

and federal securities laws noted in the Certification.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-18965 Filed 7-15-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26894]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 10, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 4, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified by any hearing, if ordered, and will receive a copy of any notice or order in the matter. After August 4, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### New Century Energies, Inc., et al. (70-9199)

New Century Energies, Inc. ("New Century"), a registered holding company, Public Service Company of Colorado, a wholly owned electric and gas subsidiary of New Century ("PSC Colorado"), and, NC Enterprises, Inc. ("NC Enterprises"), a wholly owned nonutility subsidiary of New Century, all located at 1225 17th Street, Denver, Colorado 80202-5533 ("Applicants"), have filed an application-declaration

under sections 6(a), 7, 9(a), 10, and 12(f) of the Act and rules 43 and 54 under the Act.

Applicants seek authority to: (1) Acquire 50% of the equity securities of WYCO Development LLC ("WYCO"), a nonutility company formed for the purpose of facilitating the transactions described herein, for an amount not to exceed \$26 million; (2) purchase, through WYCO, the Front Range and Powder River Lateral Expansion ("Powder River") pipeline projects from PSC Colorado and Wyoming Interstate Company, a non-associated company, respectively; and (3) lease the Front Range and Powder River pipelines back to PSC Colorado and Wyoming Interstate Company.

PSC Colorado provides electric and retail natural gas distribution service to the Denver and Front Range metropolitan areas. PSC Colorado is subject to regulation by the Colorado Public Utilities Commission ("Colorado PUC"). The Front Range Pipeline construction, sale and lease is subject to review and approval by the Colorado PUC. The Powder River lease is subject to review and approval by the Federal Energy Regulatory Commission.

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. 34-40189; File No. SR-AMEX-97-39]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Minimum Trading Increments (Rule 127)

July 10, 1998.

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 October 22, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 and to grant accelerated approval to the proposed rule change.

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

The Amex proposes to amend Exchange Rule 127 to add Commentary .03 to permit members to trade on the Exchange in increments smaller than  $\frac{1}{16}$  in order to match bids and offers displayed in other markets for the purpose of preventing Intermarket Trading System ("ITS") trade-throughs. 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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspect of such statements.

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

###### 1. Purpose

Amex Rule 127 currently provides that the minimum fractional change for transactions on the Exchange is  $\frac{1}{16}$  for securities selling above  $\frac{1}{4}$ , and  $\frac{1}{32}$  for securities selling below  $\frac{1}{4}$ . In May 1997, the Exchange extended trading in sixteenths to all Amex equity securities selling at \$10 or higher, having previously only traded securities priced under \$10 in sixteenths. The Exchange took this step based on its belief that trading in increments of  $\frac{1}{16}$  promotes investor protection by enhancing price improvement opportunities on the Exchange.

Since Amex's initiative and subsequent initiatives by other markets to implement sixteenths trading, certain third market makers have disseminated quotations in a limited number of listed securities in fractions smaller than a sixteenth. In addition, ITS has been modified to permit commitments to trade to be sent through ITS in fractions as small as  $\frac{1}{64}$ . This ITS modification permits Amex members to send orders

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

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

via ITS to a market displaying a quotation in  $\frac{1}{32}$  or  $\frac{1}{64}$ .

The Exchange believes it is important to provide its members with flexibility to effect transactions on the Exchange at a smaller increment than  $\frac{1}{16}$  for the purpose of matching a displayed bid or offer in another market at such smaller increment (i.e.,  $\frac{1}{32}$  or  $\frac{1}{64}$ ) for the purpose of preventing ITS trade-throughs.<sup>3</sup> For example, if the best bid on the Amex is 8 and a bid of  $8\frac{1}{32}$  is displayed through ITS in another market center, the Amex specialist or floor broker may execute a market or marketable limit order at  $8\frac{1}{32}$  in order to match the other market's bid. Amex will retain its existing requirement that limit orders can only be entered in increments no smaller than  $\frac{1}{16}$ .<sup>4</sup>

## 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)<sup>5</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

### *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 that is not necessary or appropriate in furtherance of the purposes of the Act.

### *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. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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) of the Act.<sup>6</sup> Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)<sup>7</sup> 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.<sup>8</sup>

Recently, there has been a movement within the industry to reduce the minimum trading and quotation increments imposed by the various self-regulatory organizations ("SROs"). Last year, the Amex, Nasdaq Stock Market ("Nasdaq"), New York Stock Exchange ("NYSE") and Chicago Board Options Exchange ("CBOE") reduced their minimum increments.<sup>9</sup> Currently, exchange rules provide for trading of most equity securities in increments as small as  $\frac{1}{16}$  of a dollar.<sup>10</sup> Amex represents that several third market makers have begun quoting securities in increments smaller than those approved for trading on the primary markets. The proposed rule change will provide Amex with the limited flexibility it needs to address this development and remain competitive with these markets.

The size of the minimum trading increment for securities traded through the facilities of Nasdaq is determined by the technical limitations of the Nasdaq system. Currently, Nasdaq systems are capable of trading securities priced under \$10 in increments as fine as  $\frac{1}{32}$  of one dollar. Securities priced over \$10 may be traded in increments as fine as  $\frac{1}{16}$  of one dollar.<sup>11</sup> As a result, the Commission recognizes that Nasdaq third market makers may trade exchange listed securities priced at less than \$10 in increments finer than sixteenths. Nasdaq has informed the Commission that Nasdaq third market makers are currently posting quotes for listed

securities in increments finer than sixteenths.<sup>12</sup> The proposed amendment to Exchange Rule 127, will allow Amex traders to match prices disseminated by Nasdaq market makers that may better the Amex quote by an increment finer than the current  $\frac{1}{16}$  minimum increment. In addition, the Commission notes that the proposal will enable the Exchange to match prices disseminated by other exchanges in the event that another exchange were to reduce its minimum trading increment.<sup>13</sup> The proposal should assist Exchange members to fulfill their obligation to obtain the best price for their customers. Accordingly, the Commission believes that it is reasonable for the Exchange to allow trading in increments finer than sixteenths for the limited purpose of preventing an ITS trade-through.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Approval of the proposal will provide Amex members with the ability to match a better bid or offer made available through ITS, thereby helping to prevent ITS trade-throughs and ensuring the best execution of Amex customer orders. The Commission notes that this proposal is similar to a proposal by the NYSE that was published for the full notice and comment period, no comments were made on that proposal.<sup>14</sup> Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.<sup>15</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. 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

<sup>8</sup> In approving this rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> Securities Exchange Act Release No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment to  $\frac{1}{16}$  for certain Amex-listed equity securities); Securities Exchange Act Release No. 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a Nasdaq rule change to reduce the minimum quotation increment to  $\frac{1}{16}$  for certain Nasdaq-listed securities); Securities Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (approving a NYSE rule change to reduce the minimum quotation increment to  $\frac{1}{16}$  for certain NYSE-listed securities) and Securities Exchange Act Release No. 39159 (Sept. 30, 1997), 62 FR 52365 (Oct. 9, 1997) (approving a CBOE rule change to reduce the minimum quotation increment to  $\frac{1}{16}$  for stocks).

<sup>10</sup> *Id.*

<sup>11</sup> The Commission notes that any change to the minimum increment for securities traded through the facilities of the Nasdaq system would be considered a change in an existing order-entry or trading system of an SRO. Accordingly, the NASD would be required to file a proposed rule change under Section 19(b)(3)(A) of the Act to change its minimum increment.

<sup>12</sup> Telephone conversation between Andrew S. Margolin, Senior Attorney, Nasdaq, Gene Lopez, Vice President, Trading and Market Services, Nasdaq and David Sieradzki, Attorney, Commission on July 8, 1998.

<sup>13</sup> To change its minimum increment, an exchange would be required to file a proposed rule change that would become immediately effective under Section 19(b)(3)(A) of the Act.

<sup>14</sup> See Securities Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997).

<sup>15</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>3</sup> See Amex Rule 236.

<sup>4</sup> But see Amex Rule 127, Commentary .01, which provides that Standard & Poor's Depository Receipts® and MidCap SPDRs™ may trade on the Exchange in increments as small as  $\frac{1}{64}$  of one dollar.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-97-39 and should be submitted by August 6, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-97-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40186; File No. SR-CBOE-98-20]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Amendment No. 1 Thereto Relating to RAES Eligibility Requirements for OEX and DJX Options

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 May 18, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On June 24, 1998, the CBOE filed an amendment to the proposal.<sup>3</sup> The

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to add a new sub-paragraph to CBOE Rule 24.17, *RAES Eligibility in OEX and DJX*, that would allow a Market-Maker to participate on the Retail Automatic Execution System ("RAES") in both options on the Standard & Poor's 100 Index ("OEX") and options on the Dow Jones Industrial Average ("DJX") during the same calendar month by meeting the eligibility requirements for OEX alone, DJX alone, or eligibility requirements which consider the percentage of transactions and contracts a Market-Maker transacted in OEX and DJX combined. The text of the proposed rule change is available at the Office of the Secretary, the 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, the 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

###### 1. Purpose

Currently, CBOE Rule 24.17(b)(v) sets forth four eligibility requirements that a Market-Maker must meet before he can participate in RAES in either OEX or DJX. One of these requirements is that the Market-Maker must execute at least seventy-five percent of his Market-Maker contracts for the preceding calendar month in the option class in which the Market-Maker is participating on RAES. Because of the high percentage requirement, a Market-Maker who qualifies to participate in RAES in either OEX or DJX would not be able to qualify to participate in RAES in the other class. In fact, the Exchange believes the seventy-five percent requirement is so high that it serves as a disincentive for a Market-Maker on

one side of the common structure in which OEX and DJX are traded to move into the other side of the structure to trade the other option product for fear that the Market-Maker will no longer qualify for RAES in his primary trading area.

The Exchange believes, however, that a strength of the Market-Maker system is the ability of Market-Makers to move from one trading pit to another to provide liquidity and capital when market conditions warrant. Because the traders in OEX or DJX stand right next to each other in the same physical trading structure, they are in the best position to provide added liquidity and capital to the products by moving from one side of the trading structure to the other. Consequently, the Exchange determined to add new sub-paragraph (b)(vi) to Rule 24.17 to allow a Market-Maker to qualify for RAES in both OEX and DJX during the same calendar month (1) by meeting the individual requirements for OEX, (2) by meeting the individual requirements for DJX, or (3) by transacting seventy-five percent of his contracts for the month in both OEX and/or DJX combined and by transacting seventy-five percent of his contracts in OEX and DJX during the month in person. A Market-Maker can participate in RAES in both OEX and DJX during the same calendar month as long as he meets one of the sets of criteria above and as long as the two products continue to be traded at the same physical trading location. It should be noted that in the equity posts on the floor, a Market-Maker may participate in RAES in all classes traded at that post. Although OEX and DJX are technically traded at two separate trading posts, the Market-Makers for each product are separated by a movable railing within the same physical structure. A Market-Maker must be present in the particular trading crowd where the class is traded while he is participating in RAES for that class.

The Exchange proposes to implement this rule change at the beginning of the next calendar month after the rule proposal is approved by the Commission. Finally, the Exchange is proposing to delete current Interpretation .02 because it is no longer relevant now that December 1, 1997 has passed.

###### 2. Statutory Basis

By eliminating a disincentive for Market-Makers, in the physical structure where OEX and DJX are traded, to move between trading pits to provide added liquidity and capital when market conditions warrant, the Exchange believes the proposed rule change is

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>3</sup> See letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Deborah Flynn, Attorney, Division of Market Regulation, Commission, dated June 19, 1998 ("Amendment No. 1"). In Amendment No. 1, the CBOE proposes to amend the proposed rule change to add cross-references to new paragraph (b)(vi) where the Rule only refers to paragraph (b)(v) presently. The proposed change will make clear to joint account participants, or the nominee of the member organization, that the requirements of paragraph (b)(v) need not be met in order to participate in the joint account, or in the firm's Retail Automatic Execution System account, if the requirements for paragraph (b)(vi) are met.