

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52782; File No. SR-Amex-2004-74)

November 16, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Elimination of Commentary .01(5) to Amex Rule 916 and Amendment to Amex Rules Relating to the Definition of “NMS stock”

On August 27, 2004, the American Stock Exchange LLC (“Amex”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate Commentary .01(5) to Amex Rule 916 (“Commentary .01(5)”). The proposal would permit the opening of new option series on an underlying security previously approved for Amex option transactions when the issuer of the underlying security has failed to timely file reports required by the Act and has not corrected such failure within 30 days after the due date of the report. On September 26, 2005, Amex amended the proposal to replace the term “national market system security” with the term “NMS stock” in its rules for consistency with Regulation NMS.³

The proposed rule change, as amended, was published for comment in the Federal Register on October 12, 2005.⁴ The Commission received no comments on the proposal.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Amex proposed to amend Amex Rule 915(a) and Commentary .01(6) to Amex Rule 916, in order to substitute the term “NMS stock” for the term “national market system security,” for consistency with Regulation NMS. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁴ See Securities Exchange Act Release No. 52563 (October 4, 2005), 70 FR 59380.

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange.⁵ The Commission believes that the elimination of Commentary .01(5) is consistent with Section 6(b)(5) of the Act,⁶ which requires that rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission notes that currently, when an issuer of a security has failed to timely file its reports required under the Act, the issuer's security may continue to trade on the primary market for a period of time. Notwithstanding the fact that the underlying security may continue to trade, Commentary .01(5) prevents Amex from opening new series of options covering the underlying security of the delinquent filer. This treatment potentially denies investors the opportunity to trade at strike prices that may more accurately reflect the current market in the underlying security. Moreover, the Commission believes that elimination of Commentary .01(5) could help reduce investor confusion arising from inconsistent treatment of the underlying security and options covering the underlying security. Finally, the Commission notes that pursuant to Amex rule, the underlying security will not be deemed to meet Amex's requirements

⁵ The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

for continued approval if such underlying security is not subject to an effective transaction reporting plan and other requirements that address the liquidity and pricing of the underlying security.⁷ Amex has represented it has procedures in place to monitor whether the underlying security continues to trade or is delisted from its primary market and will cease opening new series of options in such security and allow the existing series of options to expire. Amex has also represented that if the underlying security has been halted or suspended in its primary market, Amex may halt trading in the option class pursuant to Amex Rule 918(b) and shall halt trading pursuant to Amex Rule 117. The Commission expects Amex to diligently execute its oversight responsibilities with respect to the listing status of the underlying security, and, in the event of such a delisting, to promptly take the appropriate actions with respect to any options covering such security.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Amex-2004-74), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz
Secretary

⁷ See proposed Commentary .01(5) to Amex Rule 916 (currently Commentary .01(6) to Amex Rule 916).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).