

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54314; File No. SR-Amex-2006-27)

August 14, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Interim Members

I. Introduction

On March 23, 2006, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend Amex Rule 353 to limit members and member organizations from allocating their seats to interim members on the Floor of the Exchange for a maximum of fifteen aggregate days that may be used consecutively or non-consecutively for a one-year period beginning on the date of approval as an interim member (“approval date”). On June 15, 2006, Amex filed Amendment No. 1 to the proposed rule change and on June 27, 2006, Amex filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on July 13, 2006. The Commission received no comments regarding the proposal.<sup>3</sup> This order approves the proposed rule change, as amended.

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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> The comment period expired on August 3, 2006.

## II. Description of the Proposal

Currently, Amex Rule 353 permits unfettered temporary allocation of a membership to an interim member<sup>4</sup> on the Floor of the Exchange so long as the duration is no less than one day and no more than one year. The Exchange proposes to amend Amex Rule 353 to reduce the maximum number of days the member or member organization can allocate its membership to an interim member to fifteen days, which may be used by each interim member consecutively or non-consecutively for a one-year period beginning on the date of approval of such interim member by the Exchange. Upon approval of this proposed rule change by the Commission, (1) all interim members currently on seats will be able to use their fifteen day allocation for the duration of the year from the date on which they were approved for interim membership and (2) interim members that are subsequently approved will have a year beginning on their individual approval dates to use their fifteen day allocation.

If an interim member has exhausted the fifteen day period, even if this occurs prior to end of the one-year period, the member or member organization may regain interim membership status by designating another interim member, or redesignating the same interim member, to the seat by filing documents required by the Membership

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<sup>4</sup> An interim member is an individual, pre-qualified by the Exchange, who is designated by a member or member organization to temporarily use the membership for a specified period of time when the member is absent from the Trading Floor. Article IV, Section 3(e) of the Amex Constitution explicitly states that the designation of an interim member is “subject to and in accordance with such rules as may be adopted from time to time by the Board of Governors.” Amex Rule 353 sets forth the specific requirements, rights, and limitations of interim members.

Services Department and paying the maintenance fee in accordance with Article VII, Section 1(g) of the Amex Constitution.<sup>5</sup>

In addition, the proposed rule change will (1) eliminate the \$250 allocation fee in Article IV, Section 3(e) and Article VII, Section 1(g) of the Amex Constitution, which specify the fees associated with the Interim Member program, and all references thereto; (2) waive the \$1,500 initiation fee associated with the transfer of a membership pursuant to a special transfer agreement<sup>6</sup> in Article IV, Section 1(f) and Article VII, Section 1(c) of the Amex Constitution for interim members who wish to lease a seat immediately following their allotted time as an interim member; (3) make clarifications in Amex Rule 353 and Article IV, Section 3(e) of the Amex Constitution that an interim member will become effective upon submission of the appropriate form to and approval by the Membership Services Department of the Exchange; and (4) make corresponding changes related to this proposed rule change to the Member Fee Schedule, which sets forth the fees that Amex charges its members.

### III. Discussion

After careful consideration of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the

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<sup>5</sup> The maintenance fee is a \$1500 charge that is paid by a member or member organization annually to the Exchange in order to maintain interim member status. This proposal does not affect the amount of the maintenance fee.

<sup>6</sup> A special transfer agreement is an agreement between the owner of a regular or options principal membership and an individual who is authorized to use the membership for a specified period of time or until the occurrence of a specified event.

rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, the requirements of Section 6 of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Section 6(b)(5) of the Act<sup>10</sup> also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. In addition, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>11</sup> in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities.

The Exchange believes that allowing unlimited allocation of temporary membership days to interim members lessens the value of memberships by essentially

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<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> Id.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

permitting individuals who do not own or lease seats to operate as members.<sup>12</sup> The Exchange believes that this circumvention of seat leasing and ownership increases the number of unleased seats and decreases the demand for a membership, thereby artificially lessening the value of the membership. However, the Exchange also believes that the Interim Member program has served a useful function on the Floor by providing members with protection in cases of illnesses or emergencies and coverage when vacation is taken. The Exchange believes that the proposed rule change adequately balances concerns over having adequate emergency coverage on the Floor and concerns over the devaluation of memberships. The Commission believes that is consistent with the Act for the Exchange to make the changes described above to limit the interim membership program to balance these concerns.

While some members may incur additional expense as a result of the proposed restrictions to the Interim Member program, the proposed rule change should also provide some economic relief to these members. For example, the elimination of the \$250 allocation fee, which the Exchange charges each time an interim member is designated to a seat, should permit members to more effectively use the fifteen days for emergencies, illnesses, and vacations on a non-consecutive basis. Further, waiving the \$1,500 initiation fee, which is charged whenever a member enters into a special transfer agreement, for those who wish to lease a seat immediately following their allotted time as an interim member, will provide relief to members who encounter serious emergencies,

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<sup>12</sup> The Exchange represents that if the proposed rule change had been implemented at the start of 2005, approximately half of the 21 interim members would have exhausted their fifteen aggregate days by the beginning of November.

as well as offer a financial incentive for interim members to enter into special transfer agreements.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Amex-2006-27), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris  
Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).