

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52325; File No. SR-Amex-2005-052)

August 23, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Integration of Regulatory Staff into Floor Official Rulings and the Review of Floor Official Rulings and Expediting the Process for Appealing Floor Official Rulings

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 May 11, 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 Amex. On August 12, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</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 (1) amend Amex Rules 22(c), 115, 958A(d), 958A-ANTE(d), 118(n), 135A and Amex Rule 155, Commentary .05 to integrate regulatory staff into Floor Official rulings and the review of Floor Official rulings; and (2) amend Amex Rule 22(d) to expedite the process for appealing a Floor Official’s ruling.

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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 Amex made minor revisions to the proposed rule text and clarified certain details of its proposal. Amendment No. 1 replaced and superseded Amex's original filing in its entirety. The Commission made clarifications to the description in Item II, pursuant to telephone conversations with Amex, as noted herein. Telephone conversations between Nyieri Nazarian, Assistant General Counsel, Amex, and Rahman Harrison, Attorney, Commission, on August 23, 2005.

The text of the proposed rule change, as amended, is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

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 proposed rule change. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Incorporation of Regulatory Staff into Floor Official Rulings

Floor Officials are officers of the Exchange,<sup>4</sup> who are authorized to (1) make rulings on behalf of the Exchange with respect to certain matters that require a decision by the Exchange, and (2) resolve trading disputes submitted to them by members. Floor Official decisions are currently subject to same day, on-floor appeal at the request of an aggrieved member, first by an

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<sup>4</sup> There are three levels of Floor Officials on the floor, each with ascending levels of responsibility: Floor Officials, Exchange Officials and Senior Floor Officials. All are considered to be Floor Officials. Article II, Section 3 of the Amex Constitution provides that the Chairman of the Board of Governors may appoint members of the Exchange and individuals employed by, or associated with, a member organization in a senior capacity as Exchange Officials to serve on committees of the Board. Amex Rule 21 provides for the appointment of Senior Floor Officials and Floor Officials.

Exchange Official, then by a Governor and finally by a panel of three Governors.<sup>5</sup> The Exchange proposes to integrate regulatory staff into specified categories of Floor Official rulings and the review of Floor Official rulings (“Covered Rulings and Reviews”) on an advisory, i.e., non-approving, basis. The Exchange believes that incorporation of regulatory staff in Covered Rulings and Reviews will contribute to a more consistent application of Exchange rules, and better ensure that proper documentation is completed.

The proposed rules would require a member of the regulatory staff to be present during a Floor Official’s ruling on an advisory basis. This member of the regulatory staff would give his or her opinion on the matter and, although the Floor Official would be required to take this opinion into consideration, the Floor Official would not be required to rule according to the regulatory staff member’s opinion. Once the Floor Official’s decision is documented by the Floor Official, the participating regulatory staff member will also sign the form, indicating whether he or she agrees or disagrees with the ruling.<sup>6</sup> The regulatory staff member will be responsible for maintaining the documentation related to Covered Rulings and Reviews, and will forward such documentation, as appropriate, to the NASD Amex Regulation Division.<sup>7</sup>

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<sup>5</sup> Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Rahman Harrison, Attorney, Commission, on August 23, 2005.

<sup>6</sup> Commentary .02 to Amex Rule 22 requires that a written record of all Floor Official decisions or rulings be documented on a form and prepared as soon as practicable after the decision or ruling is made.

<sup>7</sup> The NASD Amex Regulation Division will utilize documentation of such rulings, as appropriate, in order to verify that an appropriate ruling was obtained as required by applicable Amex rules, as well as to enable review of situations in which a Floor Official may have issued an improper ruling contrary to the advice of the regulatory staff.

Amex Rule 22(c) currently provides Floor Officials with the authority to make rulings in the following areas:

- Trading halts
- Indications and reopenings
- Non-regular way trades
- Unusual market exception to the Commission's Firm Quote Rule
- Turning Auto-Ex off
- ITS disputes
- Member disputes
- Cancellations or revisions to trades
- Voluntary publication of imbalances
- Enforcing standards of floor decorum

The Exchange proposes to amend Amex Rule 22(c) to require that a member of the regulatory staff participate in an advisory capacity in the following categories of Floor Official rulings:

- Unusual market exception to the Commission's Firm Quote Rule
- ITS disputes
- Member disputes
- Cancellations or revisions to trades

Corresponding amendments are also proposed to Amex Rules 115, 958A(d), 958A-ANTE(d), 118(n), 135A and 155, Commentary .05, which are the existing rules governing the application of the unusual market exceptions to the Commission's Firm Quote Rule and the Amex rules governing cancellation or revisions to trades. Amex Rules 936, 936C, 936-ANTE, 936C-ANTE, governing the cancellation and adjustment to equity and index option transactions, are not being amended because regulatory staff is already required to participate in such rulings. At the present time, regulatory staff would not be required to participate in Floor Official rulings relating to trading halts, indications and reopenings, non-regular way trades, turning Auto-Ex off, voluntary publication of imbalances, and enforcing standards of floor decorum.

## Amex Rule 22(d)

The Amex also is proposing to amend Amex Rule 22(d) in two respects. Amex Rule 22(d) currently provides for three on-Floor tiers of review in the appeal of a Floor Official's initial ruling. First, any member wishing prompt on-Floor review of a Floor Official's market decision may present the matter to an Exchange Official, who may confirm, amend or overrule the decision. Second, an Exchange Official's decision may be promptly appealed to a Governor. Finally, a Governor's decision may be appealed to a panel of three Governors. A decision by a panel of three Governors is binding on members, with the option that at any point after establishing a loss or profit and complying with the highest decision made in a matter, either party to the matter may submit it to arbitration.<sup>8</sup> The Exchange is proposing to amend Amex Rule 22(d) to clarify that Senior Floor Officials have the same authority as Governors with respect to matters arising on the Floor that require review or action by Governors.<sup>9</sup> The amendment will replace each reference to "Governor" with "Senior Floor Official."<sup>10</sup>

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<sup>8</sup> A decision to cancel or revise an option trade may also be appealed to the Board of Governors. See Amex Rules 936, 936C, 936 ANTE and 936C ANTE.

<sup>9</sup> Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Rahman Harrison, Attorney, Commission, on August 23, 2005. The Commission recently approved an amendment to Amex Rule 21 which provides 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 Floor and require review or action by a Floor Governor or Senior Floor Official." Securities Exchange Act Release No. 51503 (April 7, 2005), 70 FR 19534 (April 13, 2005).

<sup>10</sup> Based on the recent amendment to Amex Rule 21 (see supra note 9), the Exchange also proposes to make conforming changes to Amex Rule 118(n)(iii) (Trading in Nasdaq National Market Securities) and Amex 135A(c) (Cancellations of, and Revisions in, Transactions Where both the Buying and Selling Members Do Not Agree to the Cancellation or Revision) to replace "Governor" and "Floor Governor," as applicable, with "Senior Floor Official." Amex Rules 118(n)(iii) and 135A(c) address the process for review of transactions, and the ability of a Floor Governor to declare a transaction

Second, the Exchange proposes to amend Amex Rule 22(d) to eliminate the second tier in the current review process, i.e., review of an Exchange Official's decision by a Governor. The proposed rule will provide that a Floor Official's initial decision will be reviewable by an Exchange Official and then a three Senior Floor Official panel. The Exchange believes that two levels of on-Floor review following a Floor Official's original decision are sufficient to assure a fair and impartial review and that three levels of on-Floor review may unnecessarily delay the resolution of disputed matters. The Exchange notes that under the proposal, regulatory staff would advise and participate in each level of a review of a Floor Official decision or ruling that required the advice and participation of a member of the regulatory staff in the initial Floor Official ruling. The increased involvement of regulatory staff should help ensure that rulings are in accordance with applicable rules.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>12</sup> 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

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null or void, in the event of an operational malfunction or "extraordinary market conditions." Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Rahman Harrison, Attorney, Commission, on August 23, 2005.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

The Exchange does not believe that the proposed rule change, as amended, would impose any 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

Written comments were neither solicited nor received.

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 Amex consents, the Commission will:

- A. by order approve such proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change 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-2005-052 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-052. 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 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 publicly available. All submissions should refer to File Number SR-Amex-2005-052 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>13</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).