

("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> the proposed rule change relating to written compliance and supervisory controls. Amex filed Amendment No. 1 to the proposed rule change on April 6, 2006. The proposed rule change was published for comment in the **Federal Register** on April 28, 2006.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The Exchange is proposing to amend Amex Rule 320 to require members and member organizations with employees to establish, maintain, enforce, and keep current a system of compliance and supervisory controls, including written compliance and supervisory policies and procedures, that are reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules.<sup>4</sup> In addition to requiring that the written compliance and supervisory policies and procedures be amended as necessary, the proposed rule would require that a member's or member organization's supervisory control employee provide reports, at least annually, to senior management summarizing certain aspects of the compliance and supervisory program.<sup>5</sup>

In addition, the Exchange proposed clarifying edits to the text of Amex Rule 320, including: (1) Explicit references to a member's or member organization's obligation to comply with Exchange rules in addition to all applicable securities laws and regulations, and (2) replacing references to "member firm" with references to "member organization."

## III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities exchange,<sup>6</sup> particularly section 6(b)(5) of the Act,<sup>7</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, 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 Commission believes that the Exchange's proposal to require its members and member organizations to establish, maintain, enforce, and keep current a system of compliance and supervisory controls, including written compliance and supervisory policies and procedures, that are reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules should help strengthen the Exchange's regulatory program by increasing member awareness of the laws and rules with which they must comply. It should also provide members an additional incentive to be cognizant of changing regulatory requirements. The Exchange will review the adequacy of its members' and member organizations' compliance programs. Further, the requirement that Amex members and member organizations adopt comprehensive written compliance and supervisory policies and procedures, and report to senior management on certain aspects of the compliance and supervisory program, should result in the periodic assessment by members and member organizations of the effectiveness of their compliance programs. Accordingly, the proposed rule change should help Amex strengthen its regulatory program for detecting, sanctioning, and deterring violations of Exchange rules and securities laws and regulations and, therefore, should promote just and equitable principles of trade.<sup>8</sup> Furthermore, the Commission believes that the Amex's proposal should enhance investor protection by facilitating the Exchange's review of its members' and member organizations' systems of compliance and supervisory

controls and by enhancing the compliance programs at the member level.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-Amex-2005-116), as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53911; File No. SR-Amex-2006-40]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Direct Registration System Eligibility Requirements

May 31, 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 28, 2006, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

Amex is proposing to add new Rule 778 to its Rules and new Section 135 to its Company Guide to require certain listed securities to be eligible for a Direct Registration System operated by a securities depository.<sup>3</sup>

#### 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

<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. 53708 (April 24, 2006), 71 FR 25254.

<sup>4</sup> See proposed Amex Rule 320(e). An Amex member or member organization consisting of a sole individual (*i.e.*, a sole proprietorship) would be required to maintain a written compliance manual specifying the obligations to which such member or member organization is subject along with the processes and controls in place that are reasonably designed to achieve compliance with such obligations. See Amex Rule 320, proposed Commentary .08.

<sup>5</sup> See proposed Amex Rule 320(e)(3).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> The Commission notes that a national securities exchange must have the capacity to enforce compliance by its members with applicable securities laws, regulations and the exchange's own rules. See *e.g.*, section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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.

<sup>3</sup> The term "securities depository" means a securities depository registered as a clearing agency under Section 17A(b)(2) of the Act.

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 these statements.<sup>4</sup>

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

In order to reduce the costs, risks, and delays associated with the physical delivery of securities certificates, Amex is proposing to require (i) all securities (other than the securities identified below) initially listing on Amex on or after January 1, 2007, to be eligible for a DRS and (ii) all securities (other than the securities identified below) listed on Amex on and after January 1, 2008, to be eligible for a DRS.<sup>5</sup> The initial listing requirement set forth in (i) above will not apply to securities of issuers which already have securities listed on the Amex, securities of issuers which immediately prior to such initial Amex listing had securities listed on another national securities exchange, derivative products,<sup>6</sup> or securities (other than stocks) which are book-entry-only. The ongoing listing requirement set forth in (ii) above will not apply to derivative products or securities (other than stocks) which are book-entry-only.

Securities certificates are used by issuers as a means to evidence and transfer ownership. Because securities certificates require manual processing and because trading volumes have increased, the manual clearance and settlement systems have become overburdened resulting in significant delays and expenses in processing securities transaction and in increased risks associated with lost, stolen, and forged certificates. In Section 17A of the

Act,<sup>7</sup> Congress recognized these concerns by calling for the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities.

A DRS allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry securities position on the books of the issuer and to electronically transfer that securities position between the transfer agent and the broker-dealer through facilities administered by DTC.<sup>8</sup> Instead of receiving a securities certificate, the investor receives a DRS statement as evidence of share ownership. Investors retain the rights associated with securities certificates, including such rights as control of ownership and voting rights, without having the responsibility of holding and safeguarding securities certificates. In addition, in corporate actions such as reverse stock splits and mergers, cancellation of old shares and issuance of new shares are handled electronically with no securities certificates to be returned to or received from the transfer agent.

Issuers and their transfer agents may incur initial costs when making an issue DRS-eligible and in turn satisfy the new listing standards as set forth in this proposed rule change. In order to make a security DRS-eligible, the issuer must have a transfer agent which is a DRS Limited Participant.<sup>9</sup> Issuers will also need to meet certain DTC criteria, such as insurance and connectivity requirements, in order to make an issue DRS-eligible. Further, an issuer's corporate by-laws must permit the issuance of book-entry shares. Amex believes that the proposed deadlines for DRS eligibility coupled with proactive and instructive communication by Amex with issuers, will allow issuers

sufficient time to make the necessary changes to comply with the proposed rule change.

While the propose rule change should significantly reduce the number of transactions in securities for which settlement is effected by the physical delivery of securities certificates, the proposed rule change will not eliminate the ability of investors to obtain securities certificates after the settlement of securities transactions, provided the issuer chooses to issue or continue to issue certificates.

(2) Statutory Basis

Amex believes the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to 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>10</sup>

Amex believes that DRS eligibility listing requirements will limit market impediments arising from the physical delivery of securities certificates, thereby promoting the perfection of the national market system. Because investors will have the option of holding their securities in DRS only if the security is DRS-eligible, Amex believes that the proposed rule change is necessary to encourage listed issuers to limit the use of physical certificates. Further, the proposed rule change should serve to increase the efficiency of the clearance and settlement system and prevent forgery, theft, or other misappropriation thereby serving to better protect the public interest. Finally, because the costs, both direct and indirect, associated with securities certificates are ultimately borne by investors, Amex believes that investors in Amex listed securities covered by the proposed rule change should realize the benefits of accurate, quick, and cost-efficient transfers, rapid distribution of sale proceeds, reduced lost or stolen certificates and replacement fees, elimination of the risk associated with catastrophic events, and consistency of owning in book-entry across asset classes.

<sup>4</sup> The Commission has modified the text of the summaries prepared by the Amex.

<sup>5</sup> The New York Stock Exchange LLC ("NYSE") and The NASDAQ Stock Market LLC ("Nasdaq") have also filed proposed rule changes with the Commission that would require certain listed companies to become DRS eligible. Securities Exchange Act Release Nos. 53912 (May 31, 2006) [File No. SR-NYSE-2006-29] and 53913 (May 31, 2006) [File No. SR-NASDAQ-2006-08].

<sup>6</sup> As defined in Article 1, Section 3(d) of Amex's Constitution, the term "derivative products" includes in addition to standardized options, other securities which are issued by The Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities. The term "derivative products" does not include warrants of any type or closed-end management investment companies.

<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> Currently, the only registered clearing agency operating a DRS is the Depository Trust Company ("DTC"). For a description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR-DTC-96-15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR-DTC-99-16] (order approving implementation of the Profile Modification System).

<sup>9</sup> For a description of DTC's rules relating to DRS Limited Participants and a description of DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR-DTC-96-15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR-DTC-99-16] (order approving implementation of the Profile Modification System).

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

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

Amex does not believe that the proposed rule change will 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 by Amex with respect to the proposed rule change.

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

Within thirty-five 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 ninety 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change 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 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-2006-40 in the subject line.

*Paper Comments*

- 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-2006-40. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of Amex and on Amex's Web site, <http://www.amex.com>. 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-2006-40 and should be submitted on or before June 28, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53909; File No. SR-CBOE-2005-65]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Relating to the Processing of Complex Orders in the Hybrid Trading System**

May 31, 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 August 24, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. The CBOE filed Amendment Nos. 1 and 2 to the proposal on March 13, 2006, and April

27, 2006, respectively.<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**

CBOE proposes to amend its procedures applicable to trading complex orders on the Hybrid Trading System ("Hybrid System") to provide for an automated Request for Responses ("RFR") auction process for certain eligible complex orders ("COA" process). CBOE is also proposing to make various changes to the existing routing and execution processes applicable to the complex order book ("COB") and various changes to its rules pertaining generally to the minimum increments applicable to complex orders. The text of the proposed rule change appears below. Additions are *italicized*; deletions are [bracketed].

\* \* \* \* \*

**Chicago Board Options Exchange, Incorporated****Rules***Rule 6.9. Solicited Transactions*

A member or member organization representing an order respecting an option traded on the Exchange (an "original order"), including a spread, combination, or straddle order as defined in Rule 6.53, a stock-option order as defined in Rule 1.1(ii) [or], a security future-option order as defined in Rule 1.1(zz), or any other complex order as defined in Rule 6.53C, may solicit a member or member organization or a non-member customer or broker-dealer (the "solicited person") to transact in-person or by order (a "solicited order") with the original order. In addition, whenever a floor broker who is aware of, but does not represent, an original order solicits one or more persons or orders in response to an original order, the persons solicited and any resulting orders are solicited persons or solicited orders subject to this Rule. Original orders and solicited orders are subject to the following conditions.

(a)-(f) No change.

\* \* \* Interpretations & Policies:

.01-.02 No change.

.03 In respect of any solicited order that is a spread, straddle or combination order as defined in Rule 6.53, or any other complex order as defined in Rule

<sup>11</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.

<sup>3</sup> Amendment No. 2 replaces and supersedes the original filing and Amendment No. 1 in their entirety.