

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50871; File No. SR-Amex-2004-72)

December 16, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Amend Its Minor Rule Violation Plan

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 August 23, 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 November 23, 2004, Amex filed Amendment No. 1 to the proposed rule change.³ 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

Amex proposes to amend Exchange Rule 590, its Minor Rule Violation Fine Plan (“Plan”). The text of the proposed rule change is available at Amex’s Office of the Secretary and at the Commission’s Public Reference Room.

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, as amended, and discussed any comments it received. The text of these statements may be examined at the places specified in Item IV

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original proposed rule change in its entirety.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has had the Plan since 1976 which provides a simplified procedure for the resolution of minor rule violations. Codified in Amex Rule 590, the Plan has three distinct parts: Part 1 (“General Rule Violations”) covers more substantive matters that, nonetheless, are deemed “minor” by Amex; Part 2 (“Floor Decorum”) covers floor decorum and operational matters; and Part 3 (“Reporting Violations”) covers the late submission of routine reports.

Amex is proposing to amend Part 1 of Amex Rule 590 to bring additional rules within its coverage. Amex believes that inclusion of such matters within Part 1 of Amex Rule 590 would provide a fair means of prompt resolution of minor rule violations that do not rise to the level of a formal enforcement action. Specifically, Amex is proposing to add the following violations to Part 1 of Amex Rule 590:

- (i) Failure to comply with trade reporting requirements for options (Amex Rule 992 requires the member initiating the options transaction to report, or ensure the transaction is reported, within 90 seconds of the execution to be disseminated to the Options Price Reporting Authority).
- (ii) Expand the current violation under the Plan where a specialist deactivates quote assist without proper authorization to include options (Amex Rules 950(g), Commentary .01 and 950-ANTE(g), Commentary .01).
- (iii) Violation of Exchange rules regarding the Options Linkage program relating to the responding to, and receiving of, Linkage orders (Amex Rule 941(d) and

(e)); avoidance and satisfaction of trade-throughs (Amex Rule 942(a)); and locked markets (Amex Rule 943).

- (iv) Violation of the Exchange's policy with regard to affirmative determination of the availability for borrowing of shares of Amex-listed issues prior to effecting short sale transactions (Circular 90-25).⁴
- (v) Effecting or causing to be effected a transaction outside of business hours through the Intermarket Trading System (Amex Rules 1, 100, and 233).

Amex also is proposing to amend and relocate Part 2(d)(3) of Amex Rule 590 (failure to submit option trade comparison data to the Exchange by specified deadlines) to Part 1(g) of Amex Rule 590. The proposed amendment would expand the requirement of reporting trade comparison data to include all transactions effected on the Exchange (presently, the rule only applies to options). Repositioning the above-mentioned violation would allow such behavior to be subject to Amex Enforcement Department action rather than Amex Floor Official action and also would increase the size of possible fines. The Exchange believes that inclusion of such matters within Part 1 of Amex Rule 590 would provide a fair means of prompt resolution of minor rule violations that do not rise to the level of a formal enforcement action.

As previously noted, Part 3 of Amex Rule 590, Reporting Violations, allows the specified departments of the Exchange that routinely receive regulatory reports from members and member organizations to issue abbreviated "written statements" to persons who may have violated the specified reporting rules, identifying the rules violated, the act or omission constituting the violation, and the amount of the fine. The fines are \$50 per day for each day the report is late. The Exchange is proposing to revise Part 3 of Amex Rule 590 to reflect the current

⁴ See Securities Exchange Act Release No. 27542 (December 15, 1989), 54 FR 53222 (December 27, 1989) (SR-Amex-89-17).

filing schedule for the Form 50 (Short Position), which was previously only required to be filed at or about mid-month but is now additionally required to be filed at or about the end of the month for selected derivative products.⁵ The text of Part 3(g) of Amex Rule 590 as it discusses Form 1-S (Round Lot Short Sales Transactions) is being corrected to reflect that the form is due on Friday rather than Thursday.⁶

2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(1),⁸ 6(b)(6),⁹ and 6(b)(7),¹⁰ in particular, in that it would enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it would help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it would provide a fair procedure for disciplining members and persons associated with members.

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

Amex believes the proposed rule change, as amended, would impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

⁵ See Amex Member Firm Regulation Informational Circular 98-0234 which pertains to Diamonds, SPDRS, MIDCAP SPDRS, and the various WEBS series known as iSHARES.

⁶ See Amex Member Firm Regulation Informational Circular 97-597, which states that the Form 1-S will be due on the Friday following the week included in the report.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ 15 U.S.C. 78f(b)(6).

¹⁰ 15 U.S.C. 78f(b)(7).

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.

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, or
- (B) institute proceedings to determine whether the proposed rule change 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 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-2004-72 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-2004-72. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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-2004-72 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).