

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51471; File No. SR-Amex-2005-030)

April 4, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Specialist Liability for Failure to Send a Report to an Order-Providing Member

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 March 4, 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 Exchange. On March 30, 2005, Amex submitted Amendment No. 1 to its 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 its Rule 178 to limit an equity or ETF specialist’s liability for a failure to send a report, to a member that provided the specialist with an order. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in italics, and proposed deletions are in brackets.

Responsibility of Specialist

Rule 178. (a) If a specialist shall fail to send a report with respect to an odd-lot or full lot order which he or she executed or should have executed and the member or member organization giving the specialist such order shall have made a written request to the specialist for a report

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made non-substantive changes to the text of the proposed rule change and clarified the basis of the proposal.

prior to and including one-half hour before the opening of trading on the following business day, the specialist must answer such inquiry before the opening on that day. The failure of the specialist to meet this requirement will extend the responsibility of the specialist [shall be responsible] for any loss which may be sustained until such time as he or she answers the request.

A written request for a report which is delivered to a specialist within one hour after the close regarding the execution of an order on that day shall be answered prior to one half-hour before the opening of trading on the following business day. The failure of the specialist to meet this requirement will extend the responsibility of the specialist for any loss which may be sustained until such time as he or she answers the request.

The Exchange, through the Senior Supervisory Officer, or, in his or her absence, a Floor Governor or the Senior Officer of Market Operations, may change one or more of the times specified in this paragraph, on a temporary basis, if market conditions so warrant.

(b) In the event a report has not been sent by a specialist with respect to an odd-lot or full lot order which he or she executed or should have executed and the member or member organization leaving the order with the specialist for execution makes a written request to the specialist for a report after one half-hour before the opening of trading on the following business day [but before the close on the business day following the day on which the order was executed or should have been executed, the specialist shall be responsible for one-half of any loss which may be sustained provided the loss is established before the closing on the business day following the day on which the order was executed or should have been executed; in the event the loss is established after the closing on the business day following the day on which the order was executed or should have been executed, the specialist shall not, without his consent, be

responsible for any loss sustained. The member or member organization giving the specialist such order shall be responsible for the remainder of such loss and for any further loss], the specialist is responsible for any loss which may be sustained up to and including the opening price on the business day following the day on which the order was executed or should have been executed. The member or member organization giving the specialist the order is responsible for any further loss thereafter unless such member or member organization received the order from another member or member organization, in which case the remainder of such loss and any further loss shall be equally divided among such members or member organizations.

Commentary No Change.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposal. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex represents that both it and the New York Stock Exchange (“NYSE”) have rules dealing with the specialist’s responsibility for failure to send a report with respect to an order that the specialist executed or should have executed.⁴ These rules date back over 30 years and have been amended from time to time to suit specific needs of each exchange. Amex believes that,

⁴ See Amex Rule 178 and NYSE Rule 123A.32.

because of the differences between the Amex rules and the NYSE rules on this issue, Amex equity specialists are currently in a more disadvantageous position than NYSE specialists.

If either an Amex or an NYSE specialist fails to send a report with respect to an order which the specialist executed or should have executed, the member or member organization which gave the specialist the order must request a report in writing no more than one-half hour before the next business day's opening. If that deadline is missed on the NYSE, an NYSE specialist is responsible only for any loss sustained up to and including the next business day's opening price. Currently, if that deadline is missed on Amex, however, the Amex member or member organization can still make a written request up to the next business day's close, and the Amex equity specialist will be responsible for one-half of any loss established before that close. (On both exchanges, if the member or member organization makes a written request by one-half hour before the next business day's opening, the specialist is responsible until he or she responds to the request.)

The Exchange believes that its rule should be changed to put Amex equity and ETF specialists on equal footing with the NYSE specialists. Thus, the Exchange proposes to revise Amex Rule 178(b) to provide that, if a written request for a report is not made by one-half hour before the next business day's opening, then the Amex equity or ETF specialist would be responsible only for any loss sustained up to and including the next business day's opening price. The Exchange believes that its rule should have the same flexibility as the NYSE rule and is proposing to revise Amex Rule 178(a) to permit Amex to change the half-hour deadline on a temporary basis if "market conditions so warrant." Specifically, the Exchange proposes that the Senior Supervisory Officer or, in his or her absence, a Floor Governor or an Executive Vice

President responsible for Market Operations, would have the authority to make the decision to change the one-half hour deadline.

2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act⁵ in general and furthers the objectives of Section 6(b)(5)⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

Amex believes that the proposed rule change, as amended, would impose no 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

The Exchange did not solicit or receive any written comments with respect to the 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, as amended, or
- B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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-2005-030 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-2005-030. 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. Copies of such filing also will be available for inspection and copying at the principal office 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-2005-030 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.⁷

Jill M. Peterson
Assistant Secretary

⁷ 17 CFR 200.30-3(a)(12).