

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51279; File No. SR-Amex-2004-65)

March 1, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 thereto by the American Stock Exchange LLC Relating to Revisions to Amex Rule 21, Appointment of Floor Officials

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 August 10, 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 Amex. On December 22, 2004, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 3, 2005, the Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> 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 21, Appointment of Floor Officials, to modify the requirements for Exchange Officials who may be appointed as Senior Floor Officials.

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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> See Form 19b-4, dated December 22, 2004 (“Amendment No. 1”). In Amendment No. 1, the Amex revised the text of the proposed rule.

<sup>4</sup> See Form 19b-4, dated February 3, 2005 (“Amendment No. 2”). In Amendment No. 2, the Amex further revised the text of the proposed rule.

Below is the amended text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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### **Appointment of Floor Officials**

**Rule 21. (a) Senior Floor Officials.** -- Each governor of the Exchange who spends a substantial part of his time on the Floor shall serve as a Senior Floor Official. The Vice Chairman of the Board shall serve as the Senior Supervisory Officer on the Floor. If the Vice Chairman does not spend a substantial part of his time on the Floor, the Chairman subject to the approval of the Board, shall designate one of the governors serving as a Senior Floor Official to act as the Senior Supervisory Officer on the Floor. In the absence of the person designated as the Senior Supervisory Officer on the Floor, the Senior Floor Officials, according to an order of succession to be prescribed at the time of appointment, or the acting Senior Floor Official, as provided in paragraph (b) of this Rule, shall exercise the authority of the Senior Supervisory Officer on the Floor. In addition, the Chairman, or the Chief Executive Officer if delegated by the Chairman, subject to the approval of the Board, and in consultation with the Senior Supervisory Officer on the Floor, may appoint additional Senior Floor Officials from among the Exchange Officials (appointed pursuant to the provisions of Section 3 of Article II of the Constitution), who [have previously served as Governors of the Exchange pursuant to Section 1(a)(1)(iv) of Article II of the Constitution, and who continue to] spend a substantial part of their time on the Floor of the Exchange. An Exchange Official who has been appointed as a Senior Floor Official has the same authority and responsibilities as a Floor Governor with respect to matters that arise on the Floor and require review or action by a Floor Governor or Senior Floor Official. An Exchange Official who has been appointed as a Senior Floor Official may not

participate in meetings of the Exchange's Board of Governors unless the Board invites such person to attend its meetings.

(b) No change

**Commentary....** 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 Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 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

A Floor Governor is an individual who serves on the Exchange's governing board who spends a substantial part of his or her time on the trading floor. Currently, there are three Floor Governors. Pursuant to Amex Rule 21, Floor Governors are automatically deemed to be Senior Floor Officials. In addition to Floor Governors, Exchange Officials who spend a substantial portion of their time on the trading floor and who previously served as a governor also may be appointed as a Senior Floor Official. Currently, one Exchange Official is designated as a Senior Floor Official.

Floor Officials are generally responsible for overseeing the orderly conduct of trading on the Floor, and the Exchange's rules require Floor Governors both to rule on situations that arise on

the trading floor and to review decisions made by other Floor Officials.<sup>5</sup> The Exchange's rules also require Floor Governors or Senior Floor Officials to chair meetings of the Performance and Allocations Committees. The Amex represents that these supervisory obligations and committee assignments place a substantial burden on Floor Governors and the one Senior Floor Official, which will increase when the number of Floor Governors is reduced in connection with the sale of the Class B Interest in the Exchange.<sup>6</sup>

As previously noted, the Exchange's rules currently provide for the appointment of Senior Floor Officials from among Exchange Officials who are active on the trading floor and who previously served as governors of the Exchange. However, there is only one former governor active on the floor who is available to serve as a Senior Floor Official. After the completion of the sale of the Class B Interest, moreover, there likely will be only two Floor Governors at any one time. The Exchange, consequently, is proposing to modify the requirements for Exchange Officials who may be appointed as Senior Floor Officials to eliminate the requirement of prior service as a Governor. This will significantly expand the pool of persons able to chair meetings of

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<sup>5</sup> A number of Amex rules provide for Floor Governor or Senior Floor Official action or review with respect to matters that arise on the trading floor. These rules may change with future Amex rule changes. It is contemplated that Exchange Officials appointed as Senior Floor Officials would be able to act in place of Floor Governors with respect to these responsibilities if the proposed rule change is approved. The following is a list of Amex rules that call for action or review by Floor Governors or Senior Floor Officials: Rule 1 (Hours of Business), Rule 22 (Authority of Floor Officials), Rule 25 (Cabinet Trading of Equity and Derivative Securities), Rule 26 (Performance Committee), Rule 27 (Allocations Committee), Rule 118 (Trading in Nasdaq National Market Securities), Rule 119 (Indications, Openings and Reopenings), Rule 128A (Automatic Execution), Rule 170 (Registration and Functions of Specialists), Rule 590 (Minor Rule Violation Fine System), Rule 904 (Position Limits), Rule 918 (Trading Rotations, Halts and Suspensions), Rule 933 (Automatic Execution of Option Orders), Rule 959 (Accommodation Transactions), Rule 918C (Trading Rotations, Halts and Suspensions), Rule 933-ANTE (Automatic Matching and Execution of Options Orders).

<sup>6</sup> See Securities Exchange Act Release No. 50057 (July 22, 2004), 69 FR 45091 (July 28,

the Allocations and Performance Committees, which meet well in excess of 100 times per year. The Exchange also proposes to amend Amex Rule 21 to provide that an Exchange Official who has been appointed as a Senior Floor Official has the same authority and responsibilities as a Floor Governor with respect to matters that arise on the trading floor and require review or action by a Floor Governor or Senior Floor Official.<sup>7</sup> The Amex believes that this change will facilitate the supervision of trading activity on the floor by expanding the number or persons who have the authority of a Floor Governor. The Exchange also proposes to modify Amex Rule 21 to clarify that Exchange Officials who are appointed as Senior Floor Officials are not members of the Exchange's Board of Governors and that these individuals have no right to attend meetings of the Board except to the extent that they are invited by the Board to participate in its meetings.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>10</sup> in particular, in that the proposed rule change, as amended, is designed to prevent fraudulent and manipulative

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2004).

<sup>7</sup> An Exchange Official who makes a ruling on the floor would not be permitted to review such ruling while later acting as a Senior Floor Official or in place of a Floor Governor. Telephone conversation among William Floyd-Jones, Assistant General Counsel, Amex, Susie Cho, Special Counsel, Division of Market Regulation ("Division"), Commission, and Geraldine Idrizi, Attorney, Division, Commission, on January 31, 2005.

<sup>8</sup> Article II, Section 3 of the Amex Constitution (The Board of Governors – Powers, Duties and Procedures) currently allows the Board to invite persons who are not members of the Board to participate in meetings of the Board. In relevant part, Article II, Section 3 provides: "The Board may invite a person, not a member thereof, to attend its meetings and to participate in its deliberations, but such person shall not have the right to vote."

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

<sup>10</sup> 15 U.S.C. 78f(b)(5)

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 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

Amex neither solicited nor received written comments with respect to the proposed rule change, as amended.

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, as amended, or
- (b) institute proceedings to determine whether the proposed rule change, as

amended, 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, 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-65 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-2004-65. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 such filing also will be available for inspection and copying at the principal office of 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-2004-65 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>11</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).