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**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02-3412 Filed 2-12-02; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**Proposed Collection; Comment Request**

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

**Extension:**

Rule 101; SEC File No. 270-408; OMB Control No. 3235-0464

Rule 102; SEC File No. 270-409; OMB Control No. 3235-0467

Rule 103; SEC File No. 270-410; OMB Control No. 3235-0466

Rule 104; SEC File No. 270-411; OMB Control No. 3235-0465

Rule 17a-2; SEC File No. 270-189, OMB Control No. 3235-0201

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

**Rule 101 (Activities by Distribution Participants) and Rule 102 (Activities by Issuers and Selling Security Holders During a Distribution)**

Rules 101 and 102 prohibit distribution participants, issuers, and selling security holders from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by these rules may seek to use several applicable exceptions such as a calculation of the average daily trading volume of the securities in distribution, the maintenance of policies

regarding information barriers between their affiliates, and the maintenance of a written policy regarding general compliance with Regulation M for de minimis transactions. The Commission estimates that 1,358 respondents collect information under Rule 101 and that approximately 31,079 hours in the aggregate are required annually for these collections. In addition, the Commission estimates that 669 respondents collect information under Rule 102 and that approximately 1,569 hours in the aggregate are required annually for these collections.

**Rule 103 (Nasdaq Passive Market Making)**

Rule 103 permits passive market making in Nasdaq securities during a distribution. A distribution participant that seeks use of this exception would be required to disclose to third parties its intention to engage in passive market making. The Commission estimates that 171 respondents collect information under Rule 103 and that approximately 171 hours in the aggregate are required annually for these collections.

**Rule 104 (Stabilizing and Other Activities in Connection With an Offering)**

Rule 104 permits stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and that the distribution participant inform the market when a stabilizing bid is made. It also requires the distribution participants (i.e., the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids and disclose such information to the SRO. The Commission estimates that 519 respondents collect information under Rule 104 and that approximately 51.9 hours in the aggregate are required annually for these collections.

**Rule 17a-2 (Recordkeeping Requirements Relating to Stabilizing Activities)**

Rule 17a-2 requires underwriters to maintain information regarding stabilizing activities, syndicate covering transactions, and penalty bids. The Commission estimates that 519 respondents collect information under Rule 17a-2 and that approximately 2,595 hours in the aggregate are required annually for these collections.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology,

Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 6, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-3490 Filed 2-12-02; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45418; File No. SR-Amex-2001-96]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Rule 933**

February 7, 2002.

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 November 2, 2001, 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 Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to amend Exchange Rule 933 to provide that: (1) An Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 15 seconds between entry of each such order in an option issue; and (2) members and member organizations are responsible for establishing procedures to prevent orders in an option issue for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 15 seconds.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted language is [bracketed].

\* \* \* \* \*

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

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

**Amex Rule 933, Automatic Execution of Options Orders**

(a) No change.

(b) The Exchange shall determine the size parameters of orders eligible for entry into its Automatic Execution System (Auto-Ex). *An Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 15 seconds between entry of each such order in a call class and/or a put class for the same option issue. Members and member organizations are responsible for establishing procedures to prevent orders in a call class and/or a put class for the same option issue for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 15 seconds.* [No member or member organization which transmits non-broker/dealer customer orders to the Exchange for entry into the Auto-Ex system shall unbundle (split up) such orders to take advantage of such eligibility parameters.]

**Commentary**

.01 (a)-(g) No change

.02 No change.

[.03 If a member or member organization grants a non-member electronic access to the Exchange's order routing or execution systems through the member's or member organization's order routing systems, and if the non-member uses that access to violate Exchange rules or other applicable regulations, including, but not limited to, the Exchange's "unbundling" prohibition, the member or member organization is in violation of Exchange rules if it has either knowingly facilitated the violation or has failed to establish procedures reasonably designed to prevent access to the member or member organization's order routing systems from being used to effect such violation.]

\* \* \* \* \*

**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 statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change****1. Purpose**

The Exchange represents that it established the Auto-Ex system to provide small customer orders with an immediate single price execution. In 1996, the Exchange adopted Rule 933 to prohibit the "unbundling" (i.e., the splitting or dividing-up) of customer options orders to make them fit within the size parameters of the Exchange's Auto-Ex system.<sup>3</sup>

The Exchange is proposing to amend Rule 933 ("Automatic Execution of Options Orders") to provide that an Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 15 seconds between the entry of each such order in a call class and/or put class for the same option issue. The Exchange believes that if persons were allowed to effectively increase the size of Auto-Ex eligible orders by entering more than one such order at intervals of less than 15 seconds, Amex specialists and Registered Options Traders would be unable to make markets with the same liquidity as if there were effective limits on the size and frequency of Auto-Ex eligible orders. Thus, the Exchange believes that the proposed rule change will ensure that Auto-Ex fulfills its intended purpose.

The proposed amendment to Rule 933 also provides that members and member organizations are responsible for establishing procedures to prevent orders in an option issue for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 15 seconds. The Exchange represents that this will clarify member compliance responsibilities and conform the Exchange's rules to those currently in place at other options exchanges.<sup>4</sup>

Finally, the Exchange proposes to delete Commentary .03 to Rule 933. Commentary .03 provides that "[i]f a member or member organization grants a non-member electronic access to the Exchange's order routing or execution systems through the member or member organization's order routing systems, and if the non-member uses that access to violate Exchange rules or other applicable regulations, including, but not limited to, the Exchange's

<sup>3</sup> See Securities Exchange Act Release No. 37429 (July 12, 1996), 61 FR 37782 (July 19, 1996) (approving SR-Amex-96-26).

<sup>4</sup> See, e.g., Chicago Board Options Exchange ("CBOE") Rule 6.8(e)(iii).

"unbundling" prohibition, the member or member organization is in violation of the Exchange's rules if it has either knowingly facilitated the violation or has failed to establish procedures reasonably designed to prevent access to the member or member organization's order routing systems from being used to effect such violation."<sup>5</sup>

**2. Statutory Basis**

The Exchange believes 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) of the Act<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

**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 with respect to the proposed rule change.

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

The Amex requests that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2)<sup>8</sup> of the Act. The Exchange believes that because the proposed rule change is similar to rules of other exchanges that the Commission has

<sup>5</sup> Commentary .03 was originally filed with the Commission as Commentary .01 (SR-Amex-00-47). Subsequently, the numbering changed as a result of two proposed rule changes filed by the Amex. See Securities Exchange Act Release No. 43516 (November 3, 2000), 65 FR 69079 (November 15, 2000); Securities Exchange Act Release No. 44013 (February 28, 2001), 66 FR 13816 (March 7, 2001). Also, the Commission is publishing in a separate release this Commentary to Rule 933, which was proposed in SR-Amex-00-47, but was not previously published for comment by the Commission. See Securities Exchange Act Release No. 45417 (February 7, 2002) (SR-Amex-00-47).

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

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

<sup>8</sup> 15 U.S.C. 78(b)(2).

previously approved,<sup>9</sup> the proposed rule change does not present any regulatory issues that the Commission has not previously considered. Furthermore, the Exchange believes that early implementation of the proposed rule change would benefit the public interest and the interests of investors by clarifying member compliance responsibilities and conforming the Exchange's rules to those of other markets.

#### 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 No. SR-Amex-2001-96 and should be submitted by March 6, 2002.

#### V. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b).<sup>10</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the

mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

In its proposal, Amex proposes to amend section (b) of Amex Rule 933 (entitled "Automatic Execution of Options Orders") to limit entry of Auto-Ex eligible orders, in a call class and/or put class for the same option issue, for accounts in which the same person is directly or indirectly interested, to intervals of no less than 15 seconds. In addition, Amex proposes that members and member organizations be responsible for establishing procedures to prevent orders in a call class and/or put class for the same option issue from being entered at intervals of less than 15 seconds for any account in which the same person is directly or indirectly interested. Finally, Amex proposes to delete Commentary .03 to Rule 933.

The Commission finds that paragraph (b) makes explicit the responsibilities and requirements of Amex members and member organizations with respect to the entry of multiple orders by the same person within intervals of less than 15 seconds. The Commission recognizes that the Exchange's proposal will place an explicit prohibition against members or member organizations entering multiple orders in a call class and/or put class for the same option issue within any period of less than 15 seconds for an account in which the same person is directly or indirectly interested. The Commission finds that this prohibition is similar to, although not exactly identical to, provisions that it has already approved for other options exchanges.<sup>11</sup> The Commission also believes that the Exchange's establishment of a prohibition on members and member organizations entering multiple orders for an account in which the same person is directly or indirectly interested within a period of less than 15 seconds, in lieu of a presumption regarding the unbundling of such orders, will add certainty and consistency to the enforcement of the Rule and provide members and member organizations with clarity as to what

conduct violates the Rule.<sup>12</sup> In addition, the Commission believes that it is appropriate for the Exchange to delete Commentary .03 to Rule 933. The Commission therefore finds that the proposed rule change is consistent with the provisions of the Act and rules thereunder.<sup>13</sup>

Furthermore, the Commission believes that accelerated approval of this proposal is appropriate to ensure that the Exchange's market makers are not placed at a competitive disadvantage to those market makers who are trading at an exchange where a substantially similar requirement is currently in place. For these reasons, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>14</sup> to approve the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Amex-2001-96) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

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

[FR Doc. 02-3491 Filed 2-12-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45412; File No. SR-Amex-2001-68]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Adopt Sanctioning Guidelines for the Exchange's Order Handling Rules

February 7, 2002.

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 September 4, 2001, the American Stock

<sup>12</sup> The Commission notes that the Amex proposal allows the Exchange solely to prohibit conduct expressly set forth in Amex Rule 933(b). If in the future, the Exchange seeks to prohibit members from entering multiple orders for the same person outside of the time interval set by the rule, it must file such a revision as a proposed rule change with the Commission.

<sup>13</sup> In this regard, the Commission notes that the Exchange may not take punitive action against the customer of a particular Amex member in the event that the member violates Amex Rule 933(b).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> *Id.*

<sup>16</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>9</sup> In this connection, the Amex cites Amex Rule 128A (Automatic Execution for Exchange-Traded Funds), CBOE Rule 6.8(e) (RAES Operations—Order Entry Firms), and New York Stock Exchange ("NYSE") Rule 1005 (Automatic Execution—NYSE Direct+™).

<sup>10</sup> 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> See Securities Exchange Act Release Nos. 43971 (February 15, 2001), 66 FR 11344 (February 23, 2001) (order partially approving File No. SR-PCX-00-05); 44017 (February 28, 2001), 66 FR 13820 (March 7, 2001) (order approving File No. SR-ISE-00-20); and 44104 (March 26, 2001), 66 FR 18127 (April 5, 2001) (order approving File No. SR-CBOE-00-47). The Commission approved proposals by the Pacific Exchange ("PCX"), the International Securities Exchange ("ISE"), and the Chicago Board Options Exchange ("CBOE") that prohibit members from entering multiple orders for the same beneficial account within a 15-second period.