

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51119; File No. SR-Amex-2004-72)

February 1, 2005

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereby by the American Stock Exchange LLC to Amend Its Minor Rule Violation Plan

On August 23, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 590, its Minor Rule Violation Fine Plan (“Plan”). On November 23, 2004, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on December 22, 2004.³ The Commission received no comments regarding the proposal.

The Exchange proposed to make the following actions subject to its Plan:

- failure to comply with trade reporting requirements for options (Amex Rule 992);
- violation of Exchange rules regarding the deactivation of quote assist as it pertains to options (Amex Rules 950(g), Commentary .01 and 950-ANTE(g), Commentary .01);
- violation of Exchange rules regarding the Options Linkage Program relating to the responding to, and receiving of, Linkage Orders (Amex Rule 941(d) and (e)), Avoidance and Satisfaction of Trade-Throughs (Amex Rule 942(a)), and Locked Markets (Amex Rule 943);

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50871 (December 16, 2004), 69 FR 76801.

- violation of Exchange policy regarding affirmative determination of the availability for borrowing of shares of Amex-listed issues prior to effecting short sale transactions (Circular 90-25); and
- effecting or causing to be effected a transaction outside of business hours through the Intermarket Trading System (Amex Rules 1, 100, and 233).

The Exchange also proposed to amend the Plan as follows:

- expand the requirement of reporting trade comparison data (Part 2(d)(3) of Amex Rule 590) to include all transactions effected on the Exchange and to relocate such rule to Part 1(g) of Amex Rule 590 so as to subject it to Amex Enforcement Department action rather than Amex Floor Official action; and
- revise Part 3 of Amex Rule 590 to reflect the current filing schedule for the Form 50 (Short Position), which is now also required to be filed at or about the end of the month for selected derivative products.

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.⁴ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act⁵ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

The Commission also believes that the proposal is consistent with Sections 6(b)(1)⁶ and 6(b)(6)⁷ of the Act which require that the rules of an exchange enforce compliance and provide appropriate discipline for violations of Commission and Exchange rules. In addition, because Amex Rule 590 provides procedural rights to a person fined under the Plan to contest the fine and permit a hearing on the matter, the Exchange believes the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7)⁸ and 6(d)(1)⁹ of the Act.

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act¹⁰ which governs minor rule violation plans. The Commission believes that these changes to Amex's Plan will strengthen its ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Amex rules and all other rules subject to the imposition of fines under the Exchange's Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's Plan provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain

⁶ 15 U.S.C. 78f(b)(1).

⁷ 15 U.S.C. 78f(b)(6).

⁸ 15 U.S.C. 78f(b)(7).

⁹ 15 U.S.C. 78f(d)(1).

¹⁰ 17 CFR 240.19d-1(c)(2).

violations. The Commission expects that Amex will continue to conduct surveillance with due diligence and make a determination based on its findings, whether fines of more or less than the recommended amount are appropriate for violations under the Plan, on case-by-case basis, or a violation requires formal disciplinary action.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹¹ and Rule 19d-1(c)(2) under the Act,¹² that the proposed rule change (SR-Amex-2004-72), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 240.19d-1(c)(2).

¹³ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).