

(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

The Exchange requests accelerated effectiveness of the proposed rule change pursuant to section 19(b)(2) of the Act.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, particularly, section 6(b)(5) of the Act,¹³ in 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 interest.

The Commission believes that it is necessary for securities to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security to become options eligible. These standards are imposed to ensure that those issuers upon whose securities options are to be traded are financially sound companies whose trading volume, market price, number of shareholders, and number of shares owned by persons not required to report their stock holdings under section 16(a) of the Act are substantial enough to ensure adequate depth and liquidity to sustain options trading that is not readily susceptible to manipulation. The Commission also recognizes that under current equity options listing criteria, existing shareholders of an issuer that becomes involved in a restructuring transaction, may be precluded for a significant period from employing an adequate hedging strategy involving options on any newly acquired Restructure Security received in connection with such transaction.

Accordingly, to determine whether the earlier listing of options overlying a Restructure Security is reasonable, the Commission must balance the benefits of providing adequate hedging strategies to shareholders of the issuer of the Restructure Security, and the risks of approving certain securities for options trading before such securities actually satisfy the options eligibility criteria, which currently, for newly issued

securities, can not occur, at the very least, prior to the three months after the security begins trading. The Commission believes that the proposed limited exception to established equity options listing procedures, as proposed, strikes such a reasonable balance.

As discussed in more detail below, the Commission believes that the conditions of the new rule will help to ensure that only those securities that are most likely to have adequate depth and liquidity will be eligible for options trading prior to the establishment of a recognized trading history. Additionally, by facilitating the earlier listing of options on a Restructure Security, the Commission believes that investors formerly holding the Original Equity Security, upon which options are currently traded, should be able to better hedge the risk of their newly acquired stock position in the Restructure Security.¹⁴

Despite the benefits of the proposal, the Commission believes that the proposal should only apply to restructuring transactions that involve financially sound and sufficiently large companies. The Commission believes that the Exchange has addressed this concern by adding conditions to the proposal that require the Restructure Security to either satisfy certain comparative tests (comparing the Restructure Security, or its related business with that of the Original Equity Security, or its related business),¹⁵ or meet a very high aggregate market value standard (\$500 million).

The Commission believes that if one of the comparative tests is satisfied, the Restructure Security should adequately resemble the Original Equity Security to qualify for the "lookback" provision. Under the "lookback" provision, a Restructure Security will be able to satisfy the Volume and Price Tests if the trading volume and market price history of the Restructure Security, together with the trading volume and market price history of the Original Equity Security occurring prior to the ex-date, meet the existing related requirements. Moreover, the Commission believes that, given the limited scope of the proposal, it is appropriate to conclude that a Restructure Security with an aggregate market value of at least \$500 million appropriately qualifies for the "lookback" provision.

The Commission also believes that it is appropriate for the Exchange to count

"when issued" trading in the Restructure Security when determining if the Restructure Security will satisfy the Volume and Price Tests set forth in the initial options listing requirements. However, once the Exchange begins to use "when issued" volume or price history for the Restructure Security to satisfy the Volume or Price Tests, it may not use the Original Equity Security for such purposes on any subsequent trading day. In addition, both the trading volume and market price history of the Original Equity Security must be used, if either is so used. For example, if in order to satisfy the Volume Test for a Restructure Security for which the ex-date is expected to be February 1, 1996, an exchange may elect to base its determination on the trading volume of the Original Equity Security from February 1, 1995 through December 27, 1995, and then utilize the trading volume in the when-issued market for the Restructure Security from December 28, 1995 through January 31, 1996, in determining whether options covering the Restructure Security may be listed on the February 1 ex-date. Under this example, after December 28, 1995, only when-issued trading data for the Restructure Security may be used in determining whether it meets the Volume and Price Tests. An exchange, however, would be permitted to use the volume and price history of the Original Equity Security throughout the entire period prior to February 1, 1996, provided that it did not rely on any when-issued trading data during that period.

The Commission notes that the Exchange shall not use trading history relating to the Original Equity Security after the ex-date to meet the initial options listing requirements for the option contracts overlying the Restructure Security. Additionally, the condition that option contracts overlying a Restructure Security shall not be initially listed for trading until such time as shares of the Restructure Security are issued and outstanding and are the subject of trading that is not on a "when issued" basis or in any other way contingent on the issuance or distribution of the shares will ensure that options will only be traded on a Restructure Security when it is certain the security is actually issued and outstanding.

In addition to satisfying the Volume and Price Tests, a Restructure Security must also meet certain distribution requirements before the Exchange can deem such security to be options eligible. Specifically, the Restructure Security must have 2,000 holders, and 7 million shares must be owned by

¹⁴ Although not specifically addressed by the proposal, the Commission understands that the application of the proposal is limited to instances where options are listed on the Original Equity Security.

¹⁵ See *supra* note 12 and accompanying text.

¹³ 15 U.S.C. 78f(b)(5).