

Amicus participation.

The subject matter of the Open Meeting scheduled for Wednesday, January 15, 2003 will be:

1. The Commission will consider adopting new rules and amendments regarding the use of pro forma financial information in order to implement Section 401(b) of the Sarbanes-Oxley Act of 2002. In addition, the Commission will consider an amendment to Form 8-K requiring the submission of earnings announcements and releases.

2. The Commission will consider whether to adopt new rules to prohibit an issuer's directors and executive officers from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity securities transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. These rules implement Section 306(a) of the Sarbanes-Oxley Act of 2002. In addition, the rules will require issuers to provide advance notice to their directors and executive officers and the Commission of the imposition of a pension plan blackout period.

3. The Commission will consider whether to adopt new disclosure requirements mandated by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. The new rules require a company subject to the reporting requirements of the Securities Exchange Act of 1934 to disclose: (1) Whether it has adopted a code of ethics that applies to certain of its senior officers; and (2) whether a financial expert serves on the company's audit committee. The Commission will consider whether to adopt rules under Section 404 of the Sarbanes-Oxley Act relating to internal control reports by management in a separate release at a later date—these rules were proposed in the same release as the rules under Sections 406 and 407.

4. The Commission will consider whether to adopt Regulation Analyst Certification, a new rule that would require research analysts to provide certifications regarding the views they express in research reports and public appearances and to provide disclosures regarding any compensation they may have received related to those views and recommendations.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if

any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: January 8, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47123; File No. SR-Amex-00-48]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 To Amend Amex Rule 590, Minor Rule Violation Fine Systems

January 3, 2003.

On August 17, 2000, 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 amend the Amex's Minor Rule Violation Fine Plan ("Plan"). On December 7, 2000, the Amex amended the proposal.<sup>3</sup> The Amex again amended the proposal on January 29, 2001.<sup>4</sup> On March 19, 2001, the proposed rule change, as modified by Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register**.<sup>5</sup> The Commission received no comments on the proposed rule change. On December 23, 2002, the Amex amended the

proposed rule change.<sup>6</sup> This order approves the proposed rule change as modified by Amendment Nos. 1 and 2. Simultaneously, the Commission provides notice of filing of Amendment No. 3 and grants accelerated approval of Amendment No. 3.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, the requirements of section 6 of the Act<sup>8</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) of the Act<sup>9</sup> in that it will provide a procedure whereby member organizations can be appropriately disciplined in those instances when a rule violation is minor in nature, but a sanction more serious than an admonition letter is appropriate. Additionally, the Commission finds the proposed rule change is consistent with the requirements of sections 6(b)(7)<sup>10</sup> and 6(d)(1)<sup>11</sup> of the Act. Section 6(b)(7) requires the rules of an exchange to be in accordance with the provisions of section 6(d) of the Act, and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires an exchange to bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record, in any proceeding to determine whether a member or person associated with a member should be disciplined. Finally, the Commission finds the proposal is consistent with

<sup>6</sup> See December 20, 2002 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments ("Amendment No. 3"). In Amendment No. 3, the Amex removed the following rules from the list of rules that the Amex originally proposed to add to the Plan: (1) Violations of the Amex's short sale borrowing policies; (2) failure to liquidate positions as directed by the Amex that are over applicable position limits; and (3) failure to comply with the Amex's restrictions on transactions and exercises in specified options. As a result of Amendment No. 3, the only rules that the Amex proposes to administer pursuant to the Plan are violation of SEC Rule 11Ac1-4 (commonly referred to as the "Limit Order Display Rule," and violation of the Amex's rules regarding the deactivation of Quote Assist (Amex Rule 170, Commentary .10).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(6).

<sup>10</sup> 15 U.S.C. 78f(b)(7).

<sup>11</sup> 15 U.S.C. 78f(d)(1).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See December 1, 2000 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). In Amendment No. 1, the Amex made technical changes to the proposed rule language to clarify which language was added and which language was rearranged.

<sup>4</sup> See January 26, 2001 letter from William Floyd-Jones, Jr., Esq., to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments ("Amendment No. 2"). While the cover letter indicates that Amendment No. 2 replaces and supersedes the original filing, Amendment No. 2 only replaces and supersedes the proposed rule language provided in the original proposal and Amendment No. 1. Telephone conversation March 12, 2001 between William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, and Joseph P. Morra, Special Counsel, Division, Commission.

<sup>5</sup> See Securities Exchange Act Release No. 44066 (March 12, 2001), 66 FR 15511.

Rule 19d-1(c)(2) under the Act<sup>12</sup> that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Amex will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

The Commission finds good cause for approving proposed Amendment No. 3 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Amex filed Amendment No. 3 to remove certain rules from the proposal. Removal of these rules from the proposal presents no novel issues that would require further notice and comment before approving this modification. Therefore, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

In approving this proposed rule change, the Commission recognizes that certain aspects of the proposal will require additional time for implementation, while other aspects of the proposed rule change can be implemented upon Commission approval. The Commission expects that the Amex will implement as much of the proposed rule change's terms and conditions as is possible upon approval, and will implement the remaining provisions of the proposed rule change as soon as practicable thereafter.<sup>13</sup>

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3

is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 3 that are filed with the Commission, and all written communications relating to Amendment No. 3 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 will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-00-48 and should be submitted by January 31, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-00-48), as amended by Amendment Nos. 1 and 2, be, and it hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-458 Filed 1-9-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47119; File No. SR-Amex-2002-97]

### Self Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Initial and Continued Listing Standards

January 3, 2003.

On November 20, 2002, the American Stock Exchange LLC ("Amex") 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 amend sections 101, 102, and 1003 of the Amex *Company Guide* to modify initial and continued listing standards.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

The proposed rule change was published for comment in the **Federal Register** on December 4, 2002.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>6</sup> because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange proposes to adopt a new initial listing standard (in addition to existing standards) which is designed to permit an assessment of an issuer's suitability for listing on the basis of compliance with total market capitalization or total assets and revenues in substitution of shareholders' equity. The Amex also proposes that corresponding revisions be adopted to the continued listing standards to provide that a listed company will not be subject to delisting (assuming compliance with other applicable standards) even if it has experienced net losses or losses from continuing operations, and does not satisfy existing equity requirements,<sup>7</sup> if it is in compliance with following requirements:

- Total value of market capitalization: \$50 million, or
- Total assets and revenue: \$50 million each (in most recent fiscal year or two of last three most recently completed fiscal years), and
- At least 1,100,000 shares publicly held, a market value of publicly held shares of at least \$15,000,000 and 400 round lot shareholders.

The Commission believes that the proposed rule change will allow for the evaluation of an issuer's listing

<sup>3</sup> See Securities Exchange Act Release No. 46887 (November 22, 2002), 67 FR 72239 (December 4, 2002).

<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> Section 1003(a) of the Amex *Company Guide* provides that a listed company which has sustained losses in two of its three, three of its four, or five of its most recent fiscal years will be subject to delisting if its stockholders' equity is less than \$2 million, \$4 million or \$6 million, respectively.

<sup>12</sup> 17 CFR 240.19d-1(c)(2).

<sup>13</sup> For example, the Amex will require additional time to implement the new Committee structure for the Minor Floor Violation Disciplinary Committee. The Amex anticipates it will be able to implement the new structure after the April 23, 2003 meeting of the Amex Board. See January 3, 2003 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Joseph P. Morra, Special Counsel, Division, Commission (via e-mail).