

request for confidential treatment included in its application, and the complete application will be available on the Commission's website (<http://www.sec.gov>) and available for a fee at the Commission's Public Reference Branch, at (202) 942-8090, 450 Fifth Street, NW., Washington, DC 20549-0102.

#### Request for Comment

First, the Commission invites any person to submit comments or other information that relates to the relief requested in ECCU's application, including whether the application should be granted.

Second, the Commission requests comment on whether relief such as requested by ECCU should be extended to all credit unions with deposits insured by the National Credit Union Share Insurance Fund to permit all federally insured credit unions to offer sweep account services on the same terms and conditions available to banks and thrifts. In particular, the Commission requests comment on the significance of the scope of the relief requested in ECCU's application being limited to sweep arrangements for institutions, and the significance of the non-profit status of almost all of those institutions. In this connection, the Commission would appreciate receiving information relating to whether any exemption permitting credit unions to offer sweep account services on the same terms and conditions available to banks and thrifts:

(a) Should be limited to the ECCU application until additional experience is gained with other applicants;

(b) Should be available only to some category or categories of credit unions such as, for example, federally insured credit unions;

(c) Should be available with respect to all credit union members or only some category or categories of credit union members such as, for example, individuals or non-profit organizations;

(d) Would benefit credit union members and customers of banks and thrifts by enhancing the ability of credit unions to compete with banks and thrifts by offering new services;

(e) Would raise investor protection concerns; or

(f) Would unfairly disadvantage banks, thrifts, broker-dealers, or other financial institutions in light of the ability of credit unions to offer particular products or services that other institutions might not be able to offer such as, for example, interest-bearing business checking accounts.

Third, the Commission requests comment on whether such relief would

raise issues that should be considered in connection with amendments to the May 11, 2001 interim final rules implementing the functional regulation exceptions from broker-dealer registration of the GLBA. The Commission notes that when it issued the interim final rules, it requested comment on whether the exceptions and exemptions from the definitions of "broker" and "dealer" applicable to banks should be extended to other entities.<sup>9</sup>

Comments should be received on or before July 18, 2002. For further information, contact Catherine McGuire, Chief Counsel, Lourdes Gonzalez, Assistant Chief Counsel, or Brice Prince, Special Counsel, at (202) 942-0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comments should refer to File No. S7-12-01, and this file number should be included in the subject line if email is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549-0102. Electronically submitted comment letters will be posted on the Commission's website (<http://www.sec.gov>).<sup>10</sup>

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-15290 Filed 6-17-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46061; File No. SR-Amex-2002-54]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rules 26 and 27 To Allow Upstairs Member Firm Representatives To Participate in Meetings of the Performance Committee by Telephone, and To Reduce the Number of Specialists on the List From Which Listed Companies May Select Their Specialist

June 11, 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 June 5, 2002, 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 the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</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 Amex proposes to amend Amex Rule 26 to allow upstairs member firm representatives to participate in meetings of the Performance Committee ("Committee") by telephone, and to amend Amex Rule 27 to reduce to five the number of specialists on the list from which listed companies may select their specialist. The text of the proposed rule change is below. Proposed additions are in italics; proposed deletions are in brackets.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The Exchange provided the Commission with notice of its intention to file the proposed rule change by letter dated May 29, 2002 from Bill Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission. Rule 19b-4(f)(6) under the Act requires five business days notice, however. The Commission has decided to waive the 5-day pre-filing notice requirement. The Amex asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> See Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760, 27788 (May 18, 2001), available at <<http://www.sec.gov/rules/final/34-44291.htm>>.

<sup>10</sup> We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

*Performance Committee*

Rule 26. (a) The Committee on Floor Member Performance (the "Performance Committee") shall consist of 16 persons comprised as follows: four representatives of upstairs member firms and twelve Floor members divided as equally as possible among specialists, registered traders and brokers. The Performance Committee shall be drawn from a roster of not less than 32 persons representing upstairs member firms, specialists, registered traders and brokers. The minimum quorum for the transaction of business by the Performance Committee shall be nine persons including at least one representative of an upstairs member firm. The Performance Committee shall be chaired by a Floor Governor who may not vote except to make or break a tie. In the event that no Floor Governor is able to chair the Committee, a Senior Floor Official may chair the Committee. *Upstairs member firm representatives may attend meetings by telephone.*

The Performance Committee may delegate any or all of its responsibilities to one or more subcommittees consisting of six persons including at least one representative of an upstairs member firm, provided, however, that a subcommittee only may take the following actions: (1) Send admonitory letters, (2) refer matters to the Minor Floor Violation Disciplinary Committee for possible action pursuant to Exchange Rule 590, (3) assign performance ratings, (4) refer matters to the full Performance Committee with or without a recommendation, (5) prohibit registered option traders from effecting opening transactions for specific periods of time for failing to meet zone requirements, or (6) counsel members on how to improve their performance. The minimum quorum for the transaction of business by a subcommittee shall be four persons including one representative of an upstairs member firm. *Upstairs member firm representatives may attend meetings by telephone.*

(b) through end. No change.

*Allocations Committee*

Rule 27. (a) through (d). No change. (e) If the issuer of a listed equity security chooses to participate in the allocation process, the Allocations Committee shall prepare a list of qualified specialists based on the criteria set forth in paragraph (b). In the case of an equity security, the list shall consist of five [six] specialists. In the case of an Exchange Traded Fund or Structured Product, the list shall consist of five specialists. The issuer may request that one or more specialists be

placed on the list of eligible specialists. The Allocations Committee, however, is not obligated to honor such requests. Specialists that are subject to a preclusion on new allocations as a result of a disciplinary proceeding or action by the Performance Committee only are eligible for allocations of "related securities" as described in Commentary .05 of this Rule. The issuer may ask to meet with representatives of the specialists units on the list.

The issuer shall select its specialist from the list within five business days of receiving the list by providing the Exchange with a letter signed by person of Secretary rank or higher indicating the issuer's choice of specialist. In the case of an Exchange Traded Fund or Structured Product, the selection may be made by a senior officer of the sponsor or issuer who has been authorized to make such selection. If the issuer does not make its selection in a timely manner, the Allocation Committee may select the specialist as provided in paragraph (b) of this Rule.

The security shall remain with its initial specialist for at least 120 days. After that time, but during the first 12 months after listing, the issuer or sponsor may request that the security be reallocated should it become dissatisfied with its specialist. This is the case whether or not the issuer or sponsor has participated in the selection process. The issuer or sponsor is expected to furnish an explanation for the basis for its dissatisfaction, and if after counseling the issuer or sponsor and the specialist such change is still desired, the Exchange shall reallocate the security within 30 days. In any such reallocation, the Exchange shall follow the allocation procedures described in this paragraph (e) unless the issuer or sponsor requests the Allocations Committee to select the specialist without any issuer or sponsor input under the procedures described in paragraph (b) of this Rule.

(f) through (i). No change.

*Commentary*

.01 No change.

.02 Contacts with Unlisted Companies. Specialists and other members must submit a "Notice of Marketing Interest" ("NOMI") (1) prior to contacting an unlisted company, or (2) within five business days of any unanticipated contact with an unlisted company where discussions regarding listing occur or are contemplated by the specialist or other member. The NOMI must identify the company that the specialist or other member would like to contact and is valid for no more than 12 months after Amex staff has given

written approval to the request (the "contact period"). Amex staff may decline to approve a specialist's or other member's request to contact an unlisted company where it is felt that such activity could hinder the Exchange's overall listing efforts. For example, a request to contact an unlisted company generally will not be granted where Amex staff have begun discussions with the company.

A specialist or other member may request one extension of the contact period. The request must be in writing and must describe the specific activities that the specialist or other member has undertaken which it believes will result in a favorable listing decision. If the request is deemed sufficient by Amex staff, the contact period may be extended up to an additional six months. After the expiration of the contact period and any extension, a specialist or other member may not request permission to again contact the company until six months have elapsed from the expiration of the contact period or extension as applicable. Amex staff may contact an unlisted company as to which there is an approved NOMI provided the staff notify the subject specialist or other member prior to contacting the company.

Only one NOMI can be on file for any company. A designated senior officer of the Exchange, however, may approve a second NOMI with respect to a particular company when (1) sufficient evidence warrants a determination that the second NOMI would assist the Exchange's listing program, and (2) the second NOMI includes the written consent of the first specialist or other member to the approval of the second NOMI.

Once an unlisted company has requested a listing qualification review, specialists and other members are prohibited from making any direct or indirect contact with the company for the purpose of influencing its decision in the choice of a specialist. This prohibition includes the company's investment bankers or other advisors, or any other person in a position to influence the company's management.

The Allocations Committee only will be advised of a company's preference for a particular specialist where a specialist's or member's efforts actually have been instrumental in securing the listing as evidenced by the company filing a written preference with the Exchange for the specialist within two weeks of the Exchange initiating a listing qualification review. The Allocations Committee, however, is not obligated to honor such requests.

Once the Allocations Committee has prepared the list of *five* [six] specialists to be submitted to the new listing candidate, specialists and other members may not initiate any direct or indirect communications with management, the company's investment banker or other advisors, or any person in a position to influence the company. If the company wishes to interview individual specialists, the Exchange will arrange for such interviews. The Chief Executive Officer of the Exchange or his or her designee may require a member of the Exchange staff to attend such interviews to ensure that any statements by specialists and their representatives are consistent with the Exchange's policies on communications with unlisted companies. Inappropriate communications include, but are not limited to, apparent misrepresentations as to market making capabilities or promises unrelated to the specialist's role in making a market in the issuer's stock. Specialists and their representatives also may not supply information concerning another specialist either orally or in writing, except they may refer to overall floor-wide statistics.

.03 to end. No change

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## 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 its proposal and discussed any comments it received regarding the proposal. 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 Committee on Floor Member Performance ("Committee") reviews specialist performance and may take remedial action up to terminating a specialist's registration as such or reallocating securities when it identifies inadequate performance. The Committee protects both the interests of investors (by taking remedial actions to correct poor performance) and the institutional interests of the Exchange (by ensuring that the Amex is as

competitive as possible with other markets).

The Exchange recently amended its rules to include representatives of upstairs member firms on the Committee. Amex staff, however, has encountered reluctance among potential upstairs member firm representatives to travel to downtown Manhattan to participate in Committee meetings. Management, therefore, is proposing to allow upstairs member firm representatives to participate by telephone at Committee meetings. This would conform Committee procedures to those of the Amex Board, the Committee on Programs and Policies, the Allocations Committee and other Amex Committees that generally allow participation by telephone.<sup>6</sup> Representatives of upstairs member firms that participate in meetings of the Committee by telephone would receive all materials that are provided to other Committee members so that they can fully participate in Committee activities.

Since the late 1980s, the Exchange has had two procedures for allocating equity securities: the "issuer choice" program under which the company selects its specialist from a list of the most qualified units prepared by the Allocations Committee, and the traditional allocation procedure under which the Allocations Committee, exercising its professional judgment, selects the specialist unit for the company.

When the Exchange first implemented the issuer choice program, there were more than 20 equity specialist units on the Amex, and the issuer received a list of seven units. In recognition of the fact that there has been a reduction in the number of equity specialist firms on the Exchange since the initiation of the issuer choice program, the Exchange is proposing to reduce to five the number of eligible specialists on the list given to newly listed companies.<sup>7</sup>

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest by encouraging good

<sup>6</sup> See, Article II, Section 5(d) of the Amex Constitution, "Committee Procedures."

<sup>7</sup> The Exchange notes that New York Stock Exchange "issuer choice" procedures call for a list of three to five specialists to be given to a newly listed company. See, NYSE Information Memo 00-18 (July 17, 2000).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

performance and competition among specialists.

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

The Exchange believes that the proposed rule change will impose no 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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, 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.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit Committee members to participate by telephone immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 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).

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-2002-54 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-15254 Filed 6-17-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46064; File No. SR-Amex-2002-49]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Allow the Amex's Chief Executive Officer To Halt, Extend or Suspend Trading in the Event of an Emergency or an Extraordinary Market Condition

June 12, 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 May 31, 2002, 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 the Exchange. On June 6, 2002, the Amex amended the proposal.<sup>3</sup> The

Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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 Amex proposes to amend Amex Rule 1, "Hours of Business," to afford the Chief Executive Officer ("CEO") of the Exchange, or his designee, in consultation with the Vice Chairman or Senior Supervisory Officer on the floor of the Exchange, greater guidance, specificity and flexibility with regard to halting, extending or suspending trading, or by closing some or all Exchange facilities, in the event of an emergency or an extraordinary market condition to meet the kinds of challenges that the Exchange may face in the future. The proposed amendment is consistent with Article XII of the Exchange Constitution ("Constitution") and merely provides specific guidance to the CEO and others concerning the types of emergencies and special circumstances envisioned in the authority delegated to him by the Board of Governors ("Board") pursuant to Article XII of the Constitution. The text of the proposed rule change is below. Proposed additions are in italics.

#### Hours of Business

Rule 1. Except as otherwise determined by the Board of Governors, the Exchange shall be open for the transaction of business on every business day, Monday through Friday. At 9:00 a.m., official announcement shall be made that the Exchange is open for trading in options on debt securities. At 9:30 a.m., official announcement shall be made that the Exchange is open for all other business purposes. The Exchange shall remain open until closed by official announcement at 4:00 p.m.; provided however, that option transactions in debt options may be effected on the Exchange only until 3:00 p.m. and all other option transactions may be effected on the Exchange until 4:02 p.m. each business day at which times no further debt or other options transactions may be made.

"After-Hours Trading" (as defined in Rule 1300(e)(iii)) shall be conducted

during such hours as the Exchange may from time to time specify.

*Except as may be otherwise determined by the Board of Governors, the Chief Executive Officer of the Exchange, or his designee, shall have the power to halt, extend or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, extension, suspension or closing, when he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange; (2) a request by a governmental agency or official; or (3) a period of mourning or recognition for a person or event. In considering such action, the Chief Executive Officer of the Exchange, or his designee, shall consult with the Vice Chairman or Senior Supervising Officer on Floor, if available, and such available Floor Governors as he deems appropriate under the circumstances. The Chief Executive Officer of the Exchange, or his designee, shall notify the Board of Governors of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.*

Commentary—No change.

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#### 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 its proposal and discussed any comments it received regarding the proposal. 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 proposes to amend Rule 1, "Hours of Business," to afford the CEO, or his designee, greater flexibility with regard to suspension of

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>15</sup> 17 CFR 240.19b-4.

<sup>3</sup> See undated letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Alton Harvey, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Amex asked the Commission to consider the proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A), 17

CFR 240.19b-4(f)(6). The Amex asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).