

Low-Level Radioactive Waste Disposal Compact,

4. Certain human and site assets related to the Plant,

5. The Plant's switchyards and certain transmission assets, and office property located in Brattleboro, Vermont.

After the Closing, Vermont Yankee will continue its existence as a corporation. Its operations will be limited to its obligations under the PSA. The PSA contemplates that Vermont Yankee will purchase, from ENVY, 100% of the output of the Plant, based on the Plant's current configuration and capacity during the Plant's remaining licensed life<sup>15</sup> under a power purchase agreement ("PPA") between Vermont Yankee and ENVY. Vermont Yankee will resell that output at wholesale to the Sponsoring Utilities under certain amendatory agreements ("Amendatory Agreements") with each of the Sponsoring Utilities that modify existing power contracts and additional power contracts (collectively, "Power Contracts") to reflect the proposed transaction. The Power Contracts also require the Sponsoring Utilities to pay Vermont Yankee's remaining unamortized net plant investment and Vermont Yankee's ongoing costs after Closing.<sup>16</sup>

In addition, the PSA contains a Security Agreement between Vermont Yankee and ENVY under which Vermont Yankee pledges its rights to the payments from the Sponsoring Utilities under the Power Contracts to ENVY, if Vermont Yankee defaults on power payments. Applicants state that the Security Agreement amounts to a pass-through to ENVY of Vermont Yankee's right to payment obligations that the Sponsoring Utilities will have under the Power Contracts. The Security Agreement provides that if Vermont Yankee fails to pay ENVY for power provided, ENVY has the right to receive the payments under the Power Contracts that the Sponsoring Utilities would otherwise pay to Vermont Yankee.

<sup>15</sup> The Plant's remaining licensed life ends March 21, 2012.

<sup>16</sup> It is important for Vermont Yankee to remain in existence because the Power Contracts between Vermont Yankee and the Sponsoring Utilities are within the jurisdiction of the FERC and have been accepted by the FERC. Under the present Power Contracts, the Sponsoring Utilities may include Power Contract payments in the calculation of rates to their customers. If Vermont Yankee ceased to exist, and the Sponsoring Utilities were to enter into Power Contracts directly with ENVY, their ability to include those Power Contract payments in their rate calculations would be uncertain and a method to cover other ongoing Vermont Yankee costs, including unamortized net plant investment, and residual obligations under the PSA would be necessary.

In preparation for the Closing it will be necessary for Vermont Yankee to redeem its outstanding first mortgage bonds and to repay the outstanding indebtedness under its current secured credit agreement. The cash required to satisfy these obligations will come from the cash proceeds to be paid by ENVY at the Closing.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46122; File No. SR-Amex-2001-95]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Its Performance Evaluation Procedures for Option, Equity and ETF Specialists

June 26, 2002.

On February 19, 2001, 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 codify the Exchange's performance evaluation procedures for options, equity and Exchange Traded Fund ("ETF") specialists. The Amex filed Amendment Nos. 1,<sup>3</sup> 2,<sup>4</sup> and 3<sup>5</sup> to the proposed rule change, respectively. The proposed rule change, as amended, was published for public comment in the **Federal Register** on April 1, 2002.<sup>6</sup> The Commission received no comments on

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

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

<sup>3</sup> See Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation ("Division"), Commission (December 13, 2001) ("Amendment No. 1").

<sup>4</sup> See Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (January 31, 2002) ("Amendment No. 2").

<sup>5</sup> See Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (February 14, 2002) ("Amendment No. 3").

<sup>6</sup> See Securities Exchange Act Release No. 45643 (March 25, 2002), 67 FR 15434 (proposing SR-Amex-2001-95).

the proposal. On May 28, 2002, the Amex filed Amendment No. 4 to the proposed rule change.<sup>7</sup> This order approves the proposed rule change, as amended.

### I. Description of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 26, and adopt Commentaries .04, .05, .06, and .07 to Amex Rule 26 to revise the current system for evaluating option, equity and ETF specialists by adding and codifying a number of objective criteria in the rating scheme and implementing defined consequences for poor performance. The Exchange also proposes to codify its existing market share methodology for evaluating options specialist performance.<sup>8</sup>

Under the proposed specialist evaluation systems, specialists would be evaluated quarterly based upon data from the prior quarter with respect to various criteria. The Exchange may change the criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or market quality. The Exchange would notify specialists of any changes to the criteria, and the weightings thereof, in advance of the calendar quarter in which the change would be implemented.

The Exchange proposes to use the following performance criteria for specialist evaluation until further notice:

#### Option Specialist Evaluation Criteria

- Percentage of trades executed at or better than the National Best Bid and Offer ("NBBO").

<sup>7</sup> See Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (May 24, 2002) ("Amendment No. 4"). Amendment No. 4 clarifies that the Exchange may change the performance rating criteria and their weightings from time to time as warranted by market conditions without filing such changes pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b), provided that the Exchange follows the procedures in the proposed rule for changing the criteria and their weightings. This was a technical amendment and is not subject to notice and comment.

<sup>8</sup> The Exchange notes that upon implementation of the new evaluation system for equity specialists, the Performance Committee will no longer assign performance ratings for specific transactions, but may take such other action as is available to the Performance Committee that would be appropriate in the circumstances. The Exchange will continue to order ticket reviews for options and ETFs for regulatory purposes. The Exchange may incorporate the results of these reviews into the performance evaluation rating system with the criteria that measure the number of Minor Floor Violation Disciplinary actions.

- Percentage of orders that receive price improvement.
- Percentage of time at NBBO.
- Average bid/offer spread.
- Liquidity enhanced trades.<sup>9</sup>
- Average execution time.
- Size of orders eligible for Auto-Ex.
- Timeliness of openings relative to the underlying security.
  - Floor Broker Questionnaire rankings.
  - Average number of Performance Committee actions per option.
  - Average number of Minor Floor Violation Disciplinary Committee actions<sup>10</sup> per option.

#### *Equity Specialist Evaluation Criteria*

- Percentage of volume executed better than the NBBO.
- Percentage of volume at the NBBO.
- Percentage of time at the NBBO.
- Percentage of market orders executed within sixty seconds.
  - Percentage of manual display of better limit orders.
  - Number of issues opened after 9:45.
  - Floor Broker Questionnaire rankings.
  - Average response time to ITS<sup>11</sup> commitments.

#### *ETF Specialist Evaluation Criteria*

- Percentage of orders that receive price improvement.
- Percentage of time at the NBBO.
- Average bid/offer spread.
- Average execution time for market and marketable limit orders.
- Floor Broker Questionnaire rankings.
  - Average response time to ITS commitments.
  - Average number of Performance or Minor Floor Violation Disciplinary Committee actions per ETF.

The Exchange would rate all specialists from "1" to "5" on a curve based upon their scores with respect to the criteria. ETFs would be "tiered" and evaluated for rating purposes in separate groups based upon trading volume to ensure that comparisons between specialists are based upon securities with similar trading characteristics. The

<sup>9</sup> The Amex states that liquidity enhancement is a measure of the depth of a market. The percentage of trades that receive liquidity enhancement equals the percentage of trades where an order for more than 20 contracts was executed at one price, at or between the NBBO.

<sup>10</sup> The Amex states that the term "action" would be defined to include any time the Committees did something other than "no action" the matter. For example, an admonitory letter from the Performance or Minor Floor Violation Disciplinary Committee would be considered "action" for the purposes of calculating specialist performance ratings.

<sup>11</sup> The term "ITS" means Intermarket Trading System.

Exchange would notify specialists of their ratings following calculation.<sup>12</sup> The Exchange notes that the Performance Committee may consider any relevant information, including the Specialist Floor Broker Questionnaire, trading data, a member's regulatory history, market share, order flow statistics, level and adequacy of staffing, and other pertinent information in reviewing a specialist or unit.

In addition to the performance ratings system described above, the Exchange also proposes to codify its current program for evaluating options specialists based upon market share. Under this program, options specialists are regularly evaluated with respect to non-market maker contract volume in options that are actively traded in the United States.<sup>13</sup> The Exchange may change the minimum market share criteria used to evaluate specialists from time to time as warranted by market conditions. The Exchange would notify specialists of any changes to the market share criteria in advance of the calendar quarter in which the change will be implemented. The Exchange also would notify specialists of their market share.

The market share evaluation program for options specialists would be separate from the performance ratings system. Thus, for example, an options specialist with performance ratings that would not trigger remedial action could be referred to the Performance Committee for consideration of reallocation or other action based upon sub-standard market share in one or more options.

## II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

<sup>12</sup> A rating of "1" would represent the best possible score. A specialist unit that received a "4" or a "5" rating in any quarter would be referred to the Performance Committee for consideration of a preclusion on new allocations, or other appropriate remedial action. A specialist unit that received a "5" rating in any two of four consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action. A specialist unit that received ratings of "4" or "5" in any three of six consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action.

<sup>13</sup> The Exchange represents that options specialists are not evaluated on their market share in a newly listed option for the six months following listing on the Exchange. In addition, under the program, a specialist that falls below the minimum market share criteria in one or more options is referred to the Performance Committee for consideration of reallocation or other remedial action based upon poor market share in one or more options.

securities exchange.<sup>14</sup> In particular, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's procedures be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>15</sup>

The Commission believes that codifying the Exchange's performance evaluation procedures for options, equity and ETF specialists should help to protect investors, issuers and ETF sponsors by ensuring that the better qualified specialists receive and retain allocations, thus potentially making this marketplace more competitive. The Commission also believes that the proposal helps the Exchange maintain market quality and integrity by providing the Exchange's Performance Committee with a means to identify the specialists that fail to satisfy market responsibilities. Further, the Commission believes that the proposal provides specialists more guidance regarding how the Exchange evaluates market performance.

The Commission notes that under the proposed specialist evaluation systems, specialists would be evaluated quarterly based upon data from the prior quarter with respect to various criteria. The Exchange will notify specialists of their ratings.<sup>16</sup> The Commission notes that the Exchange may change the criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or market quality. The Exchange will notify specialists of any changes to the criteria, and/or weightings thereof, in advance of the calendar quarter in which the change will be implemented, which should provide specialists with reasonable notice of the measures being used to judge their market performance.

<sup>14</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>16</sup> The Commission notes Amex Rule 26(e), amongst other things, provides that the Performance Committee may meet with specialists who fail to satisfy minimum performance standards. In such an event, specialists would be notified in writing of the grounds to be considered by the Performance Committee and given access to all written materials to be reviewed by the Performance Committee.

### III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-Amex-2001-95), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46123; File No. SR-BSE-2001-09]

#### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Clearly Erroneous Transactions in Nasdaq Securities

June 26, 2002.

#### I. Introduction

On December 26, 2001, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("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 related to clearly erroneous transactions in The Nasdaq Stock Market, Inc. ("Nasdaq") securities. The proposed rule change was published for comment in the **Federal Register** on April 30, 2002.<sup>3</sup> No comments were received on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to add a section to Chapter XXXV of its rules, which pertains to the trading of Nasdaq securities on the Exchange. Proposed Section 30 would govern situations in which there is an obvious error in any part of a Nasdaq security transaction. In large part, the proposed Section 30 conforms to Nasdaq Rule 11890, Clearly Erroneous Transactions, and obliges Exchange specialists to cooperate with officers of Nasdaq in their review of clearly erroneous transactions occurring on a Nasdaq system.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</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> See Securities Exchange Act Release No. 45799 (April 22, 2002), 67 FR 21304.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of section 6(b) of the Act,<sup>4</sup> in general, and section 6(b)(5) of the Act,<sup>5</sup> in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposal establishes a BSE rule that is an analogue to Nasdaq Rule 11890(b) and (c), regarding clearly erroneous transactions. This rule will foster cooperation between BSE specialists and officers of Nasdaq who are reviewing trades on Nasdaq systems to determine if they are clearly erroneous. This cooperation is particularly important because BSE currently participates in Nasdaq's SuperSoes and SelectNet systems and intends to participate in Nasdaq's SuperMontage system once it is launched. The proposal should help to ensure that clearly erroneous transactions are dealt with in such a manner that a fair and orderly market is maintained and that investors and the public interest are protected.

#### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-BSE-2001-09) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-2(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46119; File No. SR-CBOE-2002-16]

#### Self Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Removal of the Restriction on Floor Brokers From Trading in the Same Crowds as Affiliated Designated Primary Market-Makers

June 25, 2002.

On April 18, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("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 delete existing CBOE Rule 8.91(d) that prohibits a member affiliated with a Designated Primary Market-Maker ("DPM") from acting as a floor broker in any trading crowd in which that DPM is the appointed DPM.

The proposed rule change was published for comment in the **Federal Register** on May 17, 2002.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act<sup>4</sup> and the rules and regulations thereunder.<sup>5</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which, among other things, requires that the CBOE's rules be designed to facilitate transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. According to the CBOE, its Rule 8.91(d) was originally intended to prevent DPMs from circumventing their affirmative obligations, such as placing eligible public orders in the book, according priority to any order which the DPM acts as agent over the DPM's

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

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

<sup>3</sup> See Securities Exchange Act Release No. 45909 (May 10, 2002), 67 FR 35165.

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).