

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44890; File No. SR-Amex-2001-82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the American Stock Exchange LLC Relating to the Temporary Amendment of Exchange Rule 220

October 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on October 1, 2001, the American Stock Exchange LLC ("Exchange" or "Amex") 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 Amex. On October 1, 2001, the Amex file Amendment No. 1 to the proposed rule change.³ On October 1, 2001, the Amex filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, has been filed by the Amex as a "non-controversial" rule change under Rule 19b-4(f)(6)⁵ under the Act. 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 Amex proposes to amend Exchange Rule 220 on a ten business-day pilot basis to permit members to use personal cellular telephones on a temporary basis so long as service is limited on Exchange provided telephones as a result of damage sustained to the Exchange due to the attacks on the World Trade Center on September 11, 2001.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange completely replaced the original proposed rule change it filed with the Commission.

⁴ In Amendment No. 2, the Exchange clarified the procedures under Rule 220T when a Floor broker receives incoming calls on his or her cellular telephone and the caller wishes to give an order, as opposed to when a Floor broker initiates an outgoing call on his or her cellular telephone. See *infra* note 5.

⁵ 17 CFR 240.19b-4(f)(6).

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, as amended, 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 statements.

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

1. Purpose

The Exchange's telecommunications facilities, along with those of virtually every business enterprise in the western half of downtown New York, sustained serious damage as the result of the attacks on the World Trade Center on September 11, 2001. Amex staff is working diligently with their primary telecommunications services providers and their members firms to restore these facilities to full operational status on Monday, October 1, 2001, when the Amex anticipates that trading will resume on the Exchange's Trading Floor at 86 Trinity Place. It is likely, however, that the repairs will not be fully completed, and full telephone communication for all of our Floor members will not be restored, by the open on October 1. The Exchange, accordingly, is seeking to suspend on a ten-business-day, pilot-program basis the current prohibition in Amex Rule 220 on the use by members (*i.e.*, specialists, registered traders, and Floor brokers) of personal cellular telephones in the event that service is limited on the Exchange's telephone system when trading resumes on the Amex. The use by members of personal cellular telephones would be subject to the following conditions:

- A member must have (1) tested his or her Exchange provided telephones and found significant limitations on service, and (2) furnished a written statement to the Exchange to that effect;
- A member may not use a personal cellular telephone once full service is restored to the member's or member organization's Exchange telephone systems;
- A member must maintain his or her cellular telephone records, including logs of calls placed, for a period of not less than one year. The Exchange

reserves the right to inspect and/or examine such telephone records;

- A Floor broker may only receive orders at the trading post during outgoing calls initiated by the broker;⁶ and

- Except as provided in Rule 220T, all other requirements applicable to the use of Exchange provided telephones by members shall apply to the use by members of personal cellular telephones.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5)⁹ 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 facilitating 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 Exchange also believes that the proposed rule change, as amended, is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

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

The Amex does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

⁶ See *supra* note 4. If a broker were to receive an incoming call on his or her cellular telephone, and the caller wished to give the broker an order for a security traded at the post where the broker was standing, the broker would have to step-out of the crowd prior to accepting the order. In contrast, if a broker were to receive an incoming call on his or her cellular telephone, and the caller wished to give the broker an order for a security traded at some other location on the Floor, the broker would not be required to leave the crowd where he or she was standing in order to receive the order. The proposed rule also would permit a broker to initiate an outgoing call on a cellular telephone and (1) accept an order for a security traded at the post where he or she was standing without leaving the trading crowd, or (2) accept an order for a security traded at some other location on the Floor.

⁷ The rules of the Exchange continue to prohibit individuals who are not properly qualified to take public orders for securities (*i.e.*, non-Series 7 member or member firm employees) from interacting with the public. Surveillance of such telephone usage will be accomplished through the record-maintenance requirements of Rule 220T, which requires members to maintain cellular telephone records for at least one year and give the Exchange the authority to inspect such records. Telephone Conversation between William Floyd-Jones, Assistant General Counsel, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission (October 1, 2001).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the production of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally requires that the self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change; however, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time period. The Amex seeks to have the Commission waive the five-day notice. The Commission finds good cause to waive the five-day notice because the Exchange's staff discussed with Commission staff the possibility of permitting members to use personal cellular on a temporary basis prior to filing this proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Amex seeks to have the proposed rule change, as amended, become operative immediately. The Commission notes that the proposed rule change, as

amended, is a direct result of exigencies created by the September 11, 2001 attacks on the World Trade Center; as such, the Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of October 1, 2001.¹²

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹³

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, as amended, 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-2001-82 and should be submitted by October 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-25128 Filed 10-5-01; 8:45 am]

BILLING CODE 8010-01-M

¹² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44891; File No. SR-CBOE-2001-52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Extension of the Rapid Opening System Pilot Program

October 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 20, 2001, 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 CBOE. 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 extend for one year the pilot program established in Rule 6.2A, Rapid Opening System, which governs the operation of, and the eligibility to participate in, the Exchange's Rapid Opening System ("ROS pilot"). The text of the proposed rule change follows. Deleted text is bracketed. New text is italicized.

Rapid Opening System

Rule 6.2A

- (a)-(c) No change.
- (d) Pilot Program.

This Rule (and the sentences in Rule 6.2 and Rule 6.45 referring to this Rule) will be in effect until [September 30, 2001] *September 30, 2002* on a pilot basis.

Interpretations and Policies

- .01-.02 No change.

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

In its filing with the Commission, CBOE 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).