

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51209; File No. SR-Amex-2005-007)

February 15, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Require Members to Use and Maintain a Back-up Automatic Quote System in ANTE Classes

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> notice is hereby given that on January 12, 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 the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to require members to use and maintain a back-up quoting system in ANTE classes and to incorporate violations of this requirement in the Exchange’s Minor Rule Violation Plan (“Plan”). The text of the proposed rule change is available on the Amex’s Web site (<http://www.amex.com>), at the Amex’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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. 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 Exchange seeks to amend Amex Rule 950–ANTE(1), Commentary .02(a) to require a Specialist utilizing an Exchange-approved proprietary automatic quote system in a class trading on Amex’s ANTE system to have available for immediate use the Exchange-provided automatic quote system that is independent of the Specialist’s primary automatic quote system. Specialists would be required to take appropriate provisions to immediately fall back onto the Exchange-provided automatic quotation system should their Exchange-approved proprietary automatic quote system fail. Included within “appropriate provisions” would be the requirement that Specialists be diligent in keeping their theoretical values current in their back-up system. This requirement would apply at all times during market hours. The Amex believes that the back-up system would need to be independent in order to ensure that any event that could cause a failure to the primary automatic quote system would not corrupt the back-up system.

The Exchange believes that the failure of a proprietary automatic quote system could result in the Amex’s inability to open an entire group of listed options classes for a brief or sometimes lengthy time period. Thus, the Amex seeks to require that Specialists have the Exchange-provided automatic quotation system ready, as a back-up, should their primary

automatic quote system fail. The Exchange believes that failure to comply with the proposed requirement should be subject to sanction under the Plan.

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 sections: Part 1 (“General Rule Violations”) which covers more substantive matters that, nonetheless, are deemed “minor” by the Commission and the Amex; Part 2 (“Floor Decorum”) which covers Floor Decorum and operational matters; and Part 3 (“Reporting Violations”) which covers the late submission of routine reports.

Accordingly, the Amex proposes to amend Part 1(g) of Amex Rule 590 to allow for the issuance of minor fines when a Specialist fails to comply with the Exchange’s procedures regarding maintaining and utilizing the Exchange-provided automatic quote system as a back-up to the Specialist’s Exchange-approved proprietary automatic quote system.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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.

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<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change 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

No written comments were solicited or received by the Exchange on this proposal.

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 Exchange 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-007 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-2005-007. 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 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-2005-007 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.<sup>5</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).