

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52360; File No. SR-Amex-2004-76)

August 30, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Contingency Trading Procedures

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 September 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 the Exchange. On August 26, 2005, the Exchange submitted Amendment No. 1 to the proposal.³ On August 29, 2005, the Exchange submitted Amendment No. 2 to the proposal.⁴ 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 adopt Amex Rule 119A regarding contingency trading procedures.

The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*.

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Contingency Trading Procedures – Alternative Trading Facility

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange substantially revised the proposed rule text and corresponding description of the proposal in its Form 19b-4. Amendment No. 1 replaced Amex’s original filing in its entirety.

⁴ In Amendment No. 2, the Exchange made minor corrections to the rule text.

Rule 119A. (a) Definitions:

The term “Alternative Trading Facility” (“ATF”) for purposes of this Rule, shall mean the remote facility established by the Exchange for trading securities admitted to dealings in the event that the Exchange’s primary trading facility at 86 Trinity Place is wholly or partially unusable.

(b) Except to the extent that the provisions of Rule 119A govern, or unless the context otherwise requires, the provisions of the Constitution and Rules of the Exchange are applicable to trading conducted on the ATF.

(c) The Executive Vice President for Market Operations and Trading Floor Systems or his or her designee(s) shall have authority to designate the individuals who will be allowed to conduct a securities business on the ATF from among those members, member organizations and persons associated with members and member organization who are entitled to trade and support trading at the Exchange’s facility at 86 Trinity Place. One or more individuals from each broker and specialist unit shall be allowed to conduct business on the ATF. Registered Option Traders will be allowed to conduct business on the ATF to the extent that there is space in the ATF to accommodate them based upon their volume of trading.

(d) If a Registered Option Trader is not allowed to trade on the ATF, the Registered Option Trader may initiate opening trades for his or her market maker account from off the ATF without reference to in-person requirements or the requirement that off-floor orders be effected only for hedging, reducing risk, rebalancing or liquidating positions. (See Commentary .01 to Rules 958 and 958-ANTE)

(e) A member may use a personal cellular telephone to conduct business in the ATF subject to the following conditions:

(i) The member must maintain her or her cellular telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records.

(ii) If a Floor broker receives an incoming call on a cellular telephone, and the caller wishes to give the broker an order for a security traded at the post where the broker is standing, the broker must step-out of the crowd prior to accepting the order. In contrast, if a broker receives an incoming call on a cellular telephone, and the caller wishes to give the broker an order for a security traded at some other location on the Floor, the broker does not have to leave the crowd where he or she is standing in order to receive the order.

A Floor broker also may initiate an outgoing call on a cellular telephone and (1) accept an order for a security traded at the post where the broker is standing without leaving the trading crowd, or (2) accept an order for a security traded at some other location on the Floor.

(iii) Except as provided in this Rule 119A, all other requirements applicable to the use of an Exchange provided telephone by a member shall apply to the use by a member of a personal cellular telephone. (See Rule 220)

(f) In the event that a Floor Official's ruling is appealed to a three Senior Floor Official panel and there is an insufficient number of Senior Floor Officials to serve on the Panel, qualified Exchange Officials may serve on the Panel without reference to their order of seniority.

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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 Exchange included statements concerning the purpose of and basis for the proposed rule change 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposed Amex Rule 119A sets forth the Exchange's contingency trading with respect to the use of the Exchange's "Alternative Trading Facility" ("ATF"), which is a remote facility established by the Exchange for trading securities admitted to dealings in the event that the Exchange's primary trading facility at 86 Trinity Place is wholly or partially unusable.

Under proposed Amex Rule 119A(b) the provisions of the Constitution and Rules of the Exchange are applicable to trading conducted on the ATF, except to the extent that the provisions of Amex Rule 119A govern, or unless the context otherwise requires. Paragraph (c) of proposed Amex Rule 119A provides that the Exchange's Executive Vice President for Market Operations and Trading Floor Systems or his or her designee(s) shall have authority to designate the individuals who will be allowed to conduct a securities business on the ATF from among those members, member organizations, and persons associated with those members and member organizations who are entitled to trade and support trading at the Exchange's facility at 86 Trinity Place. Not all persons who generally conduct business at the Exchange's regular facility will be able to use the ATF due to occupancy restrictions at the facility. One or more individuals from each broker and specialist unit will be allowed to conduct business on the ATF. Registered Option Traders ("ROTs") will be allowed to conduct business on the ATF to the extent that there is space in the ATF to accommodate them based upon their volume of trading. Paragraph (d) to proposed Amex Rule 119A provides that if a ROT is not allowed to trade on the ATF, the ROT

may initiate opening trades for his or her market maker account from off the ATF without reference to in-person requirements or the requirement that off-floor orders be effected only for hedging, reducing risk, rebalancing or liquidating positions.

Although the Exchange has installed tethered telephones at the ATF, it has not replicated its wireless telephone system at this facility. As a result, the Exchange is proposing to allow members to use personal cellular telephones to conduct business on the ATF subject to the same conditions that were applicable to the use of personal cellular telephones on the Amex following September 11, 2001. The conditions applicable to the use of personal cellular telephones on the ATF are set forth in paragraph (e) to the proposed rule. Paragraph (f) provides that Exchange Officials may substitute for Senior Floor Officials without reference to their seniority in the event that a Floor Official's ruling is appealed to a three Senior Floor Official panel and there is an insufficient number of available Senior Floor Officials to consider the appeal.⁵

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(5)⁷ in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities.

⁵ The Exchange has a proposal pending with the Commission that would modify Amex Rule 22 to establish a three-level review process in which Floor Official decisions, as needed, may be appealed to a three Senior Floor Official Panel. See Securities Exchange Act Release No. 52325 (August 23, 2005), 70 FR 51392 (August 30, 2005) (SR-AMEX-2005-052).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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

The proposed rule change 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

No written comments were solicited or received by the Exchange on this 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 self-regulatory organization 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. Please include File Number SR-Amex-2004-76 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Amex-2004-76. 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 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-2004-76 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.⁸

Jonathan G. Katz
Secretary

⁸ 17 CFR 200.30-3(a)(12).