

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49983; File No. SR-Amex-2004-40)

July 8, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 thereto Relating to an Amendment to Amex Rule 131

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 May 27, 2004, 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 the Exchange. On June 10, 2004, the Amex amended the proposed rule change.³ The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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 Rule 131. The text of the proposed rule change is set forth below. Proposed new language is in italics.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from William Floyd-Jones, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 9, 2004 (“Amendment No. 1”). In Amendment No. 1, the Amex replaced the proposed rule change in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

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Rule 131. Types of Orders

(a) through (h) No change.

(i) A fill or kill order is a market or limited price order which is to be executed in its entirety as soon as it is represented in the Trading Crowd, and such order, if not so executed, is to be treated as cancelled. For purposes of this definition, a "stop" is considered an execution. A fill or kill order for securities other than options sent to the order book electronically and not executed by Auto-Ex will be cancelled automatically.

(j) No change.

(k) An immediate or cancel order is a market or limited price order which is to be executed in whole or in part as soon as such order is represented in the Trading Crowd, and the portion not so executed is to be treated as cancelled. For the purposes of this definition, a "stop" is considered an execution. In the case of an immediate or cancel order for securities other than options sent to the order book electronically, any portion not executed by Auto-Ex will be cancelled automatically.

Except as otherwise provided in the Plan, a "commitment to trade" received on the Floor through ITS shall be treated in the same manner, and entitled to the same privileges, as would an immediate or cancel order that reaches the Floor at the same time (i.e., the commitment shall be executed in whole or in part as soon as it reaches the Trading Crowd and any portion not so executed shall be cancelled); provided however, that such a commitment may not be "stopped" and the commitment shall remain irrevocable for the time period chosen by the sender of the commitment.

(l) through (t) No change.

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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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 is proposing to modify the definitions of “fill or kill” (“FOK”) and “immediate or cancel” (“IOC”) orders for equity securities to provide that if these orders were to be sent to the book electronically, and were to not be executed by Auto-Ex, the orders would be cancelled automatically. Under the proposed rule change, a person sending an FOK or IOC order to the Exchange would receive an immediate electronic report of an execution, partial execution, or a nothing done. Orders sent to the book electronically with the FOK and IOC qualifiers, accordingly, would be processed automatically without any human intervention.

The Exchange believes that modifying the processing of FOK and IOC orders sent to the book electronically so that they are automatically cancelled if not executed automatically would conform Amex practice with respect to the handling of these orders to customer expectations. Currently, the Exchange frequently receives marketable orders for securities traded in an Auto-Ex environment immediately followed by a message to cancel the orders. The Exchange believes that the persons sending these related messages

are seeking an immediate automatic execution to all or part of their orders and wish to cancel whatever quantity is not executed automatically. The Exchange thus believes that these persons would use the proposed FOK and IOC orders if they were available since these orders would provide for an immediate automatic execution or cancellation and an immediate electronic report. The Exchange also anticipates that the proposed change to the processing of FOK and IOC orders would reduce message traffic by eliminating the need for persons seeking an immediate automatic execution or cancellation to send a separate cancellation message following the entry of the order.

The proposed rule change would not affect the processing of market and marketable limit orders that are sent to the order book electronically that are not subject to the FOK and IOC qualifications. Likewise, there would be no change to the processing of FOK and IOC orders sent to a floor broker for execution. The Exchange intends to implement the proposed revisions to IOC and FOK order processing when it implements its proposed enhanced Auto-Ex functionality.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5)⁸ 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

⁶ See, Securities Exchange Act Release Nos. 49921 (June 25, 2004), 69 FR 40690 (July 6, 2004) (approval order); and 49449 (March 19, 2004), 69 FR 15411 (March 25, 2004) (notice) (SR-Amex-2004-04).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

engaged in 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange believes that the proposed rule change, as amended, will impose no burden on competition 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

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days of the filing

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange provided written notice of its intent to file the proposed rule change, along with a brief

of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹¹

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-2004-40 on the subject line.

Paper comments:

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-40. This file number should be included on the subject line if e-mail is used. To help the Commission

description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

¹¹ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 10, 2004, the date on which the Amex filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 the filing also will be available for inspection and copying at the principal office of the Amex. 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-2004-40 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.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).