SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50307; File No. SR-Amex-2004-75)

September 2, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Revisions to Amex Rule 154

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 August 30, 2004, 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 Exchange proposes to amend Amex Rule 154. The text of the proposed rule change is set forth below in its entirety. Proposed new language is in italics.

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Orders Left with Specialist

Rule 154 *(a)* No member or member organization shall place with a specialist, acting as broker, any order to effect on the Exchange any transaction except at the market or at a limited price.

(b) A specialist shall not charge a commission for handling an order (or portion thereof) that is not executed, an order that is executed on an opening or reopening, or an order (or portion thereof) that is executed against the specialist as principal (see Amex Rule 152(c)). Without

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

limiting the foregoing, a specialist also shall not charge a commission for the execution of an off floor order delivered to the specialist through the Exchange's electronic order routing systems except in the following cases:

(i) A limit order executed more than two minutes from the time of receipt on the book. In the case of a limit order partially executed in two minutes or less and partially executed in more than two minutes, a specialist shall not charge a commission for handling the portion of the order executed in two minutes or less.

(ii) An on close (market or limit) order.

(iii) A tick sensitive (market or limit) order that is not executed upon receipt in the book by the Exchange's automatic execution facilities.

(iv) A non-regular way settlement (market or limit) order.

(v) A stop or stop limit order.

(vi) A market or marketable limit order stopped at one price and executed at a better price. In the case of an order stopped at one price and partially executed at a better price, a specialist shall not charge a commission for handling the portion of the order executed at the stop price.

(vii) A fill-or-kill, immediate-or-cancel or all-or-none order that is not executed upon receipt in the book by the Exchange's automatic execution facilities.

(viii) An order for the account of a competing market maker.

For purposes of this paragraph (b), in all instances where an order received by the specialist is canceled and replaced with another order, the replacement shall be deemed to be a new order.

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[2] 17 CFR 240.19b-4.

Commentary…. .01 through .15 No change

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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 Exchange 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 Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Exchange, specialists traditionally charge a commission only for orders that they execute and do not bill for orders that they hold, but do not execute. For example, specialists do not charge a commission for "day" orders that expire unfilled or orders that are cancelled prior to execution. In addition, the Exchange has a policy (available on its AmexTrader web site[3]), which describes the circumstances under which specialists may charge members and member organizations a commission for executing orders. In general, "routine" orders are not subject to specialist commissions while orders that require special handling or for which the specialist provides a service may be subject to a commission. Thus, specialists on the Amex may (but are not required to) bill for limit orders that remain on the book for more than two minutes, market on close or limit on close orders, tick sensitive orders (e.g., an order to sell short in a security subject to the Commission's "tick-test"), orders for non-regular way settlement, stop or stop limit orders, orders stopped at one price and executed at a better price, and fill-or-kill, immediate-or-cancel and all-or-none orders.[4] By rule, specialists may not charge a commission where they take the other side of the trade as principal.[5]

One Amex specialist currently charges firms a commission for orders that are cancelled prior to execution. This specialist recently distributed a memorandum dated August 23, 2004, to "all Broker-Dealers and Firms" to advise that, commencing September 1, 2004, it would begin charging a commission for option and ETF orders that expire without an execution. Thus, for example, this specialist would charge a commission for orders for options that expire and day orders that expire unexecuted. The memorandum further states that the specialist would charge a commission for option and ETF orders, "without regard to whether they are market or limit orders, and without regard to whether they are immediately executed upon receipt or are booked." According to the Exchange, among other consequences, this change in commission billing practice would result in the specialist charging commissions for orders that are executed automatically by the Exchange's systems.

The Exchange proposes to adopt a rule that would prohibit specialists from charging a commission for orders, or portions of orders, that are not executed. This would include, but is not limited to, a prohibition on specialist commissions for order cancellations and orders that expire due to the passage of time.

The Exchange also proposes to codify its policies regarding situations where specialists

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3 See http://www.amex.com/amextrader/tdrInfo/fees/tdrInfo_Fees_pg6.html.

4 According to the Exchange, the NYSE's rules are similar to the Exchange's policy in this area. NYSE Rule 123B(b)(1) and Supplementary Material .10 generally prohibit NYSE specialists from charging a commission on orders sent to them electronically unless the order remains on the book for more than five minutes.

may charge a commission for trades that are executed in whole or part. Proposed Amex Rule 154(b) would prohibit specialists from charging a commission on off floor orders that are electronically delivered to the specialist except in cases of orders that require special handling by the specialist or the specialist provides a service. Thus, under the proposed rule, specialists would be allowed to bill a commission for a limit order that remains on the book for more than two minutes, a market or limit on close order, a tick sensitive order that is not executed upon receipt in the book by the Exchange's automatic execution facilities, an order for non-regular way settlement, a stop or stop limit order, an order stopped at one price and executed at a better price, a fill-or-kill, immediate-or-cancel or all-or-none order that is not executed upon receipt in the book by the Exchange's automatic execution facilities, and an order for the account of a competing market maker. Other off floor electronic delivered orders, orders where the specialist is the "contra" party on the execution, and orders executed on an opening or reopening would not be "billable."

The proposed rule would prohibit specialists from billing for electronically delivered orders that are executed automatically by the Exchange's order processing facilities upon receipt in the book. Amex Rule 152(c) already prohibits specialists from charging a commission where they act as principal on a trade, so the Exchange's rules would be violated if a specialist were to bill for an automatically executed trade where the specialist is the contra-side. If, on the other hand, the contra side were some other person, e.g., a registered option trader or a limit order on the book, the Exchange believes that it is hard to see what service the specialist has performed to earn a commission when the order is executed against this other interest when it first arrives in the book. The proposed rule only would allow the specialist to charge a commission for an order

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[5] Amex Rule 152(c).

that is automatically executed where (i) a limit order has been on the book for more than two minutes, and (ii) the order is automatically executed against an incoming order or some trading interest other than that of the specialist. The Exchange believes that it may be appropriate for the specialist to charge a commission in these circumstances because the specialist has assumed responsibility for the proper execution of the order.

Specialist commissions increase the cost of doing business on the Exchange. The Exchange believes that these increased costs weaken the Exchange's competitive position relative to other markets and harm investors as other markets do not need to compete as aggressively with the Exchange to cut their prices to investors. The Exchange, consequently, believes that the proposed rule would benefit investors if implemented.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5) of the Act[7] 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 is not designed to permit unfair discrimination between customers,

issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A)(a)(1)(C)(i) of the Act[8] in that it is designed to promote the

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6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(5).

8 15 U.S.C. 78k-1(a)(1)(C)(i).

economically efficient execution of securities transactions by reducing the cost of such transactions to investors.

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

The Exchange believes 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. The Exchange, in fact, believes that the proposed rule change may enhance competition by possibly reducing the cost of doing business on the Exchange.

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 Exchange consents, the Commission will:

A. by order approve such 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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2004-75 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). 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 in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-75 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland
Deputy Secretary

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9 17 CFR 200.30-3(a)(12).