

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53561; File No. SR-Amex-2005-103)

March 29, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3 and 4 Thereto Allowing Issuers of Listed Equity Securities, Structured Products, and Exchange Traded Funds a Right to Request a New Specialist

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 October 13, 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 January 26, 2006, Amex filed Amendment No. 1 to the proposed rule change.³ On January 30, 2006, Amex filed Amendment No. 2 to the proposed rule change.⁴ On February 17, 2006, Amex filed Amendment No. 3 to the proposed rule change.⁵ On March 6, 2006, Amex filed Amendment No. 4 to the proposed rule change.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange proposed further changes to Amex Rule 27(e) and (f) and made revisions to the purpose section of the proposed rule change.

⁴ In Amendment No. 2, the Exchange made revisions to the purpose section of the proposed rule change to discuss changes to the text of Amex Rule 27(f) made in Amendment No. 1.

⁵ In Amendment No. 3, the Exchange proposed further changes to Amex Rule 27(e) and (f) and made revisions to the purpose section of the proposed rule change.

⁶ In Amendment No. 4, the Exchange proposed minor technical changes to the text of Amex Rule 27(e) and (f).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 27 to give issuers of listed equity securities and structured products, as well as exchange traded fund ("ETF") sponsors, a right to request a new specialist.

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

Rule 27. Allocations Committee

(a) – (d) No change.

(e) (i) If the issuer of an [listed] equity security to be initially listed on the Exchange 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, Exchange Traded Fund or Structured Product, 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 Allocation Committee may select the specialist as provided in paragraph (b) of this Rule. This procedure only applies to issuers of equity securities, and sponsors of Exchange Traded Funds and Structured Products that initially list on the Exchange.

[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.]

(ii) (a) The issuer of any listed equity security or Structured Product or the Exchange Traded Fund sponsor, may, at any time after 120 days from the start of trading on the Exchange, file a written notice ("Notice") with the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, signed by the issuer's or sponsor's chief executive officer, requesting a change of specialist unit for "good cause," as defined below. The issuer or sponsor is afforded one opportunity to do so. The Notice shall indicate the specific issues prompting this request, and what steps, if any, have been taken to try

to address them before the filing of the Notice. The officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, shall provide copies of the Notice to the Chief Regulatory Officer (“CRO”) and the Committee on Floor Member Performance.

(b) “Good cause,” for the purposes of (e)(ii)(a), shall consist of the failure of the specialist to make competitive markets; the failure of the specialist unit to risk capital commensurate with the type of security; the failure of the specialist unit to assign competent personnel to the stock; or any statements made publicly by the specialist unit that substantially denigrate the security. The Committee on Floor Member Performance shall make any determination that “good cause” does not exist, as defined herein. Such a determination shall be made prior to the commencement of an Issuer or Sponsor Change of Specialist Mediation (“Mediation”). In this circumstance the issuer or sponsor may appeal the decision of the Committee on Floor Member Performance to the Amex Adjudicatory Council. If the decision of the Committee on Floor Member Performance is upheld, there shall be no Mediation, and the security shall not be reallocated.

(iii) The officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, shall notify the subject specialist unit that Mediation is being commenced pursuant to this provision, and shall provide the specialist with a copy of the Notice. Within two weeks, the specialist unit may submit a written response to either the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable. The officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, shall provide copies of any such written response to the CRO, and the Committee on Floor Member Performance. The date

the specialist submits a response shall be referred to herein as the “Specialist Response Date.” If the specialist does not submit a response, there shall be no Mediation, and the Allocation Committee shall be convened to reallocate securities pursuant to paragraph (b) of this Rule.

(iv) The CRO shall review the Notice and any specialist response, and may request a review of the matter by the Regulatory Oversight Committee (“ROC”) of the Exchange’s Board of Directors. In addition, the Committee on Floor Member Performance shall review the Notice and any specialist response. The Mediation process described hereunder may continue during the CRO’s reviews, however, where a review by the ROC has been requested, no change of specialist unit may occur until the ROC makes a final determination that it is appropriate to permit such change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or is in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. The ROC may request a statement from the issuer or sponsor confirming that the request does not stem in whole or in part from the specialists’ refusal or failure to engage in any wrongful action. Notwithstanding the CRO, ROC and/or Committee on Floor Member Performance reviews of any matter raised during the process described herein, the Amex Division of Regulation and Compliance (including Listing Qualifications) and/or the NASD Amex Division may at any time take any regulatory action that it may determine to be warranted.

(v) The Exchange shall facilitate a mediation of the issues that have arisen between the issuer or sponsor and the specialist unit. The Exchange shall appoint a committee consisting of at least one floor broker, one senior floor official, one upstairs governor, and two independent governors for each Mediation (“the Mediation Committee”).

(vi) As soon as practicable after the Specialist Response Date, the Mediation Committee shall commence to meet with representatives of the issuer or sponsor and the specialist unit in an attempt to mediate the matters indicated in the Notice.

(vii) Any time after the filing of the Notice, the issuer or sponsor may file with the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, a written notice, signed by the issuer's or sponsor's chief executive officer, that it is concluding the Mediation because it wishes to continue with the same specialist unit.

(viii) After the expiration of one month from the Specialist Response Date, subject to the conclusion of any review by the CRO and ROC, the issuer and sponsor may file with the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace a written notice, signed by the issuer's or sponsor's chief executive officer, that it wishes to proceed with the change of specialist unit. Subject to paragraph (c) above, as soon as practicable thereafter, the security shall be put up for allocation following 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, (3) an issuer or sponsor files a written notice requesting a change of specialist unit and the Mediation Committee orders reallocation pursuant to paragraph (e)(viii) of this Rule, or an issuer or sponsor files a written notice requesting a change of specialist unit and the specialist unit does not submit a response, or [(3)] (4) 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)] (4) 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)] (5) a specialist dissolves or recombines, [(5)] (6) 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 [(6)] (7) 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)] (5) through [(6)] (7) of this paragraph.

(g) - (i) No change.

...Commentary

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 Amex proposes to set forth procedures in Amex Rule 27, whereby issuers of equity

securities, structured products and ETF sponsors may request a new specialist.

Current Amex Rule 27

Amex Rule 27(e) currently gives the issuer of an equity security or a structured product and the sponsor of an ETF a one-time right to request a reallocation to a different specialist unit within one (1) year from the original listing. The Exchange believes that the one-year restriction on this right does not provide an adequate amount of time for issuers to reach an informed opinion regarding a specialist. Moreover, the one-year limit does not address dissatisfaction linked to fundamental changes in a specialist unit due to transfers of specialist books or changes in a unit.

Proposed Amex Rule 27

Amex proposes in Amex Rule 27(e)(ii) that at any time after 120 days from the start of trading of an issue, an issuer or sponsor may request a specialist reassignment by filing a written notice (“Notice”) with the officer in charge of Equities Administration or the officer in charge of the ETF Marketplace, as applicable, indicating the specific issues prompting the request and the steps previously taken to attempt to address them. The issuer or sponsor may make this request for “good cause.” Amex proposes to define “good cause” as the failure of the specialist to make competitive markets; the failure of the specialist unit to risk capital commensurate with the type of security; the failure of the specialist unit to assign competent personnel to the securities; or any statements made publicly by the specialist unit that substantially denigrate the security.

Further, the Amex proposes that the officer in charge of Equities Administration or the officer in charge of the ETF Marketplace, as applicable, will provide copies of the Notice to the Chief Regulatory Officer of the Exchange (“CRO”) and to the Committee on Floor Member Performance. In addition, the officer in charge of Equities Administration or the officer in

charge of the ETF Marketplace, as applicable, will notify the subject specialist unit that mediation is being commenced with respect to the request for reassignment, and will provide the specialist with a copy of the Notice. The specialist unit may submit a written response to the officer in charge of Equities Administration or the officer in charge of the ETF Marketplace within two (2) weeks, which response will be provided to the CRO and the Committee on Floor Member Performance. If the specialist unit does not submit a response during this two-week time period, however, there will be no further assessment by the CRO or Committee on Floor Member Performance, and ultimately no mediation. The Allocations Committee will be convened to reallocate securities pursuant to Amex Rule 27(b).

The Exchange proposes in Amex Rule 27(e)(iv) that the CRO will review the Notice and any specialist response, and may request a review of the matter by the Regulatory Oversight Committee (“ROC”) of the Exchange’s Board of Governors. In addition, the Committee on Floor Member Performance will review the Notice and any specialist response. The Committee on Floor Member Performance will make any determination that “good cause,” as proposed to be defined in Amex Rule 27(e)(ii)(b), does not exist prior to the commencement of the mediation. A Committee on Floor Member Performance determination that “good cause” does not exist will preclude the commencement of mediation. In this circumstance, the security will not be reallocated and the issuer or sponsor may request an appeal of the decision of the Committee on Floor Member Performance to be heard by the Amex Adjudicatory Council.⁷ If the Committee on Floor Member Performance decision is upheld, then the security will not be reallocated.

Proposed Amex Rule 27(e)(v) provides that the Exchange will facilitate mediation of the issues that have arisen between the issuer or sponsor and the specialist unit, which may be

⁷ See Article II, Section 7(a) of the Amex Constitution.

conducted pending the outcome of the CRO's and, if applicable, the ROC's review of the request. However, as set forth in proposed Amex Rule 27(e)(iv), where a review by the ROC has been requested, no change of specialist unit may occur until the ROC makes a final determination that it is appropriate to permit such change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. Moreover, the Amex proposes that, notwithstanding review by the CRO, ROC and/or Committee on Floor Member Performance of any matter raised during the process described herein, the Amex Division of Regulation and Compliance (including Listing Qualifications) and/or the NASD Amex Division may at any time take any regulatory action that it may determine to be warranted. The Amex represents that reassignment may not occur without prior notice that the CRO has decided not to refer the matter to the ROC or that the ROC has determined that the change is appropriate.

The Exchange proposes a committee consisting of at least one (1) floor broker, one (1) senior floor official, one (1) upstairs governor, and two (2) independent governors for each mediation ("the Mediation Committee"). The Mediation Committee will meet with representatives of the issuer or sponsor and the specialist unit in an attempt to mediate the matters indicated in the Notice. During the course of the mediation, the issuer or sponsor may conclude the mediation if it determines that it wishes to continue with the same specialist unit. In the alternative, after the expiration of one month from the time of the specialist's response, subject to the conclusion of any review by the CRO and ROC, the issuer or sponsor may file written notice with the officer in charge of Equities Administration or the officer in charge of the

ETF Marketplace, as applicable, signed by the issuer's or sponsor's chief executive officer, that it wishes to proceed with the change of specialist unit. The new specialist unit will be selected by the Allocations Committee pursuant to Amex Rule 27(b).

Finally, the Exchange proposes to amend Amex Rule 27(f) to provide that, in addition to the circumstances provided for in the existing rule, the Allocations Committee will be convened to reallocate securities when an issuer or sponsor files a written notice requesting a change of specialist unit and the Mediation Committee orders reallocation pursuant to proposed paragraph (e)(viii) of Amex Rule 27, or an issuer or sponsor files a written notice requesting a change of specialist unit and the specialist unit does not submit a response.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,⁸ in general, and with Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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-2005-103 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2005-103. 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-2005-103 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.¹⁰

Nancy M. Morris
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).