

on the whole, spends substantially all of its time actively involved in the natural resources business of the Group. Of applicant's twenty-two directors, only one director, who serves as applicant's Finance Director, spends any meaningful amount of his time (approximately 5%) monitoring the Group's securities holdings and cash management activities, and that time is spent mostly on administrative and supervisory matters. Applicant's five executive directors have been with the Group for a significant amount of time and have substantial experience in applicant's natural resources operations. Of applicant's thirteen principal officers, only the Treasurer spends any time (approximately 60%) on cash management.<sup>2</sup> Applicant is represented by its directors and officers on many of the boards of directors of its subsidiaries and its controlled company. In many of those companies, applicant's directors and officers play a leading role in management's strategic decision making or in other essential operational functions.

*d. Nature of Assets.* As of December 31, 1995, applicant had total assets of \$5,162 million.<sup>3</sup> For purpose of analysis under section 3(b)(2), 63% of applicant's total assets were operating assets attributed to its majority-owned subsidiaries (including wholly-owned subsidiaries), its controlled company, Engelhard, and applicant's interests in its joint ventures.

*e. Sources of Income.* As of December 31, 1995, applicant derived approximately 66% of its income from its operating businesses and approximately 34% from its investment activities. With respect to income earned by the Group's operations, applicant's majority-owned subsidiaries (including wholly-owned subsidiaries) accounted for approximately 26% of its income, Engelhard accounted for approximately 12% of its income, and its joint venture interests accounted for approximately 28% of its income.

6. In the alternative to exemptive relief under section 3(b)(2), applicant requests an order under section 6(c) exempting applicant from all provisions of the Act and the rules and regulations thereunder. Section 6(c) authorizes the Commission to issue a conditional or unconditional exemption from any provision of the Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and

<sup>2</sup> Approximately 40% of applicant's cash management activities are conducted through outside managers on a fully discretionary basis.

<sup>3</sup> The methods used in the valuation of applicant's assets were in accordance with section 2(a)(41) under the Act.

is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]." Applicant states that it was structured for valid economic and legal reasons and not with the Act in mind. Consequently, applicant believed that it would be inappropriate and detrimental to applicant and its shareholders to be treated as an investment company and made subject to the Act. Furthermore, applicant believes that it is not the type of company and does not engaged in the activities the Act was designed to regulate. Accordingly, applicant submits that the requested exemption is necessary and appropriate in the public interest, is consistent with the protection of investors, and is consistent with the purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37179; File No. SR-Amex-96-11]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc., To Establish a Firm Facilitation Exemption**

May 8, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 9, 1996, the American Stock Exchange, Inc. ("Amex" 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.<sup>3</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> On May 2, 1996, the Amex filed Amendment No. 1 to the proposed rule change to include within the rule text the requirement that if the Exchange grants a facilitation exemption on the basis of oral representations, the member organization must file the appropriate forms and documentation substantiating the basis for the exemption within either two business days or a period of time to be designated by the Exchange ("Amendment No. 1"). See Letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief,

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

The Amex proposes to amend Exchange Rules 904, 905, 904C, and 906G to provide for an exemption from standardized equity and index and Flexible Exchange option position and exercise limits for member firms seeking to facilitate customer orders.

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

In its filing with the Commission, the Amex 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 Amex 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**

**1. Purpose**

The Amex is proposing to establish a firm facilitation exemption<sup>4</sup> for all non-multiply-listed Exchange option classes. This exemption would be available to the Exchange's standardized equity and index and Flexible Exchange option classes. In addition, the firm facilitation exemption will be twice the standard limit.

Under the proposal, the procedures set forth in Exchange Rule 950(d) Commentary .02 for crossing a customer order with a firm facilitation order must be followed. In this regard, before a customer order can be crossed with a firm facilitation order, the trading crowd must be given a reasonable opportunity to participate. Moreover, only after it has been determined that the trading crowd will not fill the order, may the firm's customer order be crossed with the firm's facilitation order.

The Amex notes that the firm facilitation exemption will be in addition to and separate from the standard limit, as well as other exemptions available under the Exchange's position limit rules. For example, if a firm desires to facilitate customer orders in the XYZ option

Derivatives Regulation, Division of Market Regulation, Commission, dated May 2, 1996.

<sup>4</sup> The Commission notes that a facilitation trade is defined as a transaction that involves crossing an order of a member firm's public customer with an order for the member firm's proprietary account.

class, which is assumed not to be multiply-listed and also assumed to have a 25,000 contract standard position limit, the firm may qualify for a firm facilitation exemption of up to twice the standard limit (50,000 contracts), as well as an equity hedge exemption of up to twice the standard limit (50,000 contracts), in addition to the 25,000 contract standard limit. If both exemptions are allowed, the facilitation firm may hold or control a combined position of up to 125,000 XYZ contracts on the same-side of the market.

Initially, the Exchange intends to provide the facilitation exemption to member firms only for positions in equity options that are solely listed on the Exchange and not for multiply-listed equity options. The reason for this temporary limitation is to allow the options exchanges, working through the Intermarket Surveillance Group ("ISG"), to develop uniform procedures to assure that all market participants at each exchange are given an opportunity to participate in an order before a member firm is given an exemption from the position limit rules.

Under the proposal, member firms must receive approval from the Exchange prior to executing the facilitating order which would result in the firm exceeding position limits. Although permission may be obtained based on oral representations, the facilitation firm is required to furnish to the Exchange, within two business days or such other time period designated by the Exchange, forms and documentation substantiating the basis for the exemption. Further, to remain qualified for the exemption, the member firm must, within five business days after the execution of the exempted order, hedge all exempt option positions that have not previously been liquidated, and furnish to the Exchange documentation reflecting the resulting hedging position. In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own option and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. Moreover, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted option positions and the positions hedging them, as well as to promptly notify the Exchange of any material change in the exempted option positions or the hedge.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five business days prior to the filing date; and (4) does not become operative for 30 days from April 9, 1996, the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder. In particular, the Commission believes that the proposal qualifies as a "noncontroversial filing" in that the proposed amendments do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate for the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No SR-Amex-96-11 and should be submitted by June 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37186; File No. SR-PSE-96-12]

## **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Financial Arrangements of Market Makers**

May 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 5, 1996, the Pacific Stock Exchange Incorporated ("PSE" 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested Persons.

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

The PSE proposes to amend its rules on the trading restrictions that apply to Options Floor Members with "financial arrangements" as defined in PSE Rule 6.40.

<sup>5</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).