

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52527; File No. SR-Amex-2005-052)

September 29, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to 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

I. Introduction

On May 11, 2005, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change 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. On August 12, 2005, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on August 30, 2005.<sup>4</sup> The Commission received no comments on the proposal, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to amend Amex Rule 22(c) to require that a member of

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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 Amendment No. 1 replaced and superseded Amex's original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 52325 (August 23, 2005), 70 FR 51392.

the regulatory staff participate in an advisory capacity in the following categories of Floor Official rulings<sup>5</sup>: (i) unusual market exception to the Commission's Firm Quote Rule; (ii) Intermarket Trading System disputes; (iii) member disputes; and (iv) cancellations or revisions to trades. In particular, the Exchange's proposal 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 a Floor Official's decision is documented by the Floor Official, the participating regulatory staff person will also sign the form, indicating whether he or she disagrees with the ruling.<sup>6</sup> To conform the remainder of the Exchange's rules with this proposed modification to Amex Rule 22(c), the proposed rule change also makes corresponding amendments 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 exception to the Commission's Firm Quote Rule and the Amex rules governing cancellation or revisions to trades.<sup>7</sup> Amex has

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<sup>5</sup> Floor Officials are officers of the Exchange, 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 Exchange Official, then by a Governor and finally by a panel of three Governors.

<sup>6</sup> The regulatory staff person will be responsible for maintaining the documentation related to Floor Official rulings and reviews that require the participation of a regulatory staff person.

<sup>7</sup> 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.

indicated that 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.

The Amex also is proposing to amend Amex Rule 22(d) in two respects.<sup>8</sup> First, 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.” The Exchange also proposes to make conforming changes to Amex Rule 118(n)(iii)<sup>10</sup> and Amex 135A(c)<sup>11</sup> to replace “Governor” and “Floor Governor,” as applicable, with “Senior Floor Official.”<sup>12</sup>

Second, the Exchange proposes to amend Amex Rule 22(d) to eliminate the second tier in the current review process of Floor Official decisions. Amex Rule 22(d) currently provides for three tiers of review in the appeal of a Floor Official’s initial ruling.<sup>13</sup> The proposed rule will provide two levels of review to a Floor Official’s initial

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<sup>8</sup> Amex Rule 22(d) relates to the procedures for reviewing a Floor Official’s initial ruling.

<sup>9</sup> These changes are based on a recent amendment to Amex Rule 21 approved by the Commission. See Securities Exchange Act Release No. 51503 (April 7, 2005), 70 FR 19534 (April 13, 2005).

<sup>10</sup> Amex Rule 118 relates to trading in Nasdaq National Market securities.

<sup>11</sup> Amex 135A relates to cancellations of, and revisions in, transactions where both the buying and selling members do not agree to the cancellation or revision.

<sup>12</sup> 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 null or void, in the event of an operational malfunction or “extraordinary market conditions.”

<sup>13</sup> See supra note 5.

decision, first by an Exchange Official, and then by a panel of three Senior Floor Officials. In addition, under the proposal, regulatory staff would advise and participate in each level of 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.

### III. Discussion

The Commission has carefully reviewed the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>14</sup> and, in particular, the requirements of Section 6 of the Act<sup>15</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act<sup>16</sup> because 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. In particular, the Commission believes that the proposal is reasonably designed to (1) ensure a more consistent application of Amex's rules in Floor Official rulings and that such rulings are in accordance with applicable rules, and (2) increase the efficiency in reviewing such rulings, while continuing to provide for two levels of on-floor review.

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<sup>14</sup> In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-Amex-2005-052), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Jonathan G. Katz  
Secretary

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<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).