

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52004; File No. SR-Amex-2005-043)

July 8, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto to Extend Pilots Relating to Allocation and Performance Evaluation Procedures for Securities Admitted to Dealings on an Unlisted Trading Privileges Basis

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 April 22, 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 and II below, which Items have been substantially prepared by the Exchange. On June 14, 2005, the Exchange filed Amendment No. 1 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 simultaneously approving the filing.

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

The Amex proposes to retroactively extend from April 6, 2005, through April 6, 2006, the pilot programs comprising its allocations and performance evaluation procedures for securities admitted to dealings on an unlisted trading privileges (“UTP”) basis to permit these programs to remain in effect while the Commission considers permanent approval of these procedures. The text of the proposed rule change is available on the Amex’s Web site at <http://www.amex.com>, at the Amex and at the Commission.

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

¹ 15 U.S.C 78s(b)(1)

² 17 CFR 240.19b-4.

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 III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to reestablish and extend its allocations and performance evaluation procedures for securities admitted to dealings on a UTP basis for one year. The Commission previously approved the Exchange's allocation and performance evaluation procedures on a pilot basis through two independent approval orders ("Pilots").³ In 2003, the Pilots were extended until October 5, 2003,⁴ and April 5, 2004.⁵ In 2004, the Pilots were extended through April 6, 2005.⁶ The instant proposed rule change makes no substantive change to the Pilots other than to retroactively reinstate their operation from April 5, 2005, so that the Pilots may continue without having lapsed, and extend them until April 6, 2006.

³ See Securities Exchange Act Release Nos. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002)(SR-AMEX-2001-107); and 46750 (October 30, 2002), 67 FR 67880 (November 7, 2002)(SR-AMEX-2002-19) ("Pilot Approval Orders").

⁴ See Securities Exchange Act Release No. 47779 (May 1, 2003), 68 FR 24777 (May 8, 2003)(SR-Amex-2003-23).

⁵ See Securities Exchange Act Release No. 48657 (October 17, 2003), 68 FR 61025 (October 24, 2003)(SR-Amex-2003-87).

⁶ See Securities Exchange Act Release No. 49613 (April 26, 2004); 69 FR 24204 (May 3, 2004)("2004 Notice").

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that the Exchange's proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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 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 the proposed rule change, as amended.

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:

- 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-2005-043 on the subject line.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9309.

All submissions should refer to File Number SR-Amex-2005-043. 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 Room. Copies of the 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-2005-043 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

After careful consideration, 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 securities exchange.⁹ In particular, the Commission finds that the

⁹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

proposed rule change is consistent with Section 6(b)(5) of the Act¹⁰ and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest.

The Commission notes that the Pilots, which establish securities allocation and performance evaluation procedures for specialists trading UTP securities, were approved by the Commission in April and October of 2002, respectively,¹¹ and were most recently extended through April 6, 2005.¹²

The Commission finds that it is consistent with the Act to permit retroactive application of the Pilots from the expiration date of the current Pilots and to extend the Pilots through April 6, 2006, to allow market participants to continue to use the securities allocation and performance evaluation procedures set forth therein.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹³ to approve the proposed rule change prior to the thirtieth day after the date of publication of notice in the Federal Register. Specifically, the Commission notes that the accelerated approval of the proposal will allow the Pilots to continue without interruption. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,¹⁴ to approve the proposal on an accelerated basis.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Pilot Approval Orders, supra note 3.

¹² See 2004 Notice, supra note 6.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Amex-2005-043), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jill M. Peterson
Assistant Secretary

¹⁵

Id.

¹⁶

17 CFR 200.30-3(a)(12).