

Applicant's Legal Analysis

1. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its Eligible Directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within 10 years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC on the basis that the terms of the proposal are fair and reasonable and does not involve overreaching of the BDC or its shareholders; (d) the options are not transferable except for disposition by gift, will, or intestacy; (e) no investment adviser of the BDC receives any compensation described in paragraph (1) of section 205 of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant states that the terms of the Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states that the number of voting securities that would result from the exercise of all options issued or issuable to officers and non-officer directors under the Plan is 6,250,000 shares, or 12% of the company's outstanding stock. The total number of shares of applicant's common stock issuable under the Plan that may be granted in any one year to current Eligible Directors represents about .08% of applicant's outstanding common stock.

Applicant states that given the small number of shares of common stock issuable upon exercise of the options, the exercise of the options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of applicant's common stock.

4. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant states that the Eligible Directors are actively involved in the management and oversight of applicant's business and operations and are likely to have specific experience with respect to industries in which applicant makes a significant number of investments. Applicant asserts that the options will have value only to the extent that applicant's market value increases above the exercise price of the options, which will encourage the Eligible Directors to remain on the Board and to devote their best efforts to the success of applicant's business. In addition, applicant states that the Plan will assist it in attracting qualified persons to serve as Eligible Directors in future. Applicant further states that the options will provide a means for the Eligible Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with the interests of applicant and its shareholders.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41735; File No. SR-Amex-99-24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Amendment of Commentary .01 to Exchange Rule 340 and Amendment of Exchange Rule 590

August 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² notice is hereby given that on July 9, 1999, the American Stock Exchange LLC ("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 Exchange. 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 text of the proposed rule change is available at the Office of the Secretary, the Amex 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, 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

In 1993, the New York Stock Exchange ("NYSE") amended its rules to require all clerks to submit their fingerprints and Forms U-4 as a prerequisite to admission to the trading floor.³ The intent of the rule was to prevent an individual subject to a statutory disqualification from being employed on the exchange. At the same time, the NYSE required employers to report the termination of a clerk on Form U-5. The NYSE also amended its rules to provide for the imposition of a \$1,000 fine on members and member organizations that failed to comply with the NYSE's floor clerical personnel procedures.⁴ The Amex currently requires candidates for membership to be fingerprinted and complete Form U-4, but does not impose a similar requirement on clerks. The Amex also does not require members and member

³ NYSE Rule 35, Supplementary Material .50 and .60. See Securities Exchange Act Release No. 33045 (October 14, 1993), 58 FR 54179 (October 20, 1993) (File No. SR-NYSE-93-28).

⁴ See Securities Exchange Act Release No. 32422 (June 7, 1993), 58 FR 32972 (June 14, 1993) (File No. SR-NYSE-93-14).

¹ 15 U.S.C. 78s (b)(1).

² 17 CFR 240.19b-4

organizations to report terminations of clerks.

The Exchange now proposes to amend Commentary .01 to Amex Rule 340 to require all current and prospective clerks to be fingerprinted and submit Form U-4.⁵ Fingerprints will be submitted to the Department of Justice for a fingerprint report. All existing clerks will have eight weeks from the date the proposed rule change becomes operative to supply their fingerprints to the Exchange and submit a completed Form U-4. After the proposed rule changes become operative, new clerks and temporary clerks will not be permitted on the trading floor until they have been fingerprinted and submitted a Form U-4. A charge for the fingerprinting will be assessed against the clerk's employer.⁶ The Exchange also proposes that members and member organizations must report the discharge or termination of any clerk to the Exchange on Form U-5. Members and member organizations will be responsible for obtaining and submitting a terminated clerk's Amex identification badge with the Form U-5 to the Exchange's Membership Services Department.

Members and member organizations that fail, or whose employees fail, to submit the required fingerprints, Form U-4s and Form U-5s within the stipulated times face disciplinary action by the Exchange. In this regard, the Exchange proposes to amend the Minor Fine Plan (Amex Rule 590) to add failure to timely submit Form U-5s to the list of infractions that may be disciplined under part 3 of the Rule. This provides that members and member organizations may be fined \$50 per day for the late filing of required reports. Part 1 of the Minor Fine Plan also will be amended to provide fines for the employers of clerks that do not submit fingerprints and Form U-4s within the required time frame after the Rule becomes operative. The minimum fines under Part 1 of Rule 590 is \$500 for individuals and \$1,000 for member organizations.

The purpose of the proposed rule change is to establish better control over admission to the trading and to ensure that only qualified persons have floor access.

⁵ In the event that a clerk has already been fingerprinted and filed a U-4, the Exchange will accept in lieu of a new U-4 and fingerprints, a copy of the most recent fingerprint report and a written statement from his or her firm's compliance officer or employer/member that the U-4 is current and no reportable events have occurred.

⁶ The current charges are \$9.60 to have fingerprints taken and \$25.50 for processing by the Department of Justice.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁷ in general and further the objectives of Section 6(b)(5)⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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, and are 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 that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received 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; and (3) does not become operative for 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

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 in 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, including whether the proposed rule

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-99-24 and should be submitted by September 9, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41736; File No. SR-OCC-99-8]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Charges

August 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 27, 1999, The Options Clearing Corporation ("OCC") 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 primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The proposed rule change reduces OCC clearing fees for established products in the second half of 1999.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).