

The Commission notes that proposed Commentary .04 is substantially similar to current Chicago Board Options Exchange ("CBOE") Rule 6.9(e). The Commission believes that it is reasonable for the Amex to adopt a rule that is substantially similar to CBOE Rule 6.9(e) to provide similar protections for the Amex's marketplace. In addition, Commission believes that it is reasonable for the Amex to include solicited, facilitated, and crossing transactions in Amex Rule 950(d), Commentary .04 because solicited, facilitated, and crossing transactions could present opportunities for misuse of non-public information.

### C. Accelerated Approval of Amendments

The Commission finds good cause, pursuant to Section 19(b)(2)(B)<sup>26</sup> of the Act, for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Amendment No. 1 adds the provision, described above, that would provide an allocation to a member firm seeking to facilitate a customer order even when it only matches, but does not improve upon, the prices given by the crowd in response to the floor broker's initial request for a market. The Commission has already approved rules of the ISE, the CBOE, and the Pacific Exchange ("PCX") that establish participation guarantees for firms seeking to facilitate orders even when they only match the best prices offered by other market participants.<sup>27</sup> Thus, the addition of this provision to the Amex proposal raises no new regulatory issues. Further, it should benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the various exchanges, and will allow the Amex to compete without disadvantage for facilitation orders.

Amendment No. 2 reduces the allocation to the member firm seeking to facilitate a customer order from 50% to 40% when the firm improves the price given by the crowd in response to the floor broker's request for a market. It thus limits guaranteed participation to a percentage that the Commission has previously found consistent with the Act and raises no new regulatory issues.

Amendment No. 2 also includes the provisions described above concerning specialist allocations, and stipulates that the allocations guaranteed to the member firm and the specialist in the aggregate may not exceed 40% of the order. It thus strengthens the proposal by adding a necessary clarification of priority rights pursuant to current trading practices.

Amendment No. 2 also provides the Exchange the authority to reduce the size of orders to which the new guarantee applies from 400 to 50 contracts. The Commission has already approved ISE and CBOE rules permitting guarantees to firms facilitating crosses in order sizes as low as 50 contracts.<sup>28</sup> Thus, this modification of the Amex proposal raises no new regulatory issues. Further, it will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the ISE, the CBOE, and the Amex, and will allow the Amex to compete without disadvantage for facilitation orders.

Amendment No. 2 also seeks to establish proposed Commentary .02(d) to Rule 950(d) as a 90-day pilot program. The Commission finds no reason to delay approval of this modification.

With respect to proposed Commentary .04, Amendment No. 2 clarifies that the restriction on trading for a person who has knowledge of the terms of a solicited, facilitation, or crossing order no longer applies as long as he disclosed all the terms of the *originating* order.<sup>29</sup> This clarification brings the proposed rule change in conformity with the disclosure requirement of CBOE Rule 6.9(e) and raises no new regulatory issue.

Amendment No. 3 includes several modifications of the proposed new rule text that were made for technical purposes<sup>30</sup> or to clarify its meaning, and thus strengthen the proposal.

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)<sup>31</sup> and 19(b)(2)<sup>32</sup> of the Act to accelerate approval of Amendment Nos. 1, 2, and 3 to the proposed rule change.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>26</sup> See relevant citations at *supra*, note 27.

<sup>27</sup> See *supra*, note 14.

<sup>30</sup> One modification refers to current trading floor practices on the Amex regarding specialist allocations, rather than to the Amex proposal that would codify these practices, which is still pending before the Commission. See *supra*, note 11.

<sup>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

arguments concerning Amendment Nos. 1, 2, and 3, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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-99-36 and should be submitted by July 3, 2000.

### V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the portion of the proposed rule change (SR-Amex-99-36), as amended, adopting Commentary .04 to Amex Rule 950(d) is approved, and the portion of the proposed rule change adopting Commentary .02(d) to Amex Rule 950(d) is approved on a pilot basis until August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42895; File No. SR-AMEX-00-10]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to the Listing and Trading of Trust Issued Receipts

June 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>33</sup> 17 CFR 200.30-3(a)(12).

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>27</sup> See Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (approving ISE's registration as a national securities exchange); 42835 (May 26, 2000) (approving File No. SR-CBOE-99-10); and 42848 (May 26, 2000) (approving File No. SR-PCX-99-18).

("Act")<sup>1</sup> and Rule 196-4 thereunder,<sup>2</sup> notice is hereby given that on February 14, 2000, 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 and II below, which Items have been prepared by the Exchange. Amendment No. 1 was filed on June 2, 2000.<sup>3</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 Amex Rule 1202 to provide for the trading of Holding Company Depository Receipts ("HOLDRs") pursuant to Rule 19b-4(e) of the Act.<sup>4</sup> The text of the proposed rule change follows. *Italics* indicate text to be added.

#### TRUST ISSUED RECEIPTS Initial and Continued Listing Rule 1202

Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(a)-(e) No change.

*Commentary .01 The Exchange may approve a series of HOLDRs for listing and trading on the Exchange pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 ("Act"), provided each of the component securities satisfies the following criteria:*

*Eligibility Criteria for Component Securities Represented by a series of HOLDRs:*

*(i) each component security must be registered under Section 12 of the Exchange Act;*

*(ii) each component security must have a minimum public float of at least \$150 million;*

*(iii) each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and be a reported national market system security;*

*(iv) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;*

*(v) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and*

*(vi) the most heavily weighted security may not initially represent more than 20% of the overall value of the HOLDR.*

### 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. 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 proposes to amend Amex rule 1202 to provide for the trading of HOLDRs pursuant to Rule 19b-4(e) of the Act. On September 21, 1999, the Amex received approval to adopt new Rules 1200 *et seq.* to permit the trading of Trust Issued Receipts (of which HOLDRs are a type).<sup>5</sup> Since that time, the Exchange has listed Internet, Biotechnology, Pharmaceutical, Telecommunications, Business to Business, Internet Architecture, Internet Infrastructure, Broadband, and Semiconductor HOLDRs. The Exchange anticipates additional proposals to list new HOLDRs products.

To accommodate the listing of additional HOLDRs, the Exchange now proposes to revise existing listing

criteria and trading rules to permit the listing and trading of HOLDRs pursuant to Rule 19b-4(e).<sup>6</sup> The Exchange believes listing newly proposed HOLDRs products pursuant to Rule 19b-4(e) is appropriate because the Commission has approved, pursuant to Section 19(b) of the Act, trading rules, procedures and listing standards for the HOLDRs product class and the Exchange has a surveillance program for the HOLDRs' product class.<sup>7</sup> In addition, the Commission has reviewed a number of proposals to list and trade the Internet and Biotech holders that comprised the same product structure. The Commission noticed these proposed rule changes regarding the Internet and Biotech HOLDRs in the **Federal Register** and did not receive any comments concerning the proposals.

Amex Rule 1200 subjects HOLDRs to all of the Exchange's trading rules by providing that the provisions of the Exchange's Constitution and all other rules and policies of the Board of Governors apply to the trading of HOLDRs on the Exchange. Further, initial and continued listing standards applicable to HOLDRs, as set forth in Amex Rule 1202, currently provide that HOLDRs will be listed and traded on the Exchange subject to application of the following criteria: (a) Initial Listing—For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange; (b) Continued Listing—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances: (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more

<sup>6</sup> Rule 19b-4(e), adopted by the Commission on December 8, 1998, permits the Exchange to list and trade new derivative securities products without a rule change provided the Exchange has in place trading rules, procedures, a surveillance program and listing standards that pertain to the class of securities covering the new product. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

<sup>7</sup> *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products and Order Approving the Listing and Trading of Trust Issued Receipts, Securities Exchange Act Release Nos. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) and 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999), respectively.

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

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

<sup>3</sup> In Amendment No. 1, which has been incorporated into the proposed rule change, the Exchange replaced the word "companies" with the term "component securities" throughout the proposed rule change and the proposed rule text. The Exchange also clarified that the Exchange, and not the Commission, may approve a series of HOLDRs for listing pursuant to Rule 19b-4(e) provided each of the component securities satisfies the proposed listing criteria. *See* Letter from Scott Van Hatten, Attorney, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated May 24, 2000.

<sup>4</sup> Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class. 17 CFR 240.19b-4(e).

<sup>5</sup> HOLDRs are negotiable receipts issued by trusts that represent investors' discrete identifiable and undivided beneficial ownership interest in the securities deposited into the trust. *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

consecutive trading days; (ii) if the Trust has fewer than 50,000 receipts issued and outstanding; (iii) if the market value of all receipts issued and outstanding is less than \$1,000,000; or, (iv) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

In addition, the component securities represented by the securities in the portfolio underlying HOLDERS must meet the following minimum criteria: (1) Each component security must be registered under Section 12 of the Exchange Act; (2) the minimum public float of each component security included in the portfolio must be at least \$150 million; (3) each component security must either be listed on a national securities exchange or be traded through the facilities of Nasdaq and be a reported national market system security; (4) the average daily trading volume for each component security must be at least 100,000 shares during the preceding sixty-day trading period; and (5) the average daily dollar value of the shares traded during the preceding sixty-day trading period must be at least \$1 million. And lastly, no component security may initially represent more than 20% of the overall value of the receipt.<sup>8</sup>

The Exchange believes codifying the above listing criteria for HOLDERS listed pursuant to Rule 19b-4(e) will ensure that no security included in the basket and HOLDERS will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various HOLDERS baskets to meet investors' needs. Additionally, the listing criteria will further serve to ensure sufficient liquidity for those investors seeking to purchase and deposit in basket securities with the trustee to create HOLDERS.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) 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 prevent fraudulent and manipulative acts and practices, to 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, and, in general, protect investors and the public interest.

<sup>8</sup> See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

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

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

## 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.

## 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

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 self-regulatory organization consents, the Commission will:

(A) by order approve the 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, N.W., Washington, D.C. 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 at 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-00-10 and should be submitted by July 3, 2000.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42888; File No. SR-Amex-00-05]

### Self-Regulatory Organizations; American Stock Exchange LLC.; Order Approving Proposed Rule Change to Rescind Rules 5 and 6, the Exchange's Off-Board Trading Rules, and to Make Conforming Changes to Rules 25, 317, 900 and 959

June 1, 2000.

#### I. Introduction

On February 1, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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> a proposed rule change to rescind Rules 5 and 6, the Exchange's off-board trading rules, and to make conforming changes to Rules 25, 317, 900 and 959. The proposed rule change was published for comment in the **Federal Register** on March 3, 2000.<sup>3</sup> Proposed rule changes filed by the Chicago Stock Exchange and the Philadelphia Stock Exchange to rescind their off-board trading rules were published on the same date as the Amex proposing release.<sup>4</sup> Shortly thereafter, the Boston Stock Exchange and the Pacific Exchange filed similar proposed rule changes.<sup>5</sup> The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading

<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> Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618.

<sup>4</sup> Securities Exchange Act Release No. 42459 (February 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File NO. SR-Phlx-00-12).

<sup>5</sup> Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR-BSE-00-02); Securities Exchange Act Release NO. 42660 (April 10, 2000), 65 FR 21052 (April 19, 2000) (File No. SR-PCX-00-11).