options. As a result of the foregoing, the Exchange is proposing to decrease the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices to one-half of their respective present values.

To decrease the Indices' values, the Exchange proposes to double the divisor used in calculating the Indices. No other changes are proposed as to the components of the Indices, their methods of calculation (other than the change in the divisor), expiration style of the options or any other Index specification.

The Amex believes that lower valued indices will result in substantial lowering of the dollar values of options premiums for the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer contracts. The Exchange plans to adjust outstanding series similar to the manner in which equity options are adjusted for a 2-for-1 stock split. On the effective date of the split ''ex-date,'' the number of outstanding Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer option contracts will be doubled and strike prices halved.

Position and exercise limits. Currently, position and exercise limits (on the same side of the market) for each of the Indices are as follows: Airline, 15,000 contracts; Natural Gas, 15,000 contracts; Pharmaceutical, 12,000 contracts; and Securities Broker/Dealer, 15,000 contracts. The Exchange proposes to double each Index's position and exercise limits to 30,000, 30,000, 24,000 and 30,000 contracts respectively, on the same side of the market. This change will be made in conjunction with the simultaneous reduction of the Indices' values and the doubling of the number of contracts.

Since the new limits will be equivalent to the Indices' present limits, the Amex believes that there is no additional potential for manipulation of the Indices or the underlying securities. Further, an investor who is currently at the 12,000 or 15,000 contract limit will, as a result of the index value reductions, automatically hold 24,000 or 30,000 contracts to correspond with the lowered Index values. These position limits will revert to their original limits at the expiration of the furthest non-LEAP (long Term Equity Anticipation Security) expiration month as established on the date of the split.

The Exchange believes that decreasing the values of the Airline, Natural Gas, Pharmaceutical and Securities Broker/Dealer Indices may make these index options more attractive to retail investors and other market professionals and therefore more competitive with other products in the marketplace.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) [13] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange represents that the proposed rule change will impose no 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) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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. 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–01 and should be submitted by March 2, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99–3030 Filed 2–8–99; 8:45 am]

BILLING COCE 8010–01–M

[13] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41011; File No. SR–Amex–98–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to an Elimination of Position and Exercise Limits for Certain Broad-Based Index Options

February 1, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and 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. Amex filed an amendment to the proposed rule change on January 28, 1999.[3] The Commission is

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, from Scott G. VanHatten, Legal Counsel, Amex, dated January 27, 1999 (''Amendment No. 1''). Amendment No. 1 deleted MidCap (MID) index options from the proposal and requested that the proposed rule change be approved on a two-year pilot basis. Amendment No. 1 also provided that the Exchange may impose additional margin on accounts holding an underhedged position in Institutional Index Options or Major Market Index options or FLEX options on those indexes, as warranted by the Exchange. In addition, Amendment No. 1 clarified that the 100,000 reporting threshold that XMI and XII will be subject to will also apply to FLEX

Continued

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 Amex proposes to establish a two-year pilot program eliminating position and exercise limits for Major Market (''XMI'') and Institutional (''XII'') broad-based index options, as well as FLEX broad-based index options on these two indexes.[4] The current reporting procedures for XII,[5] as modified by this proposal, and new reporting requirements for XMI will serve to identify large option holdings and information concerning the hedging of those positions.[6] The proposal also requires the Exchange to submit a report detailing the Exchange's experience with the program no later than three months prior to the end of the program.[7] Finally, the Exchange is proposing to add text to Exchange Rule 904C to include the existing position limits for Eurotop 100 Index options.[8]

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 III below. The self-regulatory organization 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 Exchange is proposing a two year pilot program eliminating position and exercise limits for XMI, XII and FLEX options on those indexes. The Exchange will continue to require that member organizations report all index option positions exceeding 200 contracts, pursuant to Exchange Rule 906C. In addition, the Exchange is proposing to increase the reporting requirement from 45,000 to 100,000 contracts for XII and adopt a similar reporting requirement for XMI index options, and FLEX options on those indexes.[9] Lastly, the Exchange is adding text to Amex Rule 904C to state the current position limit for Eurotop 100 Index options.

Manipulation. The Amex believes that position and exercise limits in broad-based index options no longer serve their stated purpose. On the fifteenth anniversary of listed index options trading, the Exchange believes that the size of the market underlying broad-based index options is so large as to dispel any concerns regarding market manipulation. To date, there has not been a single disciplinary action involving manipulation in any broad-based index product listed on the Exchange. The Exchange believes that its fifteen years of experience conducting surveillance of index options and program trading activity is sufficient to identify improper activity. The Exchange also believes that routine oversight inspections of Amex's regulatory programs by the Commission have not uncovered any inconsistencies or shortcomings in the manner in which index option surveillance is conducted. These procedures entail a daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both the options and underlying stock basket components.

Competition. In today's market, the Exchange believes that position and exercise limits severely hamper Amex's ability to compete with the OTC and futures markets. Investors who trade listed options on the Amex are placed at a serious disadvantage in comparison to the OTC market where index options and other types of index based derivatives (*e.g.*, forwards and swaps) are not subject to position and exercise limits. Member firms continue to express concern to the Exchange that position limits on Amex products are an impediment to their business and that they have no choice but to move their business to the OTC market where position limits are not an issue.

In addition, the Amex believes that the current base limits for XMI and XII[10] options are not adequate for the hedging needs of institutions which engage in trading strategies differing from those covered under the index hedge exemption policy (*e.g.*, delta hedges, OTC vs. listed hedges). The Amex believes that, with the elimination of position limits for these products, staff resources could be better utilized elsewhere.

Financial requirements. The Exchange believes that financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in XMI or XII. Current margin, and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under paragraph (d)(2)(K) of Rule 462 to impose a higher margin requirement upon the member or member organization when the Exchange determines a higher requirement is warranted.

FLEX Equity options. In 1997, the SEC approved the elimination of position and exercise limits in FLEX Equity options under a two-year pilot program.[11] To date, there have been no adverse affects on the market as a result of the elimination of position and exercise limits. Member firms have commented favorably on this change and believe that it is the first step towards eliminating position and exercise limits in all option products. In its release approving the elimination of FLEX equity option position and exercise limits, the Commission stated that the elimination of position limits

options on those indexes. Finally, Amendment No. 1 added that the Exchange will provide a report to the Commission detailing the Exchange's experience with the program no later than three months prior to the expiration of the two-year pilot program, containing certain data from the first eighteen month period of the pilot.

[4] The current position limits for XMI and XII are 34,000 and 200,000, respectively. *See* Amex Rule 904C(b).

[5] Reporting of positions in XII exceeding 45,000 contracts on the same side of the market is currently required by Exchange Rule 904C, Commentary .03. The Exchange proposes to increase this reporting requirement to 100,000 contracts and add the same reporting requirement for XMI.

[6] Exchange Rule 906C currently requires reporting of every account holding an index option position in excess of 200 contracts. However, the Exchange will require a second reporting requirement for XMI and XII index options and FLEX options on those indexes for positions in excess of 100,000 contracts which will require member organizations to submit information to the Exchange concerning the extent to which such positions are hedged.

[7] *See* Amendment No. 1 for a discussion of additional changes to the rule filing.

[8] *See* Exchange Act Release No. 30463, 57 FR 9284 (March 17, 1992) (order approving File Nos. SR–Amex–90–25 and SR–Amex–91–01; establishing a 25,000 position and exercise limit for Eurotop index options). The present rule filling seeks only to codify this limit in Amex's rules language.

[9] The new reporting requirement will be for accounts holding positions in excess of 100,000 contracts on the same side of the market and will include, if applicable, information concerning the extent to which such positions are hedged.

[10] The base limits for XMI and XII are 34,000 and 200,000 contracts, respectively. *See* Amex Rule 904C(b).

[11] Exchange Act Release No. 39032 (September 9, 1997), 62 FR 48683 (September 16, 1997).

will allow the listed options markets to better compete with the OTC market.

[T]he elimination of position and exercise limits for FLEX equity options allows the Exchanges to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and exchange markets. The attributes of the Exchanges' options markets versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the OCC for all contracts traded on the Exchanges.[12]

Reporting requirements. The Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 100,000 contracts in XMI, XII options or FLEX options on those indexes, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. The Exchange proposes to establish the reporting level for XMI and FLEX options on the XMI and XII at 100,000 contracts and to increase the reporting level to 100,000 contracts [13] from the current reporting level of 45,000 for XII for the following reasons. Imposing a uniform reporting requirement for XII, XMI and FLEX options on those indexes will eliminate confusion. The Amex believes that an increase in the reporting level to 100,000 contracts for XII will result in the collection of more meaningful information. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for broad based index options.[14] Last, it is important to note that the proposed 100,000 contract reporting requirement is above and beyond what is currently required in the OTC market. NASD member firms are only required to report index option positions in excess of 200 contracts and are not required to report any related hedging information.

Eurotop 100 Index options position limit. The Exchange proposes to add text to Rule 904C to include the current position limit for Eurotop 100 Index options. Although the current position limit (25,000 contracts on the same side of the market with no more than 15,000 of such contracts in series with the nearest expirations) was approved in a previously submitted rule change,[15] this limit was not included in the text of Exchange Rule 904C. Accordingly, the Exchange is now adding text to Rule 904C to include the existing position limit for Eurotop 100 Index options. The Exchange believes the additional text will clarify Rule 904C and make it inclusive of and uniform for all Exchange traded indices.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[16] 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 proposed rule change will impose no 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. 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. 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, located at the above address. 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–98–38 and should be submitted by March 2, 1999.

IV. 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 of the Act.[17] Specifically, the Commission believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[18]

[12] *Id.* at 48685. The Commission notes that approval of the elimination of position and exercise limits for FLEX equity options was for a two-year pilot period and was based on several other factors including, in large part, additional safeguards adopted by the exchanges to allow them to monitor larger options positions.

[13] Currently, only the XII is subject to reporting requirements beyond those required by Exchange Rule 906C. The Exchange would expand this revised reporting requirement to XMI and FLEX options on the XII and XMI.

[14] *See* Exchange Rule 904C, Commentary .03, XII Reporting Requirement.

[15] *See* Exchange Act Release No. 30463, 57 FR 9284 (March 17, 1992).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* 15 U.S.C. 78f(b). In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id* at 78c(f).

[18] Exchange Act Release Nos. 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) (SR–Amex–92–13) (order approving an increase in XII position and exercise limits); 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (order approving an increase in OEX position and exercise limits).

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits.[19] The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set option position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.[20]

The Commission has carefully considered the Amex's proposal. At the outset, the Commission notes that it still believes that the fundamental purposes of position and exercise limits are being served by their existence. Nevertheless, the Commission believes that the current experience with the trading of index options as well as the surveillance capabilities of the Amex have made it permissible to consider other, less prophylactic alternatives to regulating the index options market while still ensuring that large positions in such index options will not unduly disrupt the options or underlying cash markets. At this time, the Commission believes that it is appropriate to allow for an elimination of position and exercise limits for certain broad-based index options on a two-year pilot basis.

The Commission believes that an elimination of position and exercise limits for certain broad-based index options on a pilot basis is appropriate for several reasons. Overall, the Commission believes that the pilot will allow Amex to allocate certain of its surveillance resources differently, focusing on enhanced reporting and surveillance of trading to detect potential manipulation and risky positions that may unduly affect the cash market, rather than focusing on the strict enforcement of position limits. Although this regulatory approach deviates from the current structure that has been in place since the beginning of index options trading, the Commission believes that the enhanced reporting and surveillance Amex is providing, as well as the fact that the pilot is limited to two of Amex's most highly capitalized and actively traded index options, provides a sound basis for approving a two year pilot program eliminating position and exercise limits.

The Commission notes first that the proposal is limited to options on two broad-based indexes, the XMI and XII, and FLEX options on those indexes. The Commission believes that the enormous capitalization of and deep, liquid markets for the underlying securities contained in these indexes significantly reduces concerns regarding market manipulation or disruption in the underlying market.[21] Removing position and exercise limits for these index options may also bring additional depth and liquidity, in terms of both volume and open interest, to the affected index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.

Second, eliminating position and exercise limits for these specified indexes should better serve the hedging needs of institutions that engage in trading strategies different from those covered under the index hedge exemption policy (*e.g.*, delta hedges, OTC vs. listed hedges). Furthermore, eliminating position and exercise limits for the XMI and XII index options will alleviate the regulatory burdens related to the current index hedge exemption, which involves a daily monitoring of positions and reports to the Exchange at the current levels.

Third, the Commission believes that financial requirements imposed by Amex and by the Commission adequately address concerns that an Amex member or its customer may try to maintain an inordinately large unhedged position in a broad-based index option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[22] Amex also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines a higher requirement is warranted.[23] The Commission believes that deleting the proposed margin review threshold of 100,000 contracts for XMI, XII and FLEX option on those indexes is appropriate to avoid a possible misinterpretation that the Exchange may only impose additional margin under Amex Rule 462 when this threshold is reached.[24] Monitoring accounts maintaining large positions should provide the Exchange with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the Exchange Act, imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. The significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts and Amex's margin requirements applicable to these products under Exchange rules serves as an additional form of protection.[25] The Commission also notes that the OCC will serve as the counter-party guarantor in every exchange-traded transaction.

Fourth, the Commission notes that the index options and other types of index-based derivatives (*e.g.*, forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that eliminating position and exercise limits for the XMI and XII options on a two-year pilot basis will better allow Amex to compete with the OTC market.

---

[19] This gradual approach to increasing position limits is evident with both the XMI and XII. *See* Exchange Act Release Nos. 29534 (August 8, 1991), 56 FR 40449 (August 15, 1991) (order approving SR–Amex–91–18; increasing position limits for the XMI from 17,000 to 34,000 contracts); 38313 (November 7, 1997), 62 FR 61418 (November 17, 1997) (order approving SR–Amex–97–44; increasing position limits for the XII from 45,000 to 100,000 contracts).

[20] *See* H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

[21] XMI includes 20 of the largest, most widely-held stocks across all major sectors of the U.S. market. As of January 26, 1999, the total market capitalization for XMI was $1.9 trillion. XII is adjusted quarterly to comprise the 75 stocks held in greatest dollar amount among all publicly traded issues in institutional portfolios larger than $100 million. As of January 26, 1999, the total market capitalization for XII was $6.4 trillion.

In addition, the average daily trading volume for the underlying components of these indexes for the six months preceding January 26, 1999, demonstrates the substantial liquidity of the index components as a group. The average daily trading share volume underlying the XMI is 3.2 million shares. The average daily trading share volume underlying the XII is 4.4 million shares.

[22] Exchange Act Rule 15c3–1 requires a capital charge equal to the maximum potential loss on a broker-dealer's aggregate index position over a +(−) 10% market move. Exchange margin rules require margin on naked index options which are in or at-the-money equal to a 15% move in the underlying index; and a minimum 10% charge for naked out-of-the money contracts. At an index value of 9,000 this approximates to a $135,000 to $90,000 requirement per each unhedged contract.

[23] *See* Amendment No. 1, and Amex Rules 462 and 904C, Commentary .03.

[24] Amendment No. 1 clarifies that the Exchange may impose additional margin as it deems necessary.

[25] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (adopting Risk Based Haircuts); and Amex Rule 462(d)(2)(K).

Fifth, the Commission believes that Amex has adopted important enhanced surveillance and reporting safeguards that will allow it to detect and deter trading abuses arising from the elimination of position and exercise limits for XMI and XII, and FLEX options on those indexes. These safeguards will also allow Amex to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. Specifically, Amex will subject XMI and XII, and FLEX options on those indexes to a 100,000 contract hedge reporting requirement.[26] Each member or member organization that maintains a position on the same side of the market in excess of these contract thresholds for its own account or for the account of a customer must file a report that includes, but is not limited to, data related to the option position, whether such position is hedged and if so, a description of the hedge. If applicable, the report must contain information concerning collateral used to carry the position. Exchange market makers would continue to be exempt from this reporting requirement. Although the new reporting threshold is higher for XII, the new level will enable Amex to allocate its surveillance resources on those accounts maintaining larger, potentially riskier, positions. Amex has submitted to the Commission a detailed description of enhanced surveillance procedures the Exchange will implement in order to monitor accounts maintaining large positions. The Commission also believes that Amex's new surveillance procedures should enable the Exchange to assess and respond to market concerns at an early stage. Although it is inappropriate to discuss the details of Amex's enhanced surveillance program, the Commission notes that these enhanced procedures were critical in its determination to approve the proposed rule change.[27]

Finally, the Commission notes the lack of any discernible problems at existing levels. Although it is difficult to compare a market with position limits and one without, the Commission notes that the lack of any significant problems at existing levels, which are relatively high for these two index options compared to other similar products, does provide some basis for going forward with Amex's proposal. The Commission further believes that, if problems were to occur during the pilot period, the enhanced market surveillance of large positions should help Amex to take the appropriate action in order to avoid any manipulation or market risk concerns.

With regard to the eliminating of position and exercise limits for FLEX options on the XMI and XII, the Commission believes that, given the size and sophisticated nature of the FLEX options market for these indexes, along with the reporting requirements, eliminating position and exercise limits for FLEX options on the XMI and XII for a two-year pilot period should not substantially increase manipulative concerns.

Notwithstanding the protections that have been built into Amex's proposal, the Commission believes a prudent approach is warranted with respect to the elimination of position limits for these indexes. In this regard, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying the effected broad-based indexes. To address this concern, the Commission is approving the proposal for a two-year pilot period and limiting the proposal to XMI and XII options, and FLEX options on those indexes.[28] Furthermore, three months prior to the end of the pilot program, Amex will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program.[29] The Commission expects that Amex will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

The Commission also believes that approval of the text being added to Amex Rule 904C to state the current position limit for Eurotop 100 Index options is appropriate given that this change is technical in nature.[30]

The Commission finds good cause to approve the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Approval of the proposed rule change may bring additional depth and liquidity, in terms of both volume and open interest, to the affected index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Further, the proposal is limited to a two year pilot and Amex has addressed the regulatory concerns by adopting enhanced reporting and surveillance requirements, as discussed above. The Commission also notes that it recently approved a similar proposed rule change from the Chicago Board Options Exchange (''CBOE''), CBOE's proposed rule change eliminated position and exercise limits for SPX, OEX, DJX options and FLEX options on those indexes on a two year pilot basis.[31] CBOE's original proposal, which was broader in that it proposed to eliminate position and exercise limits for all broad-based index options, was published for the entire twenty-one day comment period and generated only one response favorable to the proposal. Although CBOE's SPX, OEX and DJX options are not identical to Amex's XMI and XII options, these indexes are all highly capitalized board-based indexes that have been regulated in the same manner. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amex's proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–98–38) is approved, as amended, on a two year pilot basis until February 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3032 Filed 2–8–99; 8:45 am]

BILLING CODE 8010–01–M

[26] The current hedge reporting threshold for XII is 45,000 contracts. There is currently no reporting requirement for XMI.

[27] Disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[28] *Cf.* Exchange Act Release No. 30932 (September 9, 1997), 62 FR 48683 (September 16, 1997) (order approving the elimination of position and exercise limits for FLEX equity options on a two year pilot basis).

[29] *See* Amendment No. 1.

[30] *See* Exchange Release No. 30463, 57 FR 9284 (March 17, 1992) (order approving Eurotop 100 index).

[31] *See* Exchange Release No. 40969, (January 22, 1999), 64 FR 4911 (February 1, 1999).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).