

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47779; File No. SR-Amex-2003-23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Allocation and Performance Evaluation Procedures for Securities Admitted to Dealings on an Unlisted Trading Privileges Basis

May 1, 2003.

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 April 2, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 extend for six-months its pilot specialist allocation and performance evaluation rules for securities admitted to dealings on an unlisted trading privileges ("UTP") basis to permit these rules to remain in effect while the Commission considers permanent approval. The texts of the pilot rules are available at the Office of the Secretary, the principal office of the Amex, and at the Commission.

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 the 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 extend its specialist allocation and performance evaluation rules for securities admitted to dealings on a UTP basis to permit the Commission to consider the permanent approval of these rules. The Commission approved on a pilot basis, through two independent approval orders, the Exchange's specialist allocation and performance evaluation procedures with respect to securities admitted to trading pursuant to UTP ("Pilots").³ Amex Rule 28, "Allocation of Securities Admitted to Dealings on an Unlisted Trading Privileges ("UTP") Basis," details the Exchange's specialist allocation rules for UTP trading and Amex Rule 29, "Market Quality Committee" details the Exchange's specialist performance evaluation rules for UTP trading. The proposed rule change does not alter the operation of either of the Pilots in any way.⁴ This filing extends the effective dates of both Amex Rule 28 and Amex Rule 29 until October 5, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁵ in general, and the provisions of section 6(b)(5) of the Act,⁶ in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the continued trading of securities on a UTP basis will provide investors with increased flexibility in satisfying their investment needs by providing additional choice and increased competition in markets to effect transactions in the securities subject to unlisted trading.

³ For a description of the Pilots, see Securities Exchange Act Release Nos. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002), and 46750 (October 30, 2002), 67 FR 67880 (November 7, 2002).

⁴ Telephone conference between Bill Floyd-Jones, Associate General Counsel, Amex, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (April 23, 2003). The Exchange's filing contained a detailed description of the Pilots. That description has not been included in this notice because it is duplicative of the descriptions contained in the original approval orders for the Pilots.

⁵ 15 U.S.C. 78f(b).

⁶ 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. The proposed rule change, in fact, will tend to enhance competition by providing investors with additional choice and increased competition in markets to effect transactions in securities.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or the Commission waives such prior notice. 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.⁹

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. Waiving the pre-filing notice and accelerating the operative date will permit the continuous operation of Amex's specialist allocation and performance evaluation rules with respect to the trading of securities pursuant to UTP. Moreover, during the

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

initial operation period of the Pilots, the Commission did not receive any comments, and, the Commission expects the Exchange to request permanent approval of these rules during the Pilot extension period. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁰ The pilot will be effective for six months from April 5, 2003 until October 5, 2003.

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. 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 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-23 and should be submitted by May 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47775; File No. SR-CBOE-2003-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Inc. To Prohibit Clearing Firms From Accepting Certain Third-Party Deposits

April 30, 2003.

On February 10, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to establish CBOE Rule 4.21 which would prohibit, with certain exceptions, member firms that clear and carry the accounts of options market makers ("Clearing Firms") from accepting deposits to such accounts if the check, funds transfer or securities is drawn from a third party's account. The proposed rule change also would establish record retention requirements for the Clearing Firm to follow if it accepts deposits from third parties pursuant to the permitted exceptions. The CBOE filed Amendment No. 1 to the proposal on March 5, 2003. The proposed rule change, as amended, was published for comment in the **Federal Register** on March 28, 2003.³ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁴ and, in particular, the requirements of section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds that the rule change is consistent with section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. The rule change establishes a practice

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 47553 (March 21, 2003), 68 FR 15254.

⁴ In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

that should help to protect Clearing Firms from risks associated with improper transfers of funds and securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change, as amended, (File No. SR-CBOE-2003-05) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-11414 Filed 5-7-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47767; File No. SR-NSCC-2003-06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Clearing Fund Rules and Procedures

April 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on April 7, 2003, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. 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 proposed rule change eliminates the reference to "bearer" bonds in section 1 of NSCC's Rule 4 (Clearing Fund) because bearer bonds have not been issued for some time and consequently are not eligible for deposit with NSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

¹⁰ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).