

listed. Rule 915, Commentary .05 would permit the Exchange to certify a Restructure Security as options eligible sooner than if it had to wait until it could base its certification on characteristics of the Restructure Security itself, but only in circumstances where the factors relied upon make it reasonable to conclude that the Restructure Security will in fact satisfy applicable listing criteria.

As recently approved by the Commission, Amex Rule 915, Commentary .05 does not extend to restructuring transactions involving the issuance of a Restructure Security in a public offering or a rights distribution.<sup>3</sup> The questions raised by the proposed extension of Commentary .05 to Amex Rule 915 to reorganization transactions involving public offerings or rights distributions reflect that when a Restructure Security is issued in a public offering or pursuant to a rights distribution, it cannot automatically be assumed that the shareholder population of the Restructure Security and the Original Security will be the same. Instead the holders of a Restructure Security issued in a public offering will be those persons who subscribed for and purchased the security in the offering, and the holders of a Restructure Security issued in a rights distribution will be those persons who elected to exercise their rights. Even in the case of a distribution of nontransferable rights to shareholders of the Original Security, not all such shareholders may choose to exercise their rights. As a result, it cannot be assumed that the Restructure Security will necessarily satisfy listing criteria pertaining to minimum number of holders, minimum public float and trading volume simply because the Original Security satisfied these criteria.

On the other hand, the Exchange believes that the same reasons for wanting to make an options market available without delay to holders of securities issued in reorganizations that do not involve public offerings or rights distributions apply with equal force to securities issued in reorganizations that do involve public offerings or rights distributions, so long as there can be reasonable assurance that the securities satisfy applicable options listing standards. That is, holders of an Original Security who utilize options to manage the risks of their stock positions may well find themselves to be holders of both the Original Security and the Restructure Security following a

reorganization because they chose to purchase the Restructure Security in a public offering or to exercise rights in order to maintain the same investment position they had prior to the reorganization. Such holders may want to continue to use options to manage the risks of their combined stock position after the reorganization, but they can do so only if options on the Restructure Security are available. The Exchange believes that it is important to avoid any undue delay in the introduction of options trading in such a Restructure Security in circumstances where there is sound reason to believe that the Restructure Security does in fact satisfy options listing standards.

Accordingly, the Amex proposes to add new paragraph (d) to Commentary .05 of Rule 915, to address situations where a Restructure Security is issued pursuant to a public offering or rights distribution. Pursuant to the proposed rule change, the Exchange may certify the Restructure Security as satisfying minimum shareholder and minimum public float requirements on the basis provided for in approved Commentary .05(c), only after at least five days of "regular way" trading. Moreover, after due diligence, the Exchange must have no reason to believe that the Restructure Security does not satisfy these requirements. Additionally, in order to base certification on Commentary .05 of Rule 915, the closing prices of the Restructure Security on each of the five or more trading days prior to the selection date must be at least \$7.50. Finally, as is required for all underlying securities selected for options trading, trading volume in the Restructure Security must be at least 2,400,000 shares during a period of twelve months or less up to the time the security is so selected.

The effect of the proposed rule change is that a Restructure Security issued pursuant to a public offering or a rights distribution that is part of a reorganization will be eligible for options trading only if it satisfies all of the existing standards applicable to the selection of underlying securities generally, except that (A) the Exchange may assume the satisfaction of the minimum public ownership requirement of 7,000,000 shares and the minimum 2,000 shareholders requirement if (i) either the percentage of value tests of subparagraph (a)(1) of Commentary .05 are met or the aggregate market value represented by the Restructure Security is at least \$500,000,000; and if (ii) the Restructure Security is listed on an exchange of an automatic quotation system having equivalent listing requirements or at

least 40,000,000 shares of the Restructure Security are issued and outstanding, and if (iii) after the Restructure Security has traded "regular way" for at least five trading days and after having conducted due diligence in the matter, the Exchange has no reason to believe that these requirements are not met, and (B) subject to the same percentage of value or aggregate market value requirements, the Restructure Security may be deemed to satisfy the minimum market price per share requirement if it has a closing market price per share of at least \$7.50 during each of the five or more trading days preceding the date of selection, instead of having to satisfy this requirement over a majority of days over a period of three months. (In the event the Restructure Security has a closing price that is less than \$7.50 on any of the trading days preceding its selection, it will have to satisfy this requirement on a majority of trading days over a period of three months before it can be certified as eligible for options trading.) For any Restructure Security issued in a public offering or a rights distribution that does satisfy these requirements, the effect of the proposed rule change will be to permit its certification for options trading to take place as early as on the sixth day after trading in the stock commences, instead of having to wait for three months of trading.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 in general, and furthers the objectives of Section 6(b)(5) in particular, by removing impediments to a free and open market in options covering securities issued in public offerings or pursuant to rights distributions as part of restructuring transactions and other similar corporate reorganizations.

#### *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*

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i)

<sup>3</sup> See Securities Exchange Act Release No. 36020 (July 24, 1995), 60 FR 39029 (July 31, 1995) (order approving Commentary .05 to Amex Rule 915).