

and Procedures Governing the Settlement of Disputes.

On July 20, 1995, after extensive negotiations, the United States and Korea reached agreement on measures to open the Korean market to U.S. meat and other food products. Specifically, Korea agreed to phase-out its current system of establishing shelf-life standards and to replace it with a system in which manufacturers will set their own "use-by" dates. For chilled, vacuum-packed pork and beef and all frozen food (including frozen beef, pork and poultry), Korea's new manufacturer-determined shelf life system will come into effect on July 1, 1996. From October 1, 1995, until July 1, 1996, these products will be subject to specific government-mandated shelf-life dates that will allow trade to take place until the new system takes effect. All dried, packaged, canned or bottled products will be subject to the new system as of October 1, 1995. In addition, Korea has agreed to ensure that any maximum residue level for imported excretory organ meats is consistent with international standards established by the CODEX Alimentarius Commission; to notify the Harmonized Tariff System tariff heading or subheading for each item subject to a government-mandated shelf life on or after October 1, 1995; to extend the maximum chilling period for pork from 24 to 48 hours; and to provide at least seven days advance notice prior to offering a tender for the purchase of pork, and a period of at least 30 days for arrival of a product to fulfill the contract.

On the basis of this agreement the USTR has decided to terminate this investigation. The USTR will monitor Korea's implementation of the agreement pursuant to section 306 of the Trade Act (19 U.S.C. 2416).

Irving A. Williamson,

Chairman, Section 301 Committee.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36079; File No. SR-Amex-95-23]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Discontinuation of the Emerging Company Marketplace

August 9, 1995.

On June 9, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange")

submitted to the Securities and Exchange Commission ("SEC" or "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 discontinue the listing of new companies on the Emerging Company Marketplace ("ECM").

The proposed rule change was published for comment in Securities Exchange Act Release No. 35863 (June 19, 1995), 60 FR 32719 (June 23, 1995).

In March 1992, the Commission approved a rule change to amend the Amex Company Guide to add a new section establishing listing criteria for an Emerging Company Marketplace ("ECM").³ The ECM rules established quantitative listing standards that were below those required for listing on the Amex's main list. In May 1994, the United States General Accounting Office ("GAO") issued a report ("GAO Report") that examined the Amex's methodology for deciding whether to approve a company's securities for ECM listing and trading.⁴ The Commission concurred with the GAO's recommendations and noted that they were consistent with the Division of Market Regulation's conclusions following its prior inspection of the ECM.⁵ In December 1994, the Commission approved amendments to the ECM rules that substantially responded to the Commission and GAO recommendations.⁶

The Amex now has determined to discontinue the listing of new companies on the ECM and proposes to eliminate the ECM guidelines that allow for such new listings. Under the proposal, companies currently trading pursuant to the ECM listing requirements will continue to trade on the Amex as ECM listed companies.⁷ The Amex does not have a deadline for removing these companies from the ECM list. Companies presently trading on the ECM will continue to do so until they graduate to the Amex's main list by meeting the appropriate listing

standards, or delist, either voluntarily or because they fail to meet the ECM listing standards. During this transition time, ECM companies will continue to be subject to all the rules applicable to ECM issues, including the continued listing guidelines. Quotes and trades in such securities will continue to be reported to vendors with the ".EC" designator.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).⁸ In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

A self-regulatory organization has the discretion to determine the type of companies it desires to list in its marketplace, so long as such listing decisions are consistent with the requirements of the Act and in accordance with the organizations listing rules. Similarly, the Commission believes that it is reasonable for the Amex to determine that it no longer wants to continue to list a certain class of securities, such as new companies on the ECM.

Despite the Amex's determination to discontinue listing new ECM companies, the Amex's proposal ensures that existing listed ECM companies and their shareholders will not be disadvantaged because companies currently listed on the ECM will not be immediately delisted. In addition, because the existing ECM companies will remain subject to the Exchange's continued listing standards, as well as its regular surveillance program, the Commission believes that the Exchange's proposal will ensure the continued protection of investors in ECM listed companies.⁹ Once all of the ECM companies have delisted, either voluntarily or because they fail to meet the ECM maintenance standards, the Commission expects that the Amex will file a proposed rule change to remove

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 30445 (March 5, 1994), 57 FR 8693 (March 11, 1992) (approving File No. SR-Amex-91-25).

⁴ GAO, American Stock Exchange—More Changes Needed in Screening Emerging Companies for the Marketplace (May 1994).

⁵ See letter from Brandon Becker, Director, Division, to Richard L. Fogel, Assistant Comptroller General, GAO, dated February 18, 1994, reprinted in GAO Report, *supra* noted 4.

⁶ See Securities Exchange Act Release No. 35104 (December 15, 1994), 59 FR 66381 (December 23, 1994).

⁷ The continued listing guidelines for ECM companies will remain in place for these companies.

⁸ 15 U.S.C. 78f(b) (1988).

⁹ As the Commission noted in the last amendment of the ECM Rules, see *supra* note 6, it believes that enforcement of maintenance standards is vital to the continued integrity of exchange markets. The Commission expects that the Amex will continue to strictly enforce the maintenance criteria contained in the ECM Rules and maintenance criteria contained in the ECM Rules and will delist companies that fail to meet these standards.

the remaining ECM Rules from its Company Guide.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-Amex-95-23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36085; File No. SR-CBOE-95-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Responsibility for Performing Functions of the ITS Clerks

August 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1995, the Chicago board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange subsequently filed Amendment No. 1 on July 6, 1995.¹ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interest persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

With regard to the exchange trading of stocks, warrants and other non-option securities, the CBOE proposes to amend one of its Intermarket Trading System

("ITS" or "System") rules, CBOE Rule 30.75, such that the Exchange will be required to provide ITS clerks only when the Exchange deems it necessary for the ordinary operation of the system. In addition, Designated Primary Market-Makers ("DPMs") would be required to provide employees to perform the functions of ITS clerks for transactions in instruments that have been assigned to that DPM. The proposed rule change would only apply to the Exchange's Chapter 30 products. Chapter 30 of the Exchange's rules govern trading in stocks, warrants, and other non-option securities.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 30.75 ("Transmission and Reception of System Messages; Exchange Liability"), governs the transmission and reception of obligations and commitments to trade, pre-opening notifications, and responses thereto over the ITS.² Currently, Exchange Rule 30.75 requires the Exchange to provide ITS clerks to send and receive ITS messages. The Exchange proposes to amend Paragraph (a) of the Rule to clarify that the Exchange will not be obligated to provide ITS clerks, except as provided in the interpretations to the Rule.

New interpretation .01 to Exchange Rule 30.75 would require employees of

DPMS³ to send and receive commitments and obligations to trade, pre-opening notifications, and responses thereto over the System. Further, the interpretation makes it clear that the Exchange will not be liable for the acts, errors, or omissions of these DPM employees.⁴

A second interpretation to the Rule makes it clear that the Exchange will provide Exchange employed ITS clerks for products that are traded at posts that have order book officials ("OBOs"), and will not provide ITS clerks for products for which a DPM has been appointed. The Exchange also would be required to provide the services of ITS clerks for products for which DPMs make markets when the circumstances (such as fast markets) warrant. Two Floor Officials would be able to require the Exchange to provide ITS clerks for particular circumstances.

The Exchange believes this rule change is warranted because it is possible that some of its Chapter 30 products, which the Exchange may trade in the future, may be assigned to DPMs. As such, the Exchange believes it would be most efficient for the DPM that is assigned to the product that is subject to the ITS rules to employ its own employees to perform the functions of the ITS clerks. Because a DPM runs his own business, he is in the best position to make the business determination concerning how many employees are needed to perform the various functions assigned to him, including the ITS functions. Requiring the DPM to provide employees to perform these functions, therefore, should limit the resources the Exchange will be required to provide to perform these functions, therefore, should limit the resources the Exchange will be required to provide to perform this function and thus, reduce overall costs to the Exchange and its members. Customers of the Exchange and the DPMs would be protected from interruption of service in the system, however, because the Exchange will have employees available to perform the

³ A DPM is a member or member organization which has been appointed by the Exchange's Modified Trading System ("MTS") Committee to perform market-making and certain other functions with respect to a designated options class or classes or with respect to a product traded on the Exchange pursuant to Chapter 30. Among other things, a DPM is required to disseminate accurate market quotations, honor market quotations, be regularly present at the trading post, and perform the functions of an Order Book Official, *i.e.*, he must maintain and keep current the customer limit order book.

⁴ Rule 30.75 currently does provide for limited liability of the Exchange for losses caused by the errors or omissions of the Exchange's own employees, *i.e.*, ITS clerks.

¹⁰ 15 U.S.C. 78s(b)(2) (1988).

¹¹ 17 CFR 200.30-3(a)(12) (1994).

¹ In Amendment No. 1, the Exchange corrects a typographical error in the defined term "ITS Clerk" as it appears in Rule 30.75 and in the two proposed interpretations and policies thereunder, and clarifies the use of that term in proposed Interpretation and Policy .02 under Exchange Rule 30.75. The purpose of this amendment is to make it clear that the defined term "ITS Clerk" refers only to Exchange employees acting as such, and not to employees of a Designated Primary Market-Maker who may be performing the functions of ITS Clerks as contemplated by proposed Interpretation and Policy .01 under Exchange Rule 30.75. See Letter from Michael L. Meyer, Esq., Schiff Hardin & Waite, to James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated July 6, 1995 ("Amendment No. 1").

² ITS is a subsystem of the National Market System approved by the Commission pursuant to Section 11A of the Act, 15 U.S.C. 78k-1. ITS facilitates intermarket trading in exchange-listed equity securities based on the current quotation information emanating from the linked markets. Participants of ITS include the American Stock Exchange, the Boston Stock Exchange, CBOE, the Chicago Stock Exchange, the Cincinnati Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the National Association of Securities Dealers.