

Trust Series will notify the Unaffiliated Fund of the investment. At such time, the Trust Series also will transmit to the Unaffiliated Fund a list of the names of each Trust Series Affiliate and Underwriting Affiliate. The Trust Series will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Trust Series will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period not less than 6 years from the end of the fiscal year in which any investment occurred, the first 2 years in an easily accessible place.

8. The Trustee will waive or offset fees otherwise payable by a Trust Series in an amount at least equal to any compensation (including 12b-1 Fees) received by the Sponsor or Trustee, or an affiliated person of the Sponsor or Trustee, from an Unaffiliated Fund in connection with the investment by a Trust Series in the Unaffiliated Fund.

9. Any sales charges and/or service fees (as those terms are defined in Rule 2830 of the NASD Conduct Rules) charged with respect to Units of a Trust Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

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

[FR Doc. 01-6687 Filed 3-19-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44066; File No. SR-Amex-00-48]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC and Amendment Nos. 1 and 2 To Amend Amex Rule 590, Minor Rule Violation Fine Systems

March 12, 2001.

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 17, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with

the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Amex amended the proposal on December 7, 2000.<sup>3</sup> On January 29, 2001, the Amex again amended the proposal.<sup>4</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 amend Amex Rule 590, Minor Rule Violation Fine Systems. The text of the proposed rule change is available at the Amex and at the Commission.

#### 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 has had a Minor Rule Violation Fine Plan ("Plan") since 1976 that provides a simplified procedure for the resolution of minor violations of certain rules. Codified in Amex Rule 590, the plan has three distinct sections:

<sup>3</sup> See December 1, 2000 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC and attachments ("Amendment No. 1"). In Amendment No. 1, the Amex made technical changes to the proposed rule language to clarify which language was added and which language was rearranged.

<sup>4</sup> See January 26, 2001 letter from William Floyd-Jones, Jr., Esq. to Nancy J. Sanow, Assistant Director, Division, SEC and attachments ("Amendment No. 2"). While the cover letter indicates that Amendment No. 2 replaces and supersedes the original filing, Amendment No. 2 only replaces and supersedes the proposed rule language provided in the original proposal and Amendment No. 1. Telephone conversation March 12, 2001 between William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, and Joseph P. Morra, Special Counsel, Division, SEC.

Part 1 ("General Rule Violations"), which covers more substantive matters, the violation of which are nonetheless deemed "minor;" Part 2 ("Floor Decorum"), which covers floor decorum and operational matters; and Part 3 ("Reporting Violations"), which covers the late submission of routine reports.

The Exchange's Enforcement Department and its Minor Floor Violation Disciplinary Committee ("Committee")<sup>5</sup> divide responsibility for administering Part 1 of Amex Rule 590. The Enforcement Department enforces those rules enumerated in paragraph (g) of Part 1 of Amex Rule 590, and the Committee enforces the rules enumerated in paragraph (h). Part 1 of Amex Rule 590 allows the Enforcement Department and the Committee to issue abbreviated "written statements" to persons who may have violated the specified rules identifying the rules violated, the act or omission constituting the violation, and the amount of the fine.

The issuance of a "written statement" by the Enforcement Department of the Committee does not constitute a finding of guilt. Persons receiving a written statement may plead "no contest" and return the statement to the Exchange with the specified fine. In the alternative, persons who are charged under the plan may contest the fine and receive a hearing before an Exchange Disciplinary Panel ("Panel"). The Panel that hears contested Committee matters currently is composed of a hearing officer and two members of the Committee that did not participate in the decision to issue the fine.

<sup>5</sup> The Exchange established the Committee in 1993. See Securities Exchange Act Release No. 32989 (September 29, 1993), 58 FR 52122 (October 6, 1993) (SR-Amex-92-11). Originally, the Committee had authority to issue fines for the following violations: (1) failure to comply with SEC Rule 11Ac1-4, commonly referred to as the "Firm Quote" rule, and honoring a ten-up market for customer option orders; (2) failure to quote options markets within the maximum quote spread differentials; (3) failure to comply with option solicitation procedures; (4) violation of the off-floor trading prohibition; (5) failure to comply with the Exchange's Auto-Ex policy relating to signing on and off the Auto-Ex system; (6) failure to properly mark, identify and represent floor orders as required under Exchange rules; and (7) violation of the Exchange's delayed opening policy. Over time, the following violations were added to the list of rules enforced by the Committee: (8) violation of the "2, 1 and 1/2 Point Rule," (9) failure to comply with stop order procedures and approval requirements; (10) failure to obtain Floor Official approval when establishing, increasing, or liquidating a position; (11) violation of ITS rules relating to pre-opening applications, and the Trade Through, Locked Markets, and Block Trade policies; (12) failure to comply with requirements relating to agency crosses; (13) failure to submit properly completed Specialist Floor Broker Questionnaires; and (14) failure to obtain Exchange approval for proprietary electronic devices.

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

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

The Exchange believes that the proposed changes to Amex Rule 590 will make the Plan more efficient and timely. Under the proposal, the size and composition of the Committee would be changed from ten persons, all Floor members, to six persons consisting of two Amex staff, three Floor members, and one representative of an "upstairs" member firm. As is currently the case with the Committee, the Amex Board would appoint the persons that are eligible to serve on the Committee.

As a result of the change in the composition of the Committee, the Panel that hears contested fines would no longer include two members of the Committee in addition to the professional hearing officer. Instead, the Panel would be selected in accordance with Article V, Section 1(b)(4) of the Exchange Constitution or Amex Rule 345 as appropriate.

As described below, the Exchange proposes to add five violations to the list of rules under the Enforcement Department's jurisdiction in Part 1 of Amex Rule 590. The Exchange also seeks to transfer responsibility for enforcing three rules from the Committee to the Enforcement Department and move certain routine reports from Part 1 to Part 3 where the Exchange believes they more properly belong.

The proposed changes would transfer to the Enforcement Department rule violations pertaining to the SEC's Firm Quote rule,<sup>6</sup> specialists trading with orders on the limit order "book," and the improper taking or supplying of securities to fill customer orders. The proposed revisions also would add five violations that previously were not included in Part 1 to the list of rules under the Enforcement Department's jurisdiction<sup>7</sup> and would rephrase and reorder a number of the violations enforced by the Committee and the Enforcement Department under Part 1.<sup>8</sup>

<sup>6</sup> 17 CFR 240.11 Ac1-1.

<sup>7</sup> The five new rules are: (1) violation of the Exchange's short sale borrowing policies; (2) violation of SEC Rule 11 Ac1-4 (commonly referred to as the "Limit Order Display Rule," 17 CFR 240.11 Ac1-4); (3) violation of the Exchange's rules regarding the deactivation of Quote Assist; (4) failure to liquidate positions as directed by the Exchange that are over applicable position limits; and (5) failure to comply with Exchange restrictions on transactions and exercises.

<sup>8</sup> Currently, "Failure to properly mark or identify and represent Floor orders as required under Exchange rules. (Rules 108, 109, 111, 114, 150-157, 950(a)-(d), 958, Commentary .09, and 958A(b))" is listed as a single entry in Part 1 of the Plan. Because the rules cited under this violation cover some of the Exchange's principal requirements for trading equities and options, and since responsibility for enforcing these rules under the Plan will be divided between the Enforcement Department and the Committee or removed entirely from the Plan, the

Exchange believes that extending the time period is also appropriate. Under the proposal, routine filings that are currently under the jurisdiction of the Committee (e.g., the Specialist Floor Broker Questionnaire) would be shifted to Part 3, and would be enforced by the Trading Analysis Department. In addition, a failure by a Registered Equity Market Maker to file certain reports would be shifted from the Enforcement Department's jurisdiction to the Trading Analysis Department's jurisdiction under Part 3. Further, since the rule requiring members and member firms to timely file Form U-5s (Uniform Termination Notices) was recently added to the Membership Department's jurisdiction under Part 3,<sup>9</sup> the Exchange proposes to delete this rule from Part 1.

The Exchange proposes to remove three rule violations from Amex Rule 590 altogether: (1) Members trading ahead of customer orders (Amex Rule 150); (2) leaving orders with more than one broker (Amex Rule 157), and (3) off-Floor trading (Amex Rule 958(g)).

Part 1 currently has graduated fine schedules for individuals and member organizations with progressively higher fines for second, third, and subsequent offenses occurring within a "rolling" 12-month period.<sup>10</sup> The Plan further provides that the Enforcement Department and the Committee may impose fines for a second or subsequent offense in the case of a first or second offense if the circumstances warrant a more substantial penalty than called for by the schedule. For example, if the Committee finds that a particular violation is more serious than the norm, the Committee may impose the maximum fine, notwithstanding the fact that the violation may be a first offense within the rolling 12-month period.

The Exchange has determined that most violations covered under the Plan could be included in an expanded 24-month review period. In addition, certain rules that may be violated more frequently, such as the Firm Quote rule or rules requiring the submission of audit trail data, are best enforced using a "patterns and practices" approach, where market participants are evaluated both in terms of their overall performance and relative to their peers. For these types of rules, using a "patterns and practices" approach, the

existing single entry will be divided into multiple entries reflecting its constituent rules. Thus, while the proposed list of rules enforced under Part 1 may appear much longer than it is currently, only five new violations are being added to the Plan.

<sup>9</sup> See Securities Exchange Act Release No. 41735 (August 12, 1999), 64 FR 45294 (August 19, 1999) (SR-Amex-99-24).

<sup>10</sup> Violations that occur outside the 12-month rolling review period are not counted in determining whether a particular violation is a second, third or subsequent offense.

Exchange believes that extending the time period is also appropriate.

The Exchange believes that an extension of the rolling time period is appropriate only if it is coupled with explicit authority to combine separate violations into a single offense under the Plan, where appropriate. The Exchange, therefore, proposes that Amex Rule 590(e) be amended to clarify the authority of the staff and the Committee to combine violations under paragraphs (g) and (h) of Amex Rule 590. The staff and Committee would be permitted to aggregate violations when the number of violations is determined based upon a program of comprehensive surveillance, thereby enabling the staff or Committee to analyze large amounts of regulatory data and craft appropriate remedies, including minor fines, without being held to rigid schedules or being compelled to bring formal disciplinary action based on a minimal number of surveillance breaks. The staff and Committee also would be permitted to aggregate similar violations generally if the conduct was unintentional or negligent, if there was no injury to public investors, or if the violations resulted from a single systemic problem or cause that has since been corrected.

## 2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> in general and further the objectives of Sections 6(b)(1),<sup>12</sup> 6(b)(6),<sup>13</sup> and 6(b)(7)<sup>14</sup> in particular, in that it is designed to enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange believes the proposal will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes the proposal will provide a fair procedure for the disciplining of members and persons associated with members.

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

The Exchange believes that the proposed rule change will impose no burden on competition.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(1).

<sup>13</sup> 15 U.S.C. 78f(b)(6).

<sup>14</sup> 15 U.S.C. 78f(b)(7).

*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 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 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 number SR-Amex-00-48 and should be submitted by April 9, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44065; File No. SR-AMEX-01-11]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Increase the Maximum Permissible Number of Equity and Index Option Contracts in an Order Entered Through the Amex Order File System**

March 12, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 28, 2001, 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 Amex. 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**

Amex proposes to increase from 250 to 2500 the maximum permissible number of equity and index option contracts in an order that may be entered in the Amex Order File System. Although this limit does not appear in the Exchange's rules as such, Amex will notify members of the increase in this limit by issuing an information circular.<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 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 such statements.

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

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

<sup>3</sup> Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Amex, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on March 12, 2001.

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

1. Purpose

The Amex Order File ("AOF") handles limit orders routed to specialists' order books and orders routed to Auto-Ex, an automatic execution system that executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered. In October 1999, Amex filed to expand from 100 to 250 the number of option contracts that a member or member firm may enter directly into an Exchange specialist's order book (the Amex Order Display Book or "AODB") from off the Exchange's trading floor using AOF.<sup>4</sup>

The Exchange now proposes to further increase from 250 to 2500 the maximum permissible number of option contracts in an order that can be entered through AOF directly into the AODB.<sup>5</sup> By increasing the size of orders eligible for entry into the AOF, members and member firms will be able to send a larger percentage of orders directly to a specialist's order book for execution resulting in increased automated order handling. This increased automated order handling will benefit customers, as well as members and member firms, by expanding the option orders eligible for automated handling, further ensuring the orderly and timely delivery, processing, and execution of such orders.

Amex believes that, since its introduction, AOF/AODB has been successful in enhancing execution and operational efficiencies. Amex anticipates that the proposed increase to the AOF's parameters should further increase the enhanced execution and operational efficiencies realized since the introduction of the AOF.

2. Statutory Basis

Amex states 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 that it is designed to prevent fraudulent and

<sup>4</sup> See Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

<sup>5</sup> Although this filing would give the Exchange authority to increase the limit to 2500 contracts, Amex may for business or operational reasons set the actual limit at less than 2500 contracts. Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Amex, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on March 12, 2001.

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

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