

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56707; File No. SR-Amex-2007-111)

October 26, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Enable Settlements of Disciplinary Matters to Be Considered for Approval or Rejection by Exchange Hearing Officers Without the Need to Convene a Formal Hearing

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 October 19, 2007, 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 and II below, which Items have been substantially prepared by Amex. The Exchange filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt changes to Sections 1 and 2 of Article V of the Exchange’s Constitution; Rule 345 of the Exchange’s “Office Rules”; and Rules 2(a), 2(b) and 8 of the Exchange’s “Rules of Procedure in Disciplinary Matters” in order to enable settlements 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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

disciplinary matters to be considered for approval or rejection by Exchange hearing officers without the need to convene a formal hearing.

The text of the proposed rule change 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 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. 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 is proposing amendments to Sections 1 and 2 of Article V of the Exchange's Constitution; Rule 345 of the Exchange's Office Rules; and Rules 2(a), 2(b) and 8 of the Exchange's Rules of Procedure in Disciplinary Matters in order to streamline the handling of settlements of disciplinary matters by permitting such matters to be addressed by a single Exchange hearing officer, who shall either approve or reject the settlement, without being required to convene a formal hearing.

Under current Amex rules, settlements of disciplinary proceedings are handled as follows: Should a member, member organization, approved person, or a registered or non-

registered employee or prospective employee of a member or member organization (each a “respondent”), on one side, and enforcement staff of the Exchange, on the other side, enter into a stipulation of facts and consent to a specified penalty (a “Stipulation”), a formal hearing before an Exchange Disciplinary Panel (“Panel”), which may act solely through its Chair, must be convened to consider the Stipulation. Prior to that hearing, the Chair is provided with an enforcement staff memorandum outlining the Stipulation and analyzing how the agreed upon sanctions in the Stipulation are consistent with the Exchange Sanctions Guidelines and relevant precedent.<sup>5</sup> The subsequent hearings generally are conducted by telephone and consist of the respondent’s counsel and enforcement staff affirming support for the Stipulation. After considering the presentation, the Chair issues a written decision either (i) approving the Stipulation, (ii) rejecting the Stipulation, if the Chair considers the penalty too lenient, or (iii) imposing a lesser penalty than that contained in the Stipulation, if the Chair considers the agreed upon penalty too severe.

The above process has proven more time consuming than the Exchange believes necessary. It typically takes several months to schedule the hearing as a result of various scheduling conflicts among the parties involved, yet the hearing itself only takes a few minutes and is more formal than substantive, given the negotiated settlement and submission of the detailed enforcement staff memorandum in advance of the hearing. Therefore, in order to streamline the process, the Exchange is proposing to modify its rules to allow a Stipulation to be accepted or rejected by a hearing officer without conducting a formal hearing. Further, the Exchange is also proposing that the Chair’s power to impose a lesser penalty than that contained

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<sup>5</sup> The respondent’s counsel (or the respondent, in the event he is not represented) is also concurrently provided with a copy of the memorandum.

in a Stipulation be eliminated as unnecessary, in view of the fact that the Amex Adjudicatory Counsel, in any event, still retains the right to impose a lower sanction if it exercises its right to call the Chair's acceptance or rejection of the Stipulation for review.

In summary, the new proposed Stipulation consideration procedure will differ from current practice in only two substantive respects: (i) no formal hearing will now take place before the Chair, as a single hearing officer can consider the Stipulation without a formal hearing; and (ii) if a hearing officer deems a penalty in a Stipulation to be too severe, he will now reject the Stipulation, rather than propose a lesser penalty. The Exchange anticipates that these changes will provide a more efficient and expedient process for resolution of Exchange disciplinary matters, without compromising the quality of the process.

In addition, Amex proposes certain non-substantive "housekeeping" changes, including elimination of repetitive or unnecessary phrasing; creation of certain defined terms for ease of reference (i.e., "Stipulation"); and addition of rule cross-references.

## 2. Statutory Basis

The proposed rule change is consistent with Sections 6(b)(6), 6(b)(7) and 6(d) of the Act<sup>6</sup> in that it is designed to ensure that members and persons associated with members of the Exchange shall be appropriately disciplined for violation of the securities laws, the rules or regulations thereunder, or the rules of the Exchange; provide a fair procedure for imposition of such discipline; and ensure that a record is kept of such proceedings.

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

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<sup>6</sup> 15 U.S.C. 78f(b)(6), 78f(b)(7), and 78f(d).

The proposed rule change does not 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

No written comments were solicited or received with respect to the proposed rule change

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that the proposed amendments should allow the Exchange to settle disciplinary matters more efficiently, without affecting the rights of respondents in any

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that Amex has satisfied the five-day pre-filing notice requirement.

significant manner. In addition, the Exchange's non-substantive changes should help make Amex rules clearer and easier for readers to understand. The Commission believes that for these reasons, waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>9</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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-2007-111 on the subject line.

##### Paper Comments:

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<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-111. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2007-111 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>10</sup>

Nancy M. Morris  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).