

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42427; File No. SR-Amex-99-30]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Thereto by the American Stock Exchange LLC Amending Exchange Rule 18, Withdrawal From Listing

February 15, 2000.

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 13, 1999, 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 Exchange. On October 1, 1999, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 3, 2000, the Amex submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> 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 amend Exchange Rule 18, Withdrawal from Listings. The Exchange believes that Exchange Rule 18 is inconsistent with the Commission's increasing emphasis on enhancing competition and merely represents a needless restriction imposing burdensome delays on an issuer's decision to delist. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

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

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

<sup>3</sup> See Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from Michael J. Ryan, Chief of Staff, Amex, dated September 24, 1999 ("Amendment No. 1"). In Amendment No. 1, Amex proposes to amend Exchange Rule 18 instead of rescinding the rule in its entirety, as proposed in its initial filing, to provide that an issuer may voluntarily withdraw a security from listing on the Exchange upon written notice to the Exchange.

<sup>4</sup> See Letter to Marla Chidsey, Attorney, Division of Market Regulation, Commission, from Iyonne Lugo, Assistant General Counsel, Amex, dated February 2, 2000 ("Amendment No. 2"). In Amendment No. 2, Amex proposes to require the issuer to comply with all applicable state laws in effect in the state in which it is incorporated prior to filing to delist from the Amex. Amendment No. 2 also proposes to make conforming amendments to the Amex *Company Guide* Section 1010 and 1011, conveying the requirements of the amended Exchange Rule 18.

#### 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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statement.

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

Exchange Rule 18 currently requires an issuer, prior to withdrawing a security from listing, to file with the Exchange a certified copy of a resolution adopted by the board of directors authorizing withdrawal from listing and registration and explaining the reasons for such withdrawal. The rule also provides that the exchange may, if it disagrees with the stated reasons for such withdrawal, require the issuer to send to all registered holders of such security a statement of the reasons for such application, together with facts in support thereof within at least fifteen (15) days prior to the filing of a delisting application with the Commission. These Exchange Rule 18 requirements must be met before an application for delisting can be filed with the Commission.

According to the Amex, Exchange Rule 18 has not been applied in many years with respect to issuers seeking to voluntarily withdraw their common stocks from listing on the Exchange. The Exchange believes Rule 18 is inconsistent with the Commission's increasing emphasis on enhancing competition and merely represents a needless restriction imposing burdensome delays on an issuer's decision to delist.

In its Market 2000 Report,<sup>5</sup> the Commission criticized the anticompetitive nature of New York Stock Exchange ("NYSE") Rule 500 and Exchange Rule 18 when it contrasted these Rules to the NASD's rules for Nasdaq/NMS issuers which allow an issuer to terminate its Nasdaq/NMS designation voluntarily, upon written notice to the NASD. The Commission stated, "(t)he stands embodied in Rule 500 \* \* \* represents a barrier to

<sup>5</sup> Division of Market Regulation, United States Securities and Exchange Commission, Market 2000—An Examination of Current Equity Market Developments 30-31 (January 1994).

delisting that is too onerous, and the standards embodied in Amex Exchange Rule 18 are too vague." The Commission found no justification for the stringent approval requirements built into NYSE Rule 500 and Exchange Rule 18, given the current similarities in standards between the NYSE and Nasdaq/NMS markets.

In its comment letters to the Commission (January 6, 1999 and July 7, 1999), on the NYSE's proposal to modify Rule 500, and the latest Commission approved modifications to NYSE Rule 500, the NASD expressed its commitment to eliminating barriers to competition that no longer benefit investors, issuers and other market participants. U.S. markets should compete for listings solely on their market quality and enhanced value-added services to shareholders and issuers. In keeping with the NASD's commitment, and the Commission's increasing emphasis on enhancing competition in the securities industry, the Exchange proposes amending Exchange Rule 18 and the references to the Rule in its Company Guide.

The proposed amendment to Exchange Rule 18 will implement the Exchange's decision to eliminate obstacles and delays for issuers seeking to voluntarily withdraw their common stock from listing on the Exchange. Under new proposed Rule 18, issuers will be able to voluntarily withdraw a security from listing on the Exchange upon written notice to the Exchange, provided the issuer complies with all applicable state laws in effect in the state in which it is incorporated.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

The Exchange believes that the proposed rule change will not impose any burden on competition that is not

<sup>6</sup> 15 U.S.C. 78f(b).

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

necessary or appropriate in furtherance of the purpose of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received any written comments with respect to the proposed rule change.

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

Within 35 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 90 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 Exchange 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, as amended, 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 Amex. All submissions should refer to File No. SR-Amex-99-30 and should be submitted by March 15, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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<sup>8</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42425; File No. SR-NYSE-00-07]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Interpretation of Exchange Rules 15 and 390**

February 14, 2000.

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 February 14, 2000, the New York Stock Exchange, Inc. ("NYSE" 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.<sup>3</sup> Pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder, the Exchange has designated this proposal as one that does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. Thus, the proposal is effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of an interpretation of Exchange Rules 15 and 390 to permit members, member organizations, and affiliated persons (as defined in Rule 390) to effect transactions in NYSE-listed stocks in the over-the-counter market by means of the Intermarket Trading System ("ITS").<sup>4</sup>

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

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

<sup>3</sup> On February 14, 2000, the day of filing, the Exchange also submitted an amendment to the proposed rule change. See Letter from Daniel Odell, Assistant Secretary, Exchange, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated February 14, 2000 ("Amendment No. 1"). Amendment No. 1 stated that the Exchange characterized the rule filing as non-controversial, and requested that it become effective pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), and Rule 19b-4(f)(6) thereunder, 17 CFR 240.19b-4(f)(6). Amendment No. 1 also requested that the Commission waive the five day pre-filing requirement and the 30 day implementation delay for non-controversial filings.

<sup>4</sup> NYSE Rule 390 limits the ability of members of the Exchange to effect transactions in NYSE-listed stocks in the over-the-counter market. NYSE Rule 15 governs the use of the ITS.

**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. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

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

**1. Purpose**

The purpose of the proposed rule change is to interpret Rules 15 and 390 to apply those rules in a manner that is consistent with the objectives of the Commission in expanding the ITS/CAES linkage,<sup>5</sup> and that is consistent with the Exchange's filing to rescind Rule 390 and thereby eliminate restrictions on trading NYSE-listed stocks in the over-the-counter market.<sup>6</sup> The interpretation provides that members, member organizations, and affiliated persons (as defined in Rule 390) may effect, either as principal or agent, transactions in any ITS-eligible security listed on the Exchange in the over-the-counter market by means of ITS.

**2. Statutory Basis**

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>7</sup> that an Exchange have rules that are 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

<sup>5</sup> On December 13, 1999, the Commission adopted amendments to the ITS plan to expand the ITS/Computer Assisted Execution System ("CAES") linkage to all listed securities. This amendment is effective February 14, 2000. Prior to the amendment, the ITS/CAES linkage applied only to "Rule 19c-3" securities *i.e.*, securities listed after April 26, 1979. See Securities Exchange Act Release No. 42212 (December 13, 1999), 64 FR 70297 (December 16, 1999).

<sup>6</sup> On December 10, 1999, the Exchange filed a proposed rule change to rescind Rule 390. See File No. SR-NYSE-99-48.

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