

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53161; File No. SR-Amex-2005-075]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto Relating to the Establishment of a New Class of Registered Options Trader Called a Supplemental Registered Options Trader ("SROT")

January 20, 2006.

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 July 14, 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 November 4, 2005, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On December 7, 2005, the Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On January 13, 2006, the Amex filed Amendment No. 3 to the proposed rule change.<sup>5</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 Amex proposes new Amex Rule 993-ANTE and proposes to adopt amendments to existing Amex Rules 900-ANTE, 918-ANTE, 935-ANTE, 936-ANTE, 936C-ANTE, 950-ANTE, 951-ANTE, 958-ANTE and 958A-ANTE to authorize a new category of registered options trader called a Supplemental Registered Options Trader ("SROT").

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, at the Amex's principal office, 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, the Amex 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 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to create a new category of Registered Options Trader ("ROT") called an SROT. An SROT is a ROT which would be a member organization so designated by the Exchange which would be granted remote quoting rights to enter bids and offers electronically from off the Exchange's physical trading floor.

The introduction of SROTs combines the electronic and open outcry trading models. Currently, the Exchange permits ROTs to submit quotes only from the physical trading floor. In this regard, the Exchange anticipates that offering the ability to enter offers and bids electronically away from the trading floor will increase the liquidity available in those classes which the SROT is assigned, as well as enhance the overall competitiveness of the Exchange. Rules applicable to ROTs would not apply to SROTs unless otherwise specified. The proposed rules and amendments to current rules discussed below would address the definition, approval process, obligations, and quoting rights of SROTs.

i. *Proposed Rule 993-ANTE.* Proposed new Amex Rule 993-ANTE sets forth the method and the factors to be used in approving SROTs. Under the Exchange's proposal, an SROT would be defined as a ROT that is a member organization that would be granted remote quoting rights to trade in at least 300-400 option classes. A member organization requesting approval to act as an SROT would file an application with the Exchange. The Exchange intends to approve SROTs that demonstrate qualities which would encourage the development of the business of the Exchange. A maximum of six (6) SROTs would initially be

chosen based upon the following criteria:

- Adequacy of resources including capital, technology and personnel;
- History of stability, superior electronic capacity, and superior operational capacity;
- Level of market-making and/or specialist experience in a broad array of securities;
- Ability to interact with order flow in all types of markets;
- Existence of order flow commitments;
- Willingness to accept allocations as an SROT in at least 300-400 options; and
- Willingness and ability to make competitive markets on the Exchange and otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the options it trades.

The Exchange, through a committee designated by the Exchange's Board of Governors (the "Committee"), expects to approve SROTs that demonstrate the foregoing criteria. The Committee would include representatives from the Options Market Maker Association and the Options Specialist Association. In approving an applicant as an SROT, the Committee would be permitted to consider a member organization's operations to determine the number of option classes an applicant would be assigned.

The Committee would use the factor relating to the existence of order flow commitments to evaluate existing order flow commitments between an SROT applicant and order flow providers. A future change to, or termination of, any such commitments would not be used by the Exchange at any point in the future to terminate or take remedial action against an SROT. Furthermore, the Committee would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange.

The final criterion, "willingness to promote the Exchange," would include assisting in meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, and other similar activities. The Committee would use the final criterion listed to determine which applicants would best be able to enhance the competitiveness of the Exchange. The Committee would not apply this factor to in any way restrict, either directly or indirectly, an SROT's activities as a market maker or specialist on other exchanges, or to

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

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

<sup>3</sup> Amendment No. 1, which replaced and superseded the original filing in its entirety, is incorporated in this notice.

<sup>4</sup> Amendment No. 2, which replaced and superseded the original filing in its entirety, is incorporated in this notice.

<sup>5</sup> Amendment No. 3, which made clarifying changes to the Purpose section, as well as changes to the proposed rule text relating to allocation of executed contracts and affiliation limitations, is incorporated in this notice.

restrict how SROTs handle orders held by them in a fiduciary capacity to which they owe a duty of best execution. The Committee would use its discretion in conjunction with the foregoing factors to determine which SROTs should be initially chosen.

Under the Exchange's proposal, determinations regarding granting or withdrawing approval to act as an SROT would be made by the Committee. Furthermore, the Exchange proposes that an SROT application would not be approved by the Committee without written certification signed by an officer of the Exchange's Technology department indicating that an SROT applicant has sufficient technological ability to support the continuous quoting requirement set forth in 993—ANTE (c) and 958—ANTE (c), and that an SROT applicant has successfully completed, or is scheduled to complete, testing of its quoting system with the Exchange.

The Exchange's proposal further provides that if the Committee decides not to approve the applicant, it would notify the applicant of its denial. The applicant would be entitled to a hearing under Article IV, Section 1(g) of the Amex Constitution and Amex Rule 40.

The Committee would be permitted to defer an SROT applicant that satisfies the technological readiness and testing requirements described in proposed Amex Rule 993—ANTE subparagraph (a)(iv) based on system constraints, capacity restrictions, or other factors to ensure the maintenance of a fair and orderly market, for a period to be determined at the Committee's discretion. The Committee may not defer a determination of the approval of the application of an SROT applicant unless the basis for such deferral has been objectively determined by the Committee, subject to the Commission's approval or effectiveness pursuant to a rule change filing under Section 19(b) of the Act. The Committee would provide written notification to any SROT applicant whose application is the subject of such deferral, describing the objective basis for such deferral.

The Exchange's proposal requires an SROT applicant that seeks to withdraw as such to notify the Exchange at least ten business days prior to the desired effective date of such withdrawal.

The Exchange would also be permitted to suspend or terminate any appointment of an SROT in one or more classes whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action. An SROT would be permitted to seek review of the termination or suspension of its status by the Exchange

pursuant to Article IV, Section 1(g) of the Amex Constitution and Amex Rule 40.

The proposal provides that the Exchange would determine the number and type of option classes assigned to an SROT as currently set forth under Commentary .05 of Amex Rule 958—ANTE. Under the proposal, the Exchange would assign a minimum of 300 option classes per SROT.

Under the Exchange's proposal, SROTs would be required to purchase or lease one seat for every thirty (30) option classes quoted. SROTs also would be required to provide continuous two-sided quotations in accordance with the parameters set forth in Amex Rule 958—ANTE (c) in at least 60% of the series of their assigned classes.

The Exchange's proposal requires that, in addition to other obligations, no SROT would be assigned to an options class where the SROT has a direct or indirect affiliate who is a specialist, ROT or SROT in such option class. Additionally, no person who is either directly or indirectly affiliated with an SROT may submit quotations as an SROT, ROT or specialist in options in which the affiliate SROT is assigned. Furthermore, SROTs would maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in option classes assigned to an SROT, or that may act as a market maker in any security underlying options assigned to an SROT. The proposal further requires SROTs to comply with Amex Rule 193 regarding the misuse of material non-public information between the affiliate and the specialist organization. The purpose of this provision is to prevent affiliated parties from quoting electronically in the same option class and receiving multiple automatic allocations for the same or affiliated beneficial account owners.

Under the proposal, quoting rights and designation of an SROT would be non-transferable. An SROT would be permitted to submit electronic quotations only from off the floor of the Exchange. The proposal further provides that an SROT may trade in a market making capacity only in the classes of options in which the SROT is assigned.

ii. 900—ANTE. Amex Rule 900—ANTE currently sets forth the applicability, definitions and references on ANTE. The Exchange proposes to include the definition of an SROT in 900—ANTE. The Exchange defines a ROT as a regular member of the

Exchange as defined by Article I, Section 3 of the Amex Constitution, located on the trading floor, who has permission to trade in options for his or her own account in accordance with Amex Rule 958—ANTE. An SROT is defined as a ROT that is a member organization so designated by the Exchange that would be granted remote quoting rights to enter bids and offers electronically from off the Exchange's physical trading floor. Furthermore, SROTs would be subject to the obligations set forth under proposed Amex Rule 993—ANTE. Exchange rules applicable to ROTs would not apply to SROTs unless otherwise specified.

The Exchange also proposes to amend the terms "Designated Options Area" and "Designated Stock Area" to include only the area of the Exchange's physical trading floor where the option and stock, respectively, of a Paired Security are traded. The term "ANTE Participant" also would be amended to include an SROT assigned to trade a specific options class on the ANTE System.

iii. 918—ANTE. Amex Rule 918—ANTE currently sets forth the automated opening, reopening and closing rotation procedures, trading halts and the supervision of such procedures. The Exchange proposes to amend Commentary .01 to Amex Rule 918—ANTE to include paragraph (c), which provides that SROTs may not submit market orders prior to the opening and that SROTs may submit quotes or limit orders prior to the opening.

iv. 935—ANTE. Amex Rule 935—ANTE currently provides for the allocation of all contracts executed through the ANTE system. The Exchange proposes to amend Amex Rule 935—ANTE to include SROTs. Under the Exchange's proposal, the ANTE System would allocate executed contracts to non-broker-dealer customers, broker-dealers, competing market makers, specialists, registered options traders and SROTs in accordance with the provisions therein. The Exchange further proposes that when more than one market participant is quoting at the Amex Best Bid and Offer ("ABBO"), and an SROT is not interacting with its own firm's orders, the allocations in the current Amex Rule 935—ANTE (a)(1)–(4) would apply. Proposed paragraph (5) states that when more than one market participant is quoting at the ABBO, and an SROT is interacting with its own firm's orders, the ANTE System would allocate the remaining contracts after non-broker dealer customer orders as follows: (i) 40% to an SROT interacting with its own firm's orders and (ii) the balance to

registered options traders and to the specialist.

v. *936—ANTE and 936C—ANTE.* Amex Rule 936—ANTE and Amex Rule 936C—ANTE govern the cancellation and adjustment of equity options transactions and the cancellation and adjustment of index option transactions, respectively. The Exchange proposes to amend Amex Rule 936—ANTE and Amex Rule 936C—ANTE to include SROTs in the transactions that may be cancelled or adjusted. The proposal further modifies the notification requirement to allow Trading Officials and/or the Obvious Error Panel reviewing the transactions to both orally or electronically notify the members involved in the transaction of their determination. The purpose of the proposed electronic notification requirement is to provide notice to SROTs which are engaging in transactions off the Exchange's physical trading floor.

vi. *950—ANTE.* Amex Rule 950—ANTE (b) currently provides rules for priority and parity at the opening. Paragraph (b)(i) specifically provides that after the opening, an options specialist acting as principal may only retain priority over, or be on parity with, orders for the accounts of broker-dealers, but may not retain priority over, or be on parity with, off-floor orders for the accounts of public customers. The Exchange proposes to amend 950—ANTE (b)(i) to identify SROTs as broker-dealers. Commentary .01 of paragraph (c) currently provides that after the opening, an options specialist acting as principal, may only retain priority over or be on parity with orders for the accounts of broker-dealers but may not retain priority over or be on parity with off-floor orders for the accounts of public customers. Commentary .02 of paragraph (c) provides that options orders for the accounts of broker-dealers may only retain priority over or be on parity with orders for the accounts of broker-dealers but may not retain priority over or be on parity with off-floor orders for the accounts of public customers. The proposed amendments to Commentaries .01 and .02 of paragraph (c) would also categorize an SROT as a broker-dealer. Finally, the proposed amendment to Commentary .02 of paragraph (l) would require SROTs to compete with one another to improve the quoted markets in all series of option classes in which they trade.

vii. *951—ANTE.* Amex Rule 951—ANTE currently governs the bids and offers of options contracts. Commentary .01 to Amex Rule 951—ANTE provides that if the bid or offer of a specialist or registered options trader locks or crosses

the ABBO, the ANTE System would revise the bid by one or more minimum price variations lower than the bid submitted, or revise the offer by one or more minimum price variations higher than the offer submitted, so that the bid or offer submitted does not lock or cross the ABBO provided.<sup>6</sup> The Exchange proposes to amend Commentary .01 to Amex Rule 951—ANTE to apply to SROTs.

viii. *958—ANTE.* Amex Rule 958—ANTE governs ANTE options transactions of registered options traders. Pursuant to 958—ANTE (a), registered options traders are assigned classes of options in accordance with the existing procedures set forth in Commentary .05. Amex Rule 958—ANTE (a) also provides that any option transactions initiated by a registered options trader on the Floor and through the facilities of the Exchange for any account in which the registered options trader has an interest would be in such assigned classes. Paragraph (b) of Amex Rule 958—ANTE provides that transactions of a registered options trader must be reasonably calculated to contribute to the maintenance of a fair and orderly market, and no registered options trader should enter into transactions or make bids or offers that are inconsistent with such a course of dealings. Paragraph (c) of Amex Rule 958—ANTE provides that whenever a registered options trader participates in the trading of options in other than a floor brokerage capacity, or is called upon by a floor official or floor broker acting in an agency capacity, they would be required to make competitive bids and offers necessary, in a market making capacity, to contribute to the maintenance of a fair and orderly market. The Exchange proposes to apply paragraphs (a), (b) and (c) of 958—ANTE to SROTs as they currently apply to registered options traders.

Paragraph (h) currently provides that registered options traders may choose to use an Exchange provided or proprietary automated quote system to calculate and disseminate quotes, or join the specialist's disseminated quotation in some or all of his assigned classes or series. Paragraph (h) further provides that registered options traders must be physically present at the specialist's post on the floor of the

<sup>6</sup> The ANTE System collects all of the quotes being calculated by the specialist and each registered options trader, and determines the best bid and best offer for dissemination pursuant to the firm quote rule, as the ABBO. The ANTE System never allows a locked or crossed market to occur in the ABBO. If a quote is submitted that would lock or cross the ABBO, the ANTE System will revise the bid or the offer by the minimum price variant(s) so that the ABBO is not locked or crossed.

Exchange where that options class is traded.

Under the Exchange's proposal, SROTs would not be permitted to use the "join quote" feature in ANTE. The Exchange believes that requiring SROTs to submit their own quotes in options that an SROT is assigned would serve to further foster active quote competition. Finally, the Exchange proposes that SROTs, as well as registered options traders and specialists, must compete with each other to improve the quoted markets in all series of option classes which they trade. The Exchange further proposes to amend its original filing to remove the in-person requirement for SROTs as provided in paragraph (h) because they would not be physically present.

ix. *958A—ANTE.* Amex Rule 958A—ANTE, the Exchange's Firm Quote Rule, currently provides that registered options traders, when inputting their own quotes through an Exchange provided or proprietary automated quote calculation system, would each be considered a responsible broker or dealer for their bids or offers to the extent of their quotation size. The Exchange proposes to amend Amex Rule 958A—ANTE (a)(ii)(C) to include SROTs as responsible broker-dealers to the extent of their quotation size for the purposes of this rule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, 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 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 this proposal.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

### 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, 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-2005-075 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-Amex-2005-075. 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 Section, Station Place, 100 F Street, NE., Washington, DC 20549. 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-2005-075 and should be submitted on or before February 16, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-968 Filed 1-25-06; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53092A; File No. SR-CBOE-2005-105]

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the CBOE's Membership Rules for Foreign Member Organizations**

January 19, 2006.

#### **Correction**

FR Doc. E6-465, issued on January 18, 2006 on page 2963, regarding Securities Exchange Act Release No. 53092, incorrectly cited the date of the notice as January 10, 2005. The date should read January 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-966 Filed 1-25-06; 8:45 am]

**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53152; File No. SR-NYSE-2005-75]

#### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to a Proposed Rule Change Relating to Section 802.01E of the Listed Company Manual Concerning Continued Listing of Companies That Fail to File Their Securities Exchange Act of 1934 Annual Reports in a Timely Manner**

January 19, 2006.

#### **I. Introduction**

On October 26, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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 relating to amendments to the Listed Company Manual procedures applicable to companies that fail to file in a timely manner their annual report required by the Act. The proposed rule change was published for public comment in the **Federal Register** on November 16, 2005.<sup>3</sup> The Commission received four comments regarding the proposed rule change.<sup>4</sup> On December 14, 2005, the Exchange submitted a response to the comments.<sup>5</sup> This order approves the proposed rule change.

#### **II. Description of the Proposed Rule Change**

The Exchange recently amended Section 802.01E of the NYSE's Listed Company Manual, which codifies the Exchange's procedures relating to situations where companies fail to satisfy the Commission's filing requirements for annual reports on Forms 10-K, 10-KSB, 20-F, 40-F, or N-CSR in a timely manner.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 52760 (November 10, 2005), 70 FR 69617.

<sup>4</sup> See comments from James J. Angel ("Angel"), Associate Professor of Finance, McDonough School of Business, Georgetown University, dated December 5, 2005 ("Angel Letter"); Steve Berman ("Berman"), SRIC-Atlantic Trust, dated December 6, 2005 ("Berman Letter"); Edward S. Knight, Executive Vice President and General Counsel, The Nasdaq Stock Market, Inc. ("Nasdaq"), dated December 7, 2005 ("Nasdaq Letter"); and Mark Patterson ("Patterson"), Managing Director, NWQ Investment Management, LLC, dated December 7, 2005 ("Patterson Letter").

<sup>5</sup> See letter from Mary Yaeger, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated December 14, 2005 ("NYSE Response Letter").

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 17 CFR 200.30-3(a)(12).