

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53085; File No. SR-Amex-2005-064)

January 9, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Telemarketing

On June 14, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed amendment to Amex Rule 429. On September 23, 2005, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On November 15, 2005, the Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the Federal Register on December 5, 2005.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

Amex Rule 429 currently prohibits members, member organizations and associated persons from making outbound calls to the residence of any person for the purposes of soliciting the purchase of securities or related services other than between the hours of 8 a.m. and 9 p.m., without the prior consent of the person. It also requires disclosure to the called person of the caller’s identity, firm telephone number and address, and the purpose of the call.

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

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

<sup>3</sup> In Amendment No. 1, the Amex partially amended the text of proposed amended Amex Rule 429 and made conforming and technical changes to the original filing.

<sup>4</sup> In Amendment No. 2, the Amex made additional changes to the text of proposed amended Amex Rule 429 and to the original filing.

<sup>5</sup> See Securities Exchange Act Release No. 52844 (November 28, 2005), 70 FR 72477 (December 5, 2005).

Rule 429 currently includes exceptions from its time of day and disclosure requirements for telephone calls to certain categories of existing customers.

The proposed amendment to Amex Rule 429 would require Amex members and member organizations to participate in the national do-not-call registry maintained by the Federal Trade Commission (“FTC”) and to follow applicable regulations of the Federal Communications Commission (“FCC”). The amendment would delete current Rule 429 and replace it with new language that incorporates the requirements of FCC regulations applicable to broker-dealers engaged in telemarketing. The amended rule would generally prohibit Amex members, member organizations, and persons associated with a member or member organization from making telemarketing calls to people who have registered with the national do-not-call registry. It also would set forth firm-specific do-not-call restrictions,<sup>6</sup> and would retain time-of-day restrictions and disclosure requirements similar to those contained in current Rule 429.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove

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<sup>6</sup> Amex Rule 428, which is not being amended, requires members and member organizations who engage in telephone solicitation to market their products and services to maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such members or their associated persons.

<sup>7</sup> In approving this proposed rule change, the Commission has considered whether the proposed rule change will promote efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change, as amended, is designed to accomplish these ends by requiring Amex members, member organizations and associated persons to observe time-of-day restrictions on telephone solicitations, maintain firm-specific do-not-call lists, and refrain from initiating telephone solicitations to investors and other members of the public who have registered their telephone numbers on the national do-not-call registry. The Commission also believes that the proposed rule change, as amended, establishes adequate procedures to prevent Amex members, member organizations and associated persons from making telephone solicitations to do-not-call registrants, which should have the effect of protecting investors by enabling persons who do not want to receive telephone solicitations from members or member organizations to receive the protections of the national do-not-call registry, while providing appropriate exceptions to the rule's restrictions, which should promote just and equitable principles of trade.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-2005-064), as amended, be and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Nancy M. Morris  
Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).