

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51503; File No. SR-Amex-2004-65)

April 7, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to Revisions to Amex Rule 21, Appointment of Floor Officials

On August 10, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Amex Rule 21, Appointment of Floor Officials. On December 22, 2004, the Amex filed Amendment No. 1 to the proposed rule change.³ On February 3, 2005, the Amex filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the Federal Register on March 8, 2005.⁵ The Commission received no comments on the proposal.

The Exchange proposed the following amendments to Amex Rule 21: (1) eliminate the requirement that an Exchange Official who is appointed as a senior Floor Official must have previously served as a member of the Exchange’s Board of Governors (“Board”);⁶ (2) provide

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1 the Amex revised the text of the proposed rule.

⁴ In Amendment No. 2 the Amex further revised the text of the proposed rule.

⁵ See Securities Exchange Act Release No. 51279 (March 1, 2005), 70 FR 11279.

⁶ The proposal would retain the requirement that any such Exchange Official must spend a substantial part of his or her time on the Exchange’s floor.

that an Exchange Official who has been appointed as a Senior Floor Official shall have 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;⁷ and (3) clarify that an Exchange Official who is appointed as a Senior Floor Official may not participate in meetings of the Board unless the Board invites such person to attend its meetings.⁸

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

⁷ The Exchange has represented that 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.

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. The Amex noted that these rules may change with future Amex rule changes. Under the amendment to Amex Rule 21, Exchange Officials appointed as Senior Floor Officials would be able to act in place of Floor Governors with respect to these responsibilities. 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).

⁸ 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.”

securities exchange⁹ and, in particular, the requirements of Section 6(b) of the Act¹⁰ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,¹¹ in that the proposed rule change, as amended, 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 or dealers.

The Commission notes that the proposed rule change, as amended, is designed to facilitate the supervision of trading activity on the Exchange's trading floor. The proposal would expand the pool of Exchange Officials who could be appointed to serve as Senior Floor Officials by eliminating the requirement that such Exchange Officials previously must have served as an Exchange Governor. Further, the proposal specifies that Exchange Officials who are appointed as Senior Floor Officials would have 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. The Commission also notes that the proposed rule change would clarify the status of Exchange Officials who are appointed as Senior Floor Officials by specifying that these officials may not participate in Board meetings except to the extent that they are invited to

⁹ 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).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

attend such meetings. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b) of the Act.¹²

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-Amex-2004-65), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland
Deputy Secretary

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).