

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51248; File No. SR-Amex-2004-11)

February 24, 2005

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to an Obvious Error Rule for Trades on the Exchange in Equity Securities

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 February 3, 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 and II below, which Items have been prepared by the Exchange. On May 21, 2004 and February 18, 2005, Amex submitted Amendment Numbers 1<sup>3</sup> and 2,<sup>4</sup> respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

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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> In Amendment No. 1, the Exchange, among other things, revised the proposed rule text to state expressly that it would not apply to listed options and to more closely mirror the Exchange’s existing rule concerning clearly erroneous transactions in Nasdaq National Market Securities. See letter from Bill Floyd-Jones, Associate General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated May 20, 2004 (“Amendment No. 1”) (replacing the original Form 19b-4 filing in its entirety).

<sup>4</sup> In Amendment No. 2, the Exchange, among other things, made technical corrections to its proposed rule text and requested accelerated approval of the proposed rule change. Amendment No. 2 superceded and replaced Amendment No. 1 in its entirety.

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

Amex proposes to adopt an obvious error rule for transactions on the Exchange in equity securities other than Nasdaq National Market securities admitted to dealings on an unlisted basis.<sup>5</sup> The text of the proposed rule change follows. New text is italicized and deleted text is bracketed.

Cancellations of, and Revisions in, Transactions Where both the Buying and Selling Members Agree to the Cancellation or Revision

Rule 135. (a) A member or member organization effecting a transaction on the Exchange shall not cancel or revise such transaction unless it was made in error or the cancellation or revision is for other proper reason, and unless in each case both buying and selling members agree to the cancellation or revision and prior approval of the cancellation or revision is obtained from a Floor Official.

(b) Rule 390 shall not preclude a member, member organization, allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to securities admitted to dealings on the Exchange after the member organization has established that the loss was caused in whole or in part by the action or inaction of such member, member organization, allied member, registered representative or officer, provided, however, that this provision shall not permit a member, member organization, allied member, registered representative or officer to guarantee any customer against loss in his or her account.

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<sup>5</sup> Telephone conversation between William Floyd-Jones, Associate General Counsel, Amex, and Terri L. Evans, Senior Special Counsel, Division, Commission, on February 22, 2005 (clarifying that the proposed rule change does not apply to Nasdaq National Market securities).

...Commentary

.01 A change or correction in a transaction which previously appeared on the tape, or the cancellation of a transaction which previously appeared on the tape and was properly rescinded, or the occurrence of a transaction which had been omitted from the tape, is to be published on the tape on the day of the transaction after approval of such publication is obtained from a Floor Official. If not published on such day, the same is to be published at a later date in the Exchange's Sales and Quotes Report with the approval of a Floor Official.

.02 Rescinded [Where a transaction is not cancelled but the member or member organization intends to assume for his or its own account the contract made for a customer, the provisions of Rule 390 apply, and any required consent of the Exchange under that rule is to be obtained from the Compliance and Surveillance Division.]

Cancellations of, and Revisions in, Transactions Where both the Buying and Selling Members Do Not Agree to the Cancellation or Revision

Rule 135A (a) A Floor Official shall, pursuant to the procedures set forth below, have the authority to review any transaction in a security admitted to dealings on the Exchange that is claimed to be clearly erroneous arising out of the use or operation of any facility of the Exchange, provided, however, that the procedures for reviewing transactions in Nasdaq National Market securities admitted to dealings on the Exchange are separately set forth in Rule 118 and provided further that these procedures do not apply to listed options.

In reviewing a trade that is claimed to be clearly erroneous, a Floor Official shall review the transaction with a view toward maintaining a fair and orderly market and the

protection of investors and the public interest. Based upon this review, the Floor Official shall decline to “break” a disputed transaction if the Floor Official believes that the transaction under dispute is not clearly erroneous. If the Floor Official determines the transaction in dispute is clearly erroneous, however, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Floor Official shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred. For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(b) Any member who seeks to have one or more transactions reviewed pursuant to paragraph (a) above shall submit the matter to a Floor Official and deliver a written complaint to the Service Desk and the other member(s) who were part of the trade within 30 minutes of the transaction. Once a complaint has been received, the complainant shall have up to 30 minutes, or such longer period as the Floor Official may specify, to submit any supporting written information concerning the complaint necessary for a review of the transaction. The other member(s) that were part of the trade shall have up to thirty minutes after being notified of the complaint, or such longer period as specified by the Floor Official, to submit any supporting written information concerning the complaint necessary for a review of the transaction. Any member on a disputed trade may request the written information provided by the other members pursuant to this subparagraph.

Once a member communicates that he or she does not intend to submit any further information concerning a complaint, the member may not thereafter provide additional information unless requested to do so by the Floor Official. If the members involved in a disputed trade indicate that they have no further information to provide concerning the complaint before their thirty-minute information submission periods have elapsed, then the matter may be immediately considered by a Floor Official. Members or persons associated with members and member organizations involved in the transaction shall provide the Floor Official with any information that he or she requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth above. Once a member has applied to a Floor Official for a ruling, the Floor Official shall review the transaction and make a ruling unless all members on the transaction agree to withdraw the application for review prior to the time that the Floor Official makes the ruling. A member may seek review of a Floor Official's ruling pursuant to the procedures described in Rule 22(d) and Commentary .02 to Rule 22.

(c) In the event of (1) a disruption or malfunction in the use or operation of any facility of the Exchange or (2) extraordinary market conditions or other circumstances in which the nullification or modification of transactions executed on the Exchange may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, a Floor Governor may review any transactions arising out of or reported through any facility of the Exchange (other than transactions in Nasdaq National Market securities which are covered by Rule 118 or transactions in listed options). A Floor Governor acting pursuant to this paragraph may declare any Amex transaction null and void or modify the terms of any such transactions if the Floor Governor determines

that (1) the transaction is clearly erroneous, or (2) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary circumstances, the Floor Governor shall take action pursuant to this subsection within 30 minutes of detection of the transaction, but in no event later than 3:00 p.m., Eastern Time, on the next trading day following the date of the trades at issue. A member may seek review of a Floor Governor's ruling from a three Governor Panel as described in Rule 22(d) and Commentary .02 to Rule 22 without first seeking review of the ruling from a Floor Official or Exchange Official.

(d) Rule 390 shall not preclude a member, member organization, allied member, registered representative, or officer from sharing or agreeing to share in any losses in any customer's account with respect to securities admitted to dealings on the Exchange after the member organization has established that the loss was caused in whole or in part by the action or inaction of such member, member organization, allied member, registered representative or officer, provided, however, that this provision shall not permit a member, member organization, allied member, registered representative or officer to guarantee any customer against loss in his or her account.

...Commentary

.01 A change or correction in a transaction which previously appeared on the tape, or the cancellation of a transaction which previously appeared on the tape and was properly rescinded, or the occurrence of a transaction which had been omitted from the tape, is to be published on the tape on the day of the transaction after approval of such publication is obtained from a Floor Official. If not published on such day, the same is to be published

at a later date in the Exchange's Sales and Quotes Report with the approval of a Floor Official.

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 III 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

According to the Exchange, trades may occur at clearly erroneous prices, sizes, securities, and so forth, due to human or system errors. The Exchange, accordingly, is proposing to adapt the "obvious error" rule that was adopted for Nasdaq securities traded at the Exchange<sup>6</sup> to other Amex securities traded under the Exchange's equity trading rules. Listed options are not affected by the proposed rule change.<sup>7</sup> The proposed Amex obvious error rule would allow the Exchange to break or revise single or multiple trades that are obviously erroneous where the parties to the trades do not agree that the trades should be cancelled or revised. Under the proposed rule, a member may request an

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<sup>6</sup> See Securities Exchange Act Release No. 49941 (June 29, 2004), 69 FR 40992 (July 7, 2004)(approving Amex-2003-39). Telephone conversation between William Floyd-Jones, Associate General Counsel, Amex, and Terri L. Evans, Senior Special Counsel, Division, Commission, on February 22, 2005.

<sup>7</sup> The Exchange has submitted a separate rule filing regarding obvious errors involving options transactions. See Amex-2005-11. Telephone conversation between William Floyd-Jones, Associate General Counsel, Amex, and Terri L. Evans, Senior Special Counsel, Division, Commission, on February 22, 2005.

Amex Floor Official to review one or more transactions that are claimed to be clearly erroneous. Once a ruling is requested, a Floor Official must review the trade unless both parties agree to withdraw the application before the Floor Official makes a ruling.

The proposed rule would require a Floor Official to review a transaction or series of transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the Floor Official would decline to “break” a disputed transaction if the Floor Official believes that the transaction under dispute is not clearly erroneous. If the Floor Official determines the transaction in dispute is clearly erroneous, however, the Floor Official may declare the transaction null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Floor Official would seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, as they would have been in had the error not occurred.

The proposed rule establishes deadlines and procedures for Floor Official review of a disputed transaction. The procedures require any member who seeks to have a transaction or series of transactions reviewed to submit the matter to a Floor Official and deliver a written complaint to the Service Desk and other members who were part of the trade within 30 minutes of the transaction. Once a complaint has been received, the complainant has up to 30 minutes, or such longer period as the Floor Official may specify, to submit any supporting written information concerning the complaint necessary for a review of the transaction. The other members involved on the trade have up to 30 minutes after being notified of the complaint, or such longer period as specified by the

Floor Official, to submit any supporting written information concerning the complaint necessary for a review of the transaction. The members involved in a disputed trade may request the written information provided by the other members. Once a member involved in a disputed trade communicates that he or she does not intend to submit any further information concerning a complaint, the member may not thereafter provide additional information unless requested to do so by the Floor Official. If all members involved in a disputed trade indicate that they have no further information to provide concerning the complaint before their respective 30 minute information submission periods have elapsed, then the matter may be immediately considered by a Floor Official. Members or persons associated with members and member organizations involved in the transaction are required to provide the Floor Official with any information that he or she requests in order to resolve the matter on a timely basis.

The proposed rule change also provides that a Floor Governor may review any transactions arising out of or reported through any facility of the Exchange and cancel or revise these transactions in the event of: (1) a disruption or malfunction in the use or operation of any facility of the Exchange; or (2) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. A Floor Governor acting pursuant to this subsection may declare any Amex transactions null and void or modify the terms of any such transactions if the Floor Governor determines that: (1) the transaction(s) is/are clearly erroneous; or (2) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that, in the absence of extraordinary

circumstances, the Floor Governor must take action pursuant to this subsection within 30 minutes following detection of the transactions, but in no event later than 3:00 p.m., Eastern Time, on the next trading day following the date of the trades at issue.

A member seeking a prompt review of a Floor Official's ruling under the proposed rule would follow the procedures outlined in Amex Rule 22(d), which provide possible appeals first to an Exchange Official, next to a Floor Governor, and finally to a three Governor panel. The proposed rule change also provides that a member aggrieved by a Floor Governor's ruling under paragraph (c) of the proposed rule may appeal the ruling to a three Governor panel. Commentary .02 to Amex Rule 22 requires Floor Officials to prepare and submit a written record of their decisions as soon as practical after making a ruling. Floor Officials, consequently, would have to prepare and submit written decisions regarding rulings on trades that may be clearly erroneous. Since Exchange Officials and Floor Governors are also Floor Officials, they, too, would have to prepare and submit a written record of their decisions regarding rulings on trades that may be clearly erroneous.

In conjunction with the revisions to Rule 135 and 135A, the Exchange also is proposing to eliminate Commentary .02 to Rule 135 and replace it with new paragraph (b) to Rule 135 and paragraph (d) to Rule 135A. Commentary .02 to Rule 135 currently states that members must obtain consent from the Exchange's "Compliance and Surveillance Division" if they assume a trade made in error. The text of Rule 390, however, does not require any such consent. The Exchange also believes that the proposed new rule text more accurately indicates that a member or member organization does not inappropriately share in the losses of a customer account when it assumes a

trade made in error.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and further the objectives of Section 6(b)(5),<sup>9</sup> in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

The Exchange believes that the proposed rule change 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

Written comments were neither solicited nor received with respect to the proposed rule change.

## III. 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:

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

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

- 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-2004-11 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-2004-11. 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 this 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-2004-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, that are applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>10</sup> which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>11</sup> New Amex Rule 135A will set forth formal procedures to be followed by an Exchange member that seeks to have a trade nullified or revised when the parties to the trade have not agreed that the trade should be cancelled or revised, or by an Amex Floor Governor who seeks to nullify or revise trades on his or her own motion. The Commission believes that it is proper for trade nullification and revision procedures to be codified and thus made transparent to Amex members who are parties to trades that are deemed to be clearly erroneous and to Amex Floor Officials who are called upon to review such trades. The new rule also sets forth the procedure to be followed in the event of any appeal of a determination made by an Exchange Floor Official or Floor Governor pursuant to proposed Amex Rule 135A. The

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<sup>10</sup> Id.

<sup>11</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission believes that this procedure is designed to help ensure that Amex Rule 135A is exercised in a fair and reasonable manner. In addition, the Commission believes that proposed Amex Rules 135(b) and 135A(d), which allow a member to share in customer losses that were caused in whole or in part by the member's action or inaction, are consistent with the Act.

The Commission finds good cause for approving the proposed rule change prior to the 30<sup>th</sup> day after the date of publication of the notice of filing thereof in the Federal Register. The Commission notes that the proposed rule change would provide members trading non-Nasdaq equity securities with essentially the same procedures recently approved by the Commission for the nullification or adjustment of clearly erroneous transactions involving Nasdaq National Market Securities.<sup>12</sup> The Commission believes that because the proposal raises no new issues of regulatory concern, it is appropriate to accelerate approval of the proposed rule change so that members who trade any kind of equity securities that are admitted to dealings on the Exchange will be afforded similar processes in the event that a particular trade to which they are a party is claimed to be clearly erroneous.

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<sup>12</sup> See Securities Exchange Act Release No. 49941, supra note 6.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change, as amended (SR-Amex-2004-11), is hereby approved, on an accelerated basis.

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

Margaret H. McFarland  
Deputy 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).