

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52334; File No. SR-Amex-2005-068)

August 25, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to Amex Rules 26 and 27

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 June 17, 2005, 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 Amex. On June 30, 2005, Amex filed Amendment No. 1 to the proposed rule change.³ On August 19, 2005, Amex filed Amendment No. 2 to the proposed rule change.⁴ 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 Exchange proposes to amend Amex Rules 26 and 27 for the purpose of:

(i) combining the Equities, Options and Special Allocations Committees; (ii) changing the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made a non-substantive correction to the proposed rule text of Amex Rule 26 and made a correction to the proposed rule text of Amex Rule 27 to reflect that, in the case of an equity security, the list of qualified specialists shall consist of five specialists.

⁴ In Amendment No. 2, the Exchange made corrections to the proposed rule text of Amex Rule 27 to clarify that: (1) the Allocations Committee may consist of, among others, four brokers for equities and all other securities admitted for trading on the Exchange except Exchange Traded Funds and options; and (2) the Allocations Committee may be chaired by the Chief Executive Officer’s designee.

composition of the new Allocations Committee; and (iii) providing the Performance Committee with the authority to reallocate securities in connection with specialist transfers.

The text of the proposed rule change is available on the Amex's Web site (<http://www.amex.com>), at the principal office of the Amex, and at the Commission's Public Reference Room. The text of the proposed rule change also appears below. Proposed new language is italicized; proposed deletions are in [brackets].

Rule 26. Performance Committee

(a) No Change.

(b) The Performance Committee shall review, and approve, disapprove or conditionally approve, mergers and acquisitions of specialist units, transfers of one or more specialist registrations, specialist joint accounts, and changes in control or composition of specialist units. The Performance Committee shall approve a proposed transaction involving a specialist unit unless it determines that a countervailing institutional interest indicates that the transaction should be disapproved or conditionally approved. In determining whether there is a countervailing institutional interest, the Performance Committee shall consider the maintenance or enhancement of the quality of the Exchange's market, taking into account the criteria that the Allocations Committee may consider in making an initial allocation determination (Rule 27(b)) and other considerations as may be relevant in the particular circumstances. The Performance Committee shall be convened to reallocate securities when there is a business transaction that results in the transfer of one or more specialist registrations. The Performance Committee shall allocate the securities in accordance with the agreement of the parties unless the Committee determines that a countervailing institutional interest indicates that there should be some other allocation.

The Performance Committee shall evaluate specialists, individually and/or collectively as units, to determine whether they have fulfilled performance standards relating to, among other things: (1) quality of markets, (2) competition with other markets, (3) observance of ethical standards, and (4) administrative factors. The Performance Committee may consider any relevant information, including but not limited to the results of the Specialist Floor Broker Questionnaire, trading data, a member's regulatory history, order flow statistics, and such other factors and data as may be pertinent in the circumstances. The Performance Committee also may review specialists, individually and/or collectively as units, with respect to capital requirements and the "early warning level" set forth in Commentary .06 to Rule 171. The Performance Committee may take one or more of the following actions if it finds that a specialist or unit has failed to properly perform as a specialist: (1) send admonitory letters, (2) refer matters to the Exchange's Enforcement Department for investigation and possible disciplinary proceedings, (3) counsel specialists on how to improve their performance, (4) require specialists to adopt a performance improvement plan, (5) reorganize specialist units, (6) require the reallocation of securities, (7) suspend a specialist's or unit's registration as a specialist for a specific period of time, or (8) prohibit a specialist or unit from receiving allocations in a particular situation or for a specified period of time. In appropriate circumstances, the Performance Committee may confine a prohibition on new allocations to one of the three classes of securities traded on the Exchange (i.e., equities, Exchange Traded Funds or options), or otherwise target a remedial action to a particular class of security traded by a specialist or unit.

(c) through (h) No Change.

Commentary.....

.01 through .08 No Change.

Rule 27. Allocations Committee

(a)[(i)] The [Options] Allocations Committee allocates equity securities of operating companies, equity options admitted to dealings on the Exchange and all other securities to be admitted for trading on the Exchange. [It consists of 11 persons drawn from a roster of approximately 75 persons and is comprised as follows: eight Floor members (six Floor brokers and two Registered Options Traders) and three representatives of upstairs member firms. The Options Allocations Committee is chaired by a Floor Governor who does not vote except to make or break a tie. In the event that no Floor Governor is able to chair the Committee, a Senior Floor Official may chair the Committee. The minimum quorum for the transaction of business by the Options Allocations Committee shall be six persons including at least one representative of an upstairs member firm. Upstairs member firm representatives may attend meetings by telephone.] It consists of six persons drawn from a roster of approximately 75 persons and is comprised as follows: the Chief Executive Officer (or his or her designee), a representative of an upstairs member firm and either (i) four (4) brokers for equities and other securities admitted to trading on the Exchange except for Exchange Traded Funds and options; (ii) two (2) brokers and two (2) Registered Traders for Exchange Traded Funds; or (iii) two (2) brokers and two (2) Registered Options Traders for options. The Allocations Committee is chaired by the Chief Executive Officer (or his or her designee) who does not vote except to make or break a tie. In the absence of the Chief Executive Officer (or his or her designee), a Floor Governor or a Senior Floor Official may chair the Committee. The minimum quorum for the transaction of business by the Allocations Committee shall be four persons. The upstairs member firm representative may attend meetings by telephone.

[(ii) The Equities Allocations Committee allocates the equity securities of operating companies admitted to dealings on the Exchange. It consists of ten persons drawn from a roster of approximately 70 persons and is comprised as follows: six Floor brokers, one specialist, and three representatives of upstairs member firms. The Equities Allocations Committee is chaired by a Floor Governor who does not vote except to make or break a tie. In the event that no Floor Governor is able to chair the Committee, a Senior Floor Official may chair the Committee. The minimum quorum for the transaction of business by the Equities Allocations Committee shall be six persons. Upstairs member firm representatives may attend meetings by telephone.

(iii) The Special Allocations Committee allocates securities that are not allocated by the Options or Equities Allocations Committees and securities with special characteristics as may be determined by the Chief Executive Officer or his or her designee. It consists of six persons drawn from a roster of approximately 30 persons and is comprised as follows: the Chief Executive Officer (or his or her designee), two brokers, two Registered Options Traders, and a representative of an upstairs member firm. The Special Allocations Committee is chaired by the Chief Executive Officer who does not vote except to make or break a tie. In the Chief Executive Officer's absence, a Floor Governor or a Senior Floor Official may chair the Committee. The minimum quorum for the transaction of business by the Special Allocations Committee shall be four persons. The upstairs member firm representative may attend meetings by telephone.

The Options, Special, and Equities Allocations Committees are hereinafter referred to as the Allocations Committee.]

(b) No Change.

(c) No Change.

(d) At regular intervals, the [Options] Allocations Committee shall prepare a list (the "pre-allocation list") of the most qualified option specialists on the Exchange based upon criteria enumerated in paragraph (b) of this Rule and interviews of all interested specialists conducted by the persons on the roster of the [Options] Allocations Committee. In the event that the Exchange determines to list an option following its designation by another exchange, that option shall be allocated to the next specialist on the pre-allocation list unless, in the opinion of a majority of available Floor Governors, a material performance situation or another relevant matter has developed with respect to that specialist since the preparation of the pre-allocation list in which case the specialist shall be bypassed and the [Options] Allocations Committee shall be convened as soon as possible to determine if the specialist should be removed from the pre-allocation list.

(e) If the issuer of a listed equity security chooses to participate in the allocation process, the Allocations Committee shall prepare a list of qualified specialists based on the criteria set forth in paragraph (b). In the case of an equity security, the list shall consist of five specialists. In the case of an Exchange Traded Fund or Structured Product, the list shall consist of five specialists. The issuer may request that one or more specialists be placed on the list of eligible specialists. The Allocations Committee, however, is not obligated to honor such requests. Specialists that are subject to a preclusion on new allocations as a result of a disciplinary proceeding or action by the Performance Committee only are eligible for allocations of "related securities" as described in Commentary .05 of this Rule. The issuer may ask to meet with representatives of the specialists units on the list.

The issuer shall select its specialist from the list within five business days of receiving the list by providing the Exchange with a letter signed by person of Secretary rank or higher indicating the issuer's choice of specialist. In the case of an Exchange Traded Fund or Structured

Product, the selection may be made by a senior officer of the sponsor or issuer who has been authorized to make such selection. If the issuer does not make its selection in a timely manner, the Allocations Committee may select the specialist as provided in paragraph (b) of this Rule.

The security shall remain with its initial specialist for at least 120 days. After that time, but during the first 12 months after listing, the issuer or sponsor may request that the security be reallocated should it become dissatisfied with its specialist. This is the case whether or not the issuer or sponsor has participated in the selection process. The issuer or sponsor is expected to furnish an explanation for the basis for its dissatisfaction, and if after counseling the issuer or sponsor and the specialist such change is still desired, the Exchange shall reallocate the security within 30 days. In any such reallocation, the Exchange shall follow the allocation procedures described in this paragraph (e) unless the issuer or sponsor requests the Allocations Committee to select the specialist without any issuer or sponsor input under the procedures described in paragraph (b) of this Rule.

(f) The Allocations Committee shall be convened to reallocate securities when (1) the Committee on Floor Member Performance directs reallocation, (2) a specialist requests to be relieved of a particular security for good cause, or (3) a specialist's registration in a security is canceled due to disciplinary action. Whenever the Allocations Committee reallocates a security for the reasons stated in (1) through (3) of this paragraph, the Allocations Committee shall follow the procedures described in paragraph (b) of this Rule. The Allocations Committee also shall be convened to reallocate securities when (4) [there is a business transaction that results in the transfer of one or more specialist registrations, (5)] a specialist dissolves or recombines, [(6)] (5) a specialist has been determined to be in such financial or operating condition that it cannot be permitted to continue to specialize in one or more of its specialty securities with safety to

investors, its creditors or other members, or [(7)] (6) a specialist has become subject to the pre-borrowing requirement of Rule 203(b)(3) of Regulation SHO under the Securities Exchange Act of 1934 with respect to one of its specialty securities or, in the case of an options specialist, with respect to the underlying security. The Allocations Committee shall follow the procedures described in paragraphs (g) or (h) of this Rule, as appropriate, whenever it reallocates securities for the reasons stated in (4) through [(7)] (6) of this paragraph.

(g) In the event that the participants in a specialist unit have previously entered into a written agreement as to how the "book" will be divided in the event of a dissolution or recombination, [or there is a transfer of specialist registrations as a result of a business transaction,] the Allocations Committee shall allocate the securities in accordance with the agreement of the parties, unless the Performance Committee determines that a countervailing institutional interest indicates that there should be some other allocation, in which case the Allocations Committee shall reallocate the securities according to instructions received from the Performance Committee or, if there are no instructions, as provided in paragraph (b) of this Rule. In the event that a specialist unit dissolves and the participants in the unit are unable to enter into a written agreement as to how the "book" will be divided, reallocation shall be deferred until the dispute is resolved through arbitration unless the Performance Committee determines that a countervailing institutional interest suggests that the securities should be reallocated prior to the conclusion of the arbitration in which case the Allocations Committee shall reallocate the securities according to instructions received from the Performance Committee or, if there are no instructions, as provided in paragraph (b) of this Rule. The Allocations Committee shall reallocate the securities in accordance with the decision of the arbitration panel unless the Performance Committee determines that a countervailing institutional interest indicates that there

should be some other allocation, in which case the Allocations Committee shall reallocate the securities as provided in paragraph (b) of this Rule.

(h) through (i) No Change.

Commentary.....

.01 through .05 No Change.

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 Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 proposes to combine the existing Equity, Options and Special Allocations Committees into a single “Allocations Committee.” In addition, the Exchange proposes to change the composition of the Allocations Committee and to permit the Performance Committee to reallocate securities in connection with specialist transfers without approval from the Allocations Committee.

Article II, Section 3 of the Amex Constitution provides the Board of Governors (“Board”) with the authority to allocate and reallocate the equity securities of operating companies (“equities”), options and other securities listed on the Exchange. The Board in connection with the allocation and reallocation of equities and options classes has delegated this authority to the Equities Allocations Committee and the Options Allocations Committee,

respectively.⁵ The Board, in connection with securities that are not allocated by the Equities Allocations Committee or Options Allocations Committee and securities with special characteristics, has delegated authority to the Special Allocations Committee.⁶ In addition, the Performance Committee has limited input in connection with the reallocation of securities resulting from a transfer of specialist units.

The Exchange states that combining the Equities, Options and Special Allocations Committees into a single “Allocations Committee” and changing the composition of the Allocations Committee would streamline and provide greater efficiency to the process for allocating and reallocating equities and options classes.

Current Amex Rule 27 provides that the Equities Allocations Committee consists of six (6) floor brokers, one (1) specialist and three (3) representatives of upstairs member firms. The Committee is chaired by a Floor Governor who does not vote except to make or break a tie. The minimum quorum requirement is six persons. The Options Allocations Committee consists of eight (8) floor members, which include six (6) floor brokers and two (2) Registered Options Traders, and three (3) representatives of upstairs member firms. The Committee is chaired by a Floor Governor who does not vote except to make or break a tie. The minimum quorum requirement is six persons, including at least one representative of an upstairs member firm. The Special Allocations Committee consists of the Chief Executive Officer (or his or her designee), two (2) brokers, two (2) Registered Options Traders and a representative of an upstairs member firm. The Commission notes that the minimum quorum requirement is four persons. The Special Allocations Committee is chaired by the Chief Executive Officer who does not vote except to make or break a tie.

⁵ See Current Amex Rule 27(a)(i) and (ii).

⁶ See Current Amex Rule 27(a)(iii).

The proposed rule change would establish a single Allocations Committee for equities, options and other listed securities. Similar to the current Special Allocations Committee, the Allocations Committee would consist of the Chief Executive Officer (or his or her designee), a representative of an upstairs member firm and either: (i) four (4) brokers for equities and other securities admitted to trading on the Exchange except for Exchange Traded Funds and options; (ii) two (2) brokers and two (2) Registered Traders for Exchange Traded Funds; or (iii) two (2) brokers and two (2) Registered Options Traders for options. The Allocations Committee would be chaired by the Chief Executive Officer who does not vote except to make or break a tie. The minimum quorum requirement would be four persons.⁷

The Exchange also seeks to provide the current Performance Committee⁸ with sole authority to reallocate securities in connection with specialist unit transfers resulting from business transactions. The current procedure in Amex Rule 27 provides that the Allocations Committee will reallocate the securities resulting from a specialist unit transfer in accordance with the agreement of the parties unless the Performance Committee determines that a countervailing institutional interest dictates that there should be some other allocation. In such a case, the Allocations Committee will reallocate the securities according to instructions received by the Performance Committee or as it deems appropriate if no instructions are received. The proposal would amend Amex Rule 26 by providing the sole authority and power for the

⁷ The Exchange has represented that, for the purposes of determine a quorum, the Chief Executive Officer shall count as one of the six persons, whereby four of the six persons would constitute a quorum. However, the Chief Executive Officer would not vote except to make or break a tie. Telephone conversation of August 10, 2005, between Jeffery Burns, Associate General Counsel, Amex and David Michehl, Attorney, Division of Market Regulation, Commission.

⁸ The Board pursuant to Article II, Section 3 of the Constitution has delegated to the Performance Committee the authority to evaluate specialist, registered traders and floor broker performance and to take specified action in response to particular performance deficiencies.

reallocation of securities in connection with the transfer of specialist units in the Performance Committee rather than the Allocations Committee. The Exchange believes that this change will establish a better process for reallocations due to specialist unit transfers.

The Exchange believes that the proposed combination of the Equities, Options and Special Allocations Committees and the change in the composition of the Allocations Committee would better serve the interests of the Exchange and its members by reducing potential inefficiencies in connection with the allocation process. The Exchange's experience to date has shown that the process of allocating and reallocating equities and options classes may be overly and unnecessarily bureaucratic. The Exchange believes that this is largely due to the number of Equities, Options and Special Allocations Committee members and the composition of the Equities, Options and Special Allocations Committees. Accordingly, the Exchange proposes to change the number and composition of the Allocations Committee to implement an improved process for allocating and reallocating equities, options and other securities traded on the Exchange to specialist units. The Exchange further states that providing the Performance Committee with the sole authority to reallocate securities in connection with specialist unit transfers would enhance the process of reallocation in these special circumstances.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Section 6(b)(5) of the Act,¹⁰ in particular, in that it 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

open market and a national market system.

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

The Exchange does not believe that the proposed rule change, as amended, 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

The Exchange did not receive any written comments on 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 such proposed rule change, as amended; or
- B. institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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-2005-068 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-068. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2005-068 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.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).