

are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and that therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42407; File No. SR-Amex-99-29]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Relating to Disclosures by Specialists Under Amex Rule 174

February 9, 2000.

I. Introduction

On August 6, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with 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 amend Amex Rule 174 pertaining to the disclosure of specialists' orders. The proposed rule change was published for comment in the *Federal Register* on September 20, 1999.³

II. Description of the Proposal

Presently, Amex Rule 174 prohibits specialists from disclosing information regarding orders left with the specialist other than to a Floor Official or an authorized Amex official. This prohibition is subject to three exceptions: (1) a specialist may disclose information to requesting members or issuer representatives regarding names of buying and selling member organizations in completed or partially executed Amex transactions unless parties to the trade direct otherwise; (2) in response to a member's probe of the market, the specialist, in a fair and impartial manner, may provide information about buying and selling interest at or near the prevailing

quotation, including the identity of bidders or offerors represented on the book, unless the entering broker directs otherwise; and (3) the specialist must disclose information regarding limited price orders held by the specialist to the extent required by the Intermarket Trading System Plan.

The Exchange proposes to amend Amex Rule 174 to expand the information that the specialist, while acting in a market making capacity on the Floor, is permitted to disclose in response to a member's market probe in the normal course of business. The proposed rule change would eliminate the specialist disclosure restriction for information regarding orders "at or near the prevailing quotation," and instead would permit any information concerning buying and selling interest of orders held by the specialist on the specialist's book to be disclosed following a member's market probe. In addition, the specialists would be permitted to disclose information regarding stop orders if the specialist reasonably believes that the requesting member intends to trade the security at a price at which stop orders would be relevant.⁴ The proposed rule change also will permit, although not require, disclosure of percentage orders in a manner similar to disclosure of any other orders (except stop orders).⁵ Although a specialist would not be required to disclose any order information on the specialist's book in response to a member's market probe, under the existing or the proposed rule, if the specialist determines to make such disclosure, it must disclose the same information in a fair and impartial manner to any member on the Floor.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁶ and, in particular, with the

requirements of Sections 6(b)(5),⁷ 11A(a)(1)(C)(iii),⁸ and 1(b) of the Act.⁹ Section 6(b)(5) of the Act¹⁰ requires, among other things, that an exchange have rules which are designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In Section 11A(a)(1)(C)(iii) of the Act,¹¹ Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Section 11(b) of the Act,¹² among other things, prohibits a specialist or Exchange official from disclosing information with respect to orders that is not available to all members of the Exchange to any person other than an official of the Exchange, a representative of the Commission, or a specialist who may be acting for such specialist.

Presently, Amex Rule 174 prohibits specialists from disclosing Book information to other exchange members who are probing the market, unless the market probe is made at or near the prevailing quote. The proposed rule change would liberalize the specialist disclosure provisions by permitting specialists, while acting in a market maker capacity and in response to a market probe by a member, to give information concerning buying and selling interest or orders the specialist holds on the Book in a stock. All market participants, including individual investors and issuers, will be able to obtain the Book information through a member's probe. The Commission believes that this provision should promote the objectives of Sections 6(b)(5) and 11A of the Act¹³ by increasing price transparency, broadening the public dissemination of market information, and enhancing the ability of investors to develop strategies and make informed investment decisions. Moreover, because the proposed amendments to Amex Rule 174 will make Book information available to all member organizations on a non-exclusive basis and requires a specialist to disclose information in a

⁴ A stop order to buy (sell) becomes a market order when a transaction in the security occurs at or above (below) the stop price after the order is represented in the Trading Crowd. A stop limit order to buy (sell) becomes a limit order executable at the limit price or better when a transaction occurs at or above (below) the stop price after the order is represented. See Amex Rule 131(q) and (r), respectively.

⁵ A percentage order is a limited price order to buy or sell 50% of the volume of a specified stock after its entry. A percentage order is "elected" and becomes capable of execution under circumstances set forth in Amex Rule 131.

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

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁹ 15 U.S.C. 78k(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹² 15 U.S.C. 78k(b).

¹³ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k-1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41870 (September 13, 1999), 64 FR 51156 (September 21, 1999).

fair and impartial manner, the proposal is consistent with Section 11(b) of the Act.¹⁴

Stop orders, however, are treated differently than other orders under the proposed rule change. Under the proposed rule change, specialists may disclose information about stop orders when the specialist reasonably believes that the member conducting the market probe has the intention to trade in the stock at a price at which such stop orders would be relevant. Orders other than stop orders, including percentage orders, may be disclosed without restriction in response to a member's probe. The Commission believes that because stop orders held on the book may be far away from the market the proposal's special treatment of stop orders is reasonable. The Commission believes that it is reasonable that specialists only disclose stop order information when a member's market probe reasonably indicates an intention to trade at a price at which the stop orders would be relevant. This restriction should help safeguard against potential market manipulation and provide investors who place stop orders with a level of protection and confidence that Exchange members will not be permitted to obtain information regarding stop orders unless they have a legitimate market interest in that information.¹⁵

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-AMEX-99-29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42409; File No. SR-Amex-00-01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Revising Its Floor Decorum Policy and Amending Its Minor Rule Violation Fine System (Rule 590)

February 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on January 14, 2000, 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. The Amex filed the proposal pursuant to Section 19(b)(3)(A) of the Act,² and Rule 19b-4(f)(6) thereunder,³ which renders the proposal effective upon filing with 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 Amex proposes to revise its Floor Decorum Policy and to amend its Minor Rule Violation Fine System (Rule 590) to establish a two-tier fine system imposing stiffer penalties for more serious violations. The text of the proposed rule change is as follows (words and characters in brackets are to be deleted; words and characters in italics are to be inserted):

* * * * *

D. Office Rules Minor Rule Violation Fine Systems Rule 590. Minor Violation Fine System

Part 2, Floor Decorum Violations

(a) [Notwithstanding Article V, Section 1(b) of the Constitution, the Exchange may, subject to the requirements set forth herein, impose a fine on any member or member organization for any violation of the Exchange's floor decorum policy in the amount of \$100 for a first offense, \$300 for a second offense, and \$500 for any subsequent offenses within a rolling 12-month period.] The Exchange's [f]Floor [d]Decorum [p]Policy, [which is

¹ 15 U.S.C. 78s(b)(1).
² 15 U.S.C. 78s(b)(3)(A).
³ 17 CFR 240.19b-4(f)(6).

published periodically] *set forth at the end of this Part 2*, [sets forth] *delineates* specific guidelines concerning the personal appearance and conduct of persons on the Trading Floor and generally prohibits any other act or omission which disrupts the orderly conduct of business on the Floor or which causes serious interference with the personal comfort or safety of other persons on the Floor.

(b) *Notwithstanding Article V, Section 1(b) of the Constitution, the Exchange may, subject to the requirements set forth herein, impose the following fines on any member or member firm for those violations of the Exchange's Floor Decorum Policy by a member or trading floor employee of a member firm listed below:*

Violations

1. *Fighting involving any form of physical altercation (Paragraph 1 of the Floor Decorum Policy, Respectful Conduct).*
2. *Vandalism of property (Paragraph 9 of the Floor Decorum Policy, Vandalism of Property).*

Offense	Fine
1st Offense	\$1,000
2nd Offense*	1,500
Subsequent Offenses*	2,000

* Within a "rolling" 12-month period.

(c) *Notwithstanding Article V, Section 1(b) of the Constitution, the Exchange may, subject to the requirements set forth herein, impose the following fines on any member or member firm for any violation of the Exchange's Floor Decorum Policy by a member or trading floor employee of a member firm other than a violation set forth in Paragraph (b) above:*

Offense	Fine
1st Offense	\$100
2nd Offense*	300
Subsequent Offenses*	500

*Within a "rolling" 12-month period.

[(b)](d) In addition to [floor decorum] violations of the Exchange's Floor Decorum Policy, the fines set forth in paragraph [(a)] (c) above may be imposed by the Exchange with respect to the following on-floor and off-floor operational violations:

1. Failure of a specialist to be properly represented at the trading post at scheduled times to answer inquiries regarding the status of orders and to resolve equity DK notices.
2. Failure of a specialist to respond to inquiries regarding unreported PER/

¹⁴ 15 U.S.C. 78k(b).
¹⁵ The Commission notes that it approved a proposed rule change submitted by the New York Stock Exchange ("NYSE") pertaining to specialist disclosure of information on the order book which contained substantially similar provisions to this proposal. The NYSE proposal also included a provision permitting a specialist to disclose to a member the identity of any buyer or seller on the Book unless the buyer or seller expressly requests that his or her investment anonymity be maintained at all times with respect to a specific order. See Securities Exchange Act Release No. 41421 (May 18, 1999), 64 FR 28848 (May 27, 1999). A similar provision already contained in Amex Rule 174 is not amended by this proposal.
¹⁶ 15 U.S.C. 78s(b)(2).
¹⁷ 17 CFR 200.30-3(a)(12).