

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53649; File No. SR-Amex-2006-29]

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

April 13, 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 April 6, 2006, 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 prepared by the Exchange. 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 Amex seeks a one year extension of its allocations and performance evaluation procedures for securities admitted to dealings on an unlisted trading privileges ("UTP") basis to permit these programs to remain in effect while the Commission considers permanent approval of these procedures.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Amex's Office of the Secretary, 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 Exchange 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 to extend its allocations and performance evaluation procedures for securities admitted to dealings on a UTP basis from April 6, 2006 through and including April 6, 2007. The text of the rules shall remain unchanged.

The Commission previously approved the Exchange's allocation and performance evaluation procedures on a pilot basis through two independent approval orders ("Pilots").<sup>3</sup> In 2003, the Pilots were extended until October 5, 2003,<sup>4</sup> and April 5, 2004.<sup>5</sup> In 2004, the Pilots were extended through April 6, 2005.<sup>6</sup> In 2005, the Pilots were extended through April 6, 2006.<sup>7</sup> The instant proposed rule change makes no substantive change to the Pilots other than to extend them through April 6, 2007.<sup>8</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act<sup>9</sup> in general, and furthers the objectives of section 6(b)(5)<sup>10</sup> in particular, in that 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 a national market system, and, in general, to protect investors and the public interest.<sup>11</sup>

<sup>3</sup> See Securities Exchange Act Release No. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002) (SR-Amex-2001-107); and 46750 (October 30, 2002), 67 FR 67880 (November 7, 2002) (SR-Amex-2002-19).

<sup>4</sup> See Securities Exchange Act Release No. 47779 (May 1, 2003), 68 FR 24777 (May 8, 2003) (SR-Amex-2003-23).

<sup>5</sup> See Securities Exchange Act Release No. 48657 (October 17, 2003), 68 FR 61025 (October 24, 2003) (SR-Amex-2003-87).

<sup>6</sup> See Securities Exchange Act Release No. 49613 (April 26, 2004), 69 FR 24204 (May 3, 2004) (SR-Amex-2004-22).

<sup>7</sup> See Securities Exchange Act Release No. 52004 (July 8, 2005), 70 FR 41061 (July 15, 2005) (SR-Amex-2005-043).

<sup>8</sup> See e-mail from Nyieri Nazarian, Assistant General Counsel, Amex, to Terri Evans, Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 10, 2006 (clarifying the establishment of two Pilots, as well as the dates and citations of prior extensions of the Pilots). The Amex also clarified that it was not seeking retroactive approval of the proposed rule change. Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Terri Evans, Special Counsel, Division, Commission, on April 10, 2006.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and

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

According to the Exchange, 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.

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

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of the filing 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>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

The Amex has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission is exercising its authority to waive the 5-day pre-filing requirement and believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest since it will allow the Pilots to continue without interruption in service to investors. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>14</sup> At any time within 60 days of the filing of the 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.

Terri Evans, Special Counsel, Division, Commission, on April 10, 2006 (clarifying the statutory basis for the proposed rule change).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

#### 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-2006-29 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 20549-1090.

All submissions should refer to File Number SR-Amex-2006-29. 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. 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-2006-29 and should be submitted on or before May 11, 2006.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53640; File No. SR-Amex-2005-096]

#### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Relocation of Registered Options Traders Assigned Options Classes

April 12, 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 September 22, 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 Exchange. On April 5, 2006, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</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 Exchange proposes to permit registered options traders ("ROT's") to send proprietary electronic orders, representing a bona fide hedge or position liquidations, in an assigned option class for a period of up to three (3) months following a relocation of such option class when the ROT is no longer physically present in such trading crowd.

Below is the text of the proposed rule change. Proposed new language is in *italics*.

#### Options Transactions of Registered Options Traders

Rule 958-ANTE No registered options trader shall initiate an Exchange option transaction on the Floor and through the facilities of the Exchange for any account in which he has an interest except in accordance with the following provisions:

(a) through (i) No Change

Commentary \* \* \*

.01 through .09 No Change

*.10 A Registered Options Trader may apply to the Exchange for the ability 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 ("Amendment No. 1") supersedes and replaces the original filing in its entirety. The substance of Amendment No. 1 is incorporated into this notice.

*send electronic bona fide hedging and/or liquidating orders in a formerly assigned option class(es) that have been relocated to a different location on the trading floor, for up to a three (3) month period from the date the application is granted. The Registered Options Trader will not be required to be physically present in the new trading location for the purpose of sending bona fide hedging and/or liquidating orders to the option class(es) that have been relocated. Application is required to be made in writing to the Exchange's Division of Regulation and Compliance. The Exchange's Division of Regulation and Compliance is required to approve each application before a Registered Options Trader may send electronic orders pursuant to this Commentary. An extension of the three (3) month time period is not permitted. Upon the expiration of the three (3) month period, Registered Options Traders will no longer be permitted to electronically send orders from the floor of the Exchange for the purpose of bona fide hedging and/or liquidating positions in the formerly assigned options class.*

#### 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

According to the Amex, the purpose of the proposed rule change is to provide ROTs who are no longer physically present in the trading crowd of his or her formerly assigned option class<sup>4</sup> with the ability to send electronic

<sup>4</sup> The Exchange states that a ROT would no longer be considered assigned to an option class once an assigned option class has been relocated to a different floor location and the ROT has not communicated his intention to relocate with such assigned options class. A ROT must communicate his intention to relocate if he wants to keep the assigned option class. This proposed rule change proposes a three (3) month grace period in which the ROT may electronically send orders to close-out or hedge those assigned options class positions.