

Roll-Up, assessed pro-rata against the net assets of each sub-account.

6. Applicants seek an amendment to the Existing Order to permit the recapture of the Credit amounts that will be applied to purchase payments made under the New Contracts. The New Contracts include those that exist presently, as well as contracts that may be issued in the future by the Insurance Companies through the Accounts and any other separate account established in the future by the Insurance Companies ("Future Accounts") that are substantially similar in all material respects to the existing Contracts ("Future New Contracts"). Such Contracts will be sold by PIMS, the principal underwriter of the New Contracts, through broker-dealers that are affiliated with the Insurance Companies or NASD-registered broker-dealers that are not affiliated with the Insurance Companies. Each unaffiliated broker-dealer will have entered into a dealer agreement with PIMS or an affiliate of PIMS prior to offering the New Contracts. Applicants also request that the amended order extend to any National Association of Securities Dealers, Inc. member broker-dealer controlling, controlled by or under common control with, the Insurance Companies, whether existing or created in the future, that serves as distributor or principal underwriter of the New Contracts offered through the Accounts or any Future Account.

#### Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, amend the Existing Order to the extent necessary to permit the recapture of the Credit amounts described above under New Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the recapture of Credits will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act, and Rule 22c-1 thereunder for the same

reasons given in support of the Existing Order. Credits under the New Contracts will be recaptured only if the owner exercises his/her free look right or with regard to Credits applied within one year prior to death. The amounts recaptured equal the Credits provided by each Insurance Company from its own general account assets. When the Insurance Companies recapture any Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Account's assets, because his or her interest in the Credit amount has not vested. With respect to Credit recaptures upon the exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a Credit amount under a New Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the Credit, individuals could purchase a New Contract with no intention of retaining it, and simply return it for a quick profit. The owner generally bears the investment risk from the time of purchase until return of the New Contract, and is entitled to retain any investment gain attributable to the Credit.

3. Applicants submit that the provisions for recapture of any Credits under the New Contracts do not, and any such Future New Contract provisions will not, violate Section 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act, and Rule 22c-1 thereunder, and that the relief requested is consistent with the exemptive relief provided under the Existing Order.

4. Applicants submit that their request for an amended order that applies to any Account or any Future Account established by an Insurance Company in connection with the issuance of New Contracts and Future New Contracts that are substantially similar to the New Contracts described herein in all material respects, and underwritten or distributed by PIMS, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in this Application. Having Applicants file additional applications would impair Applicants' ability

effectively to take advantage of business opportunities as they arise.

5. Applicants undertake that Future New Contracts funded by Accounts or by Future Accounts that seek to rely on the order issued pursuant to this Application will be substantially similar to the New Contracts in all material respects.

#### Conclusion

Applicants submit that their request for an amended order meets the standards set out in Section 6(c) of the 1940 Act and that an amended order should, therefore, be granted.

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

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

[FR Doc. 02-18253 Filed 7-18-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46196; File No. SR-AMEX-2002-19]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to Performance Evaluation Procedures for Specialists Trading Securities Pursuant to Unlisted Trading Privileges

July 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 March 14, 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 Amendment No. 1 to its proposal on May 6, 2002<sup>3</sup> and Amendment No. 2 to its proposal on May 28, 2002.<sup>4</sup> The Commission is publishing this notice to solicit

<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 Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 3, 2002 ("Amendment No. 1").

<sup>4</sup> See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 24, 2002 ("Amendment No. 2").

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 adopt Amex Rule 29, Market Quality Committee, to codify the Exchanges' performance evaluation procedures for securities admitted to dealings on an unlisted trading privileges ("UTP") basis. The text of the proposed rule change is below. Proposed new language is in *italics*.<sup>5</sup>

\* \* \* \* \*

#### *Market Quality Committee*

*Rule 29. (a) The Market Quality Committee shall consist of seven persons comprised as follows: the Chief Executive Officer of the Exchange (or his or her designee), three members of the Exchange's senior management selected by the Chief Executive Officer, one representative of upstairs member firms, one representative of institutional investors, and one member who spends a substantial portion of his or her time on the Trading Floor. The minimum quorum for the transaction of business by the Market Quality Committee shall be four persons. The Chief Executive Officer shall chair meetings of the Market Quality Committee. The Chief Executive Officer may designate a member of the Market Quality Committee to chair meetings in the Chief Executive Officer's absence. The chairman of the Market Quality Committee shall not vote except to make or break a tie. Persons on the Market Quality Committee may attend meetings by telephone.*

*(b) The Market Quality Committee shall evaluate the performance of specialists registered in securities admitted to dealings on an unlisted basis ("UTP Specialists") with respect to, among other things: (1) quality of markets, (2) competition with other market centers, (3) administrative matters, and (4) willingness to promote*

*the Exchange as a marketplace. The Market Quality Committee may consider any relevant information, including but not limited to trading data, order flow statistics, market quality statistics, and such other factors and data pertaining to both the Amex and other market centers as may be relevant in the circumstances. The Market Quality Committee may take one or more of the following actions if it finds that the performance of the UTP Specialist is inadequate relative to one or more of the above factors: (1) send advisory letters, (2) counsel UTP Specialists on how to improve their market quality, (3) require UTP Specialists to adopt a performance improvement plan, (4) require the reallocation of securities, (5) suspend a UTP Specialist's registration as a specialist for a specific period of time, or (6) prohibit a UTP Specialist from receiving allocations in a particular situation or for a specified period of time.*

*(c) The Market Quality Committee shall review, and approve, disapprove or conditionally approve, mergers and acquisitions of UTP Specialists, transfers of one or more UTP Specialist registrations, UTP Specialist joint accounts, and changes in control or composition of UTP Specialist firms. The Market Quality Committee shall approve a proposed transaction involving a UTP Specialist unless it determines that a countervailing institutional interest indicates that the transaction should be disapproved or conditionally approved. In determining whether there is a countervailing institutional interest, the Market Quality Committee shall consider the maintenance or enhancement of the quality of the Exchange's market, taking into account the criteria that the UTP Allocations Committee may consider in making an initial allocation determination and other considerations as may be relevant in the particular circumstances.*

*(d) The Market Quality Committee may meet with a UTP Specialist that may have failed to meet minimum performance standards with respect to UTP Securities. In such an event, the UTP Specialist shall be notified in writing of the grounds to be considered by the Market Quality Committee and afforded an opportunity to make a presentation of relevant information. Such UTP Specialist shall be given access to all written material to be reviewed by the Market Quality Committee, and all persons appearing before the Market Quality Committee may be represented by counsel. However, formal rules of evidence shall not apply in meetings of the Market*

*Quality Committee. A failure to meet minimum standards relating to: (1) quality of markets, (2) competition with other market centers, (3) administrative matters, or (4) willingness to promote the Exchange as a marketplace may form the basis for remedial action by the Market Quality Committee against a UTP Specialist. Any UTP Specialist affected by a decision of the Market Quality Committee shall be informed in writing of the decision, which decision shall include the findings, conclusions, and any remedial action to be taken (hereinafter "written notification").*

*(e) If, after receiving the notice of a meeting, a UTP Specialist refuses or otherwise fails without reasonable justification or excuse to meet with the Market Quality Committee, the Market Quality Committee may take such action as it believes appropriate.*

*(f) A UTP Specialist aggrieved by a decision of the Market Quality Committee may appeal such decision to the Amex Adjudicatory Council. An application for review must be submitted to the Secretary of the Exchange within five business days of receipt of the written notification. The decision of the Market Quality Committee is stayed upon the filing of a timely application for review. Any written statement and documents in support of an appeal to the Adjudicatory Council must be submitted to the Secretary of the Exchange within 25 calendar days of receipt of the written notification. The Market Quality Committee shall have 20 calendar days from receipt by the Secretary of the Exchange of the statement in support of the appeal to submit a rebuttal statement together with supporting documents. The Adjudicatory Council may (1) limit its review of the appeal to the record created by the Market Quality Committee together with the written statements and supporting documents submitted by the appellant and Committee in connection with the appeal, (2) consider additional information that was not included in the record, or (3) hear the matter "de novo," as the Council determines is appropriate to render a fair decision on the appeal. A verbatim record of the Adjudicatory Council proceeding shall be kept and a written decision of the Amex Adjudicatory Council shall be rendered as soon as reasonably possible after the hearing. The decision of the Amex Adjudicatory Council shall constitute final action by the Exchange.*

\* \* \* ;\* Commentary

*.01 Willingness to Promote the Exchange as a Market Place. Willingness to promote the Exchange as a market place includes providing financial and*

<sup>5</sup> The Exchange requested that the Commission correct a typographical error in Commentary .04 of the proposed rule language. Telephone discussion between Bill Floyd-Jones, Assistant General Counsel, Amex, and Marc F. McKayle, Special Counsel, and Christopher B. Stone, Attorney Advisor, Division, Commission (June 14, 2002) ("Telephone Conference"). The Exchange also requested that the Commission correct an errant reference to "Market Performance Committee" in paragraph (c) of the proposed rule language below. Telephone discussion between Bill Floyd-Jones, Assistant General Counsel, Amex, and Christopher B. Stone, Attorney Advisor, Division, Commission (June 19, 2002). The Exchange has committed to submitting a conforming amendment reflecting these changes during the comment period for the rule filing.

other support for the Exchange's program to trade securities on an unlisted basis, contributing to the Exchange's marketing effort, consistently applying for allocations, assisting in meeting and educating market participants (and taking time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to competition by offering competitive markets and competitively priced services, and other like activities.

.02 Performance Improvement Plans. The Market Quality Committee may require a UTP Specialist to develop a performance improvement plan when it determines that the UTP Specialist has fallen below acceptable measures of performance for UTP Securities relative to its peers or other market centers with respect to (1) quality of markets, (2) competition with other market centers, (3) administrative matters, or (4) willingness to promote the Exchange as a marketplace. If the Market Quality Committee determines that a performance improvement plan should be developed, it shall advise the UTP Specialist in writing of its findings, the specific areas where the Market Quality Committee believes that improvement is required, and measurable goals that the Market Quality Committee believes the UTP Specialist should achieve. The UTP Specialist will prepare within the time required by the Market Quality Committee a written performance improvement plan detailing the specific, tangible steps that it will take to improve its performance and meet any goals established by the Market Quality Committee and the time for the completion of the plan. The Market Quality Committee may accept the plan as submitted or may make such modifications as it deems appropriate which modifications shall be binding upon the UTP Specialist. The Market Quality Committee, or persons appointed by it for the purpose, shall monitor the implementation of the performance improvement plan by the UTP Specialist. If the UTP Specialist has not achieved the goals set by the Market Quality Committee within the required time, the Market Quality Committee may grant for good cause shown one extension not to exceed 90 days to achieve the goals. The Market Quality Committee may not grant more than one extension. The Market Quality Committee shall take stronger remedial action against the UTP Specialist if, at the end of the time of the performance improvement plan or any extension, the

UTP Specialist has not achieved the specified goals.

.03 Performance Ratings for UTP Specialists. As soon as possible following the completion of a calendar quarter, the Exchange shall rate each UTP Specialist from "1" through "5" (with "1" representing the best possible rating) based upon their market quality relative to criteria such as the following:

- Net price improvement
- Effective spread
- Quote size
- Execution speed
- Percentage of marketable customer orders sent away to another market for execution
- Floor Broker Questionnaire rankings

The Exchange will allocate weightings to these criteria and will notify UTP Specialists of these relative weightings prior to their implementation. The Exchange may change the criteria used to evaluate UTP Specialists and the weighting assigned to each criterion from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or to improve market quality. The Exchange will notify UTP Specialists of any change in the criteria or weightings of criteria in advance of the calendar quarter in which the change will be implemented. The Exchange also will notify UTP Specialists of their ratings.

A UTP Specialist unit that receives a "5" rating in any two of four consecutive quarters shall be referred to the Market Quality Committee for consideration of possible reallocation of one or more securities admitted to dealings on an unlisted basis or other appropriate remedial action. A UTP Specialist that receives ratings of "4" or "5" in any three of six consecutive quarters shall be referred to the Market Quality Committee for consideration of possible reallocation of one or more securities admitted to dealings on an unlisted basis or other appropriate remedial action. The Market Quality Committee is not precluded from reallocating one or more securities or taking other remedial action based on a single instance of deficient performance or a single quarter of poor ratings. Conversely, the Market Quality Committee is not required to take such actions. The nature of the appropriate remedial actions is necessarily subject to professional judgment, dependent on such matters as the security being traded, competition on other markets centers, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise,

discretion and judgment of the Market Quality Committee.

The Market Quality Committee shall consider UTP Specialist performance ratings in determining whether to approve, disapprove or conditionally approve, mergers and acquisitions of UTP Specialists, transfers of one or more UTP Specialist registrations, UTP Specialist joint accounts, and changes in control or composition of UTP Specialist firms.

.04 Market Share Evaluation for UTP Specialists. The Exchange shall regularly evaluate the market share of UTP Specialists with respect to share volume and shall inform UTP specialists of their market share. The Exchange shall establish minimum market share criteria from time to time based upon market conditions, and may establish different criteria for securities with different trading characteristics (e.g., average daily volumes, number of competing market makers). The Exchange shall notify UTP specialists of any change in minimum market share criteria in advance of the period in which the change will be implemented. UTP Specialists that fall below the minimum market share criteria established by the Exchange in one or more UTP securities shall be referred to the Market Quality Committee for consideration of reallocation or other appropriate remedial action.

The Market Quality Committee is not precluded from reallocating one or more securities or taking other remedial action based on a single instance of deficient performance or a single quarter of poor ratings. Conversely, the Market Quality Committee is not required to take such actions. The nature of the appropriate remedial actions is necessarily a matter of professional judgment, dependent on such matters as the security being traded, competition on other markets centers, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise, discretion and judgment of the Market Quality Committee.

The Market Quality Committee shall consider UTP Specialist market share performance in determining whether to approve, disapprove or conditionally approve, mergers and acquisitions of UTP Specialists, transfers of one or more UTP Specialist registrations, UTP Specialist joint accounts, and changes in control or composition of UTP Specialist firms.

\* \* \* \* \*

## 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 anticipates that Amex UTP Specialists will operate in an extraordinarily competitive environment. The Exchange, accordingly, has developed a new program to evaluate and remediate UTP Specialist performance. The ultimate goal of the performance evaluation process would be to ensure that the Exchange is as successful as possible in garnering market share in UTP securities.<sup>6</sup>

Under the proposal, a new committee, the Market Quality Committee, would administer the Exchange's program to evaluate and enhance UTP Specialist performance. The Committee is proposed to consist of seven persons: the Chief Executive Officer of the Exchange, three members of the Exchange's senior management selected

by the Chief Executive Officer, one representative of upstairs member firms, one representative of institutional investors, and one member who spends a substantial portion of his or her time on the Trading Floor. The Committee would regularly evaluate UTP Specialists to determine whether they have fulfilled standards relating to: (1) Quality of markets, (2) competition with other market centers, (3) administrative matters, and (4) willingness to promote the Exchange as a marketplace. The Committee also would review transfers of specialist registrations in UTP securities to ensure that the Exchange's institutional interests are protected.

As proposed, the Market Quality Committee could take one or more of the following actions if it finds that a UTP Specialist has not met relevant standards: (1) Send an advisory letter, (2) counsel UTP Specialists on how to improve their performance, (3) require UTP Specialists to adopt performance improvement plans, (4) require the reallocation of securities, (5) suspend a specialist's registration as a UTP Specialist for a specific period of time, or (6) prohibit a UTP Specialist from receiving allocations in a particular situation or for a specified period of time. In the event that a UTP Specialist refuses or otherwise fails without reasonable justification or excuse to meet with the Market Quality Committee, the Market Quality Committee could take such action as it believes appropriate based on the information available to it without waiting for an appearance by the UTP Specialist.<sup>7</sup> Persons that are aggrieved by decisions of the Market Quality Committee may appeal them to the Amex Adjudicatory Council.

Under the proposal, the Committee could take remedial action with respect to UTP Specialists as a result of one or more transactions that involve poor performance that are identified through Amex surveillance or complaints. The Exchange also proposes to evaluate routinely UTP Specialist performance relative to both market quality and market share criteria.

Each quarter, the Exchange proposes to rate all UTP Specialists from "1" to "5" on a curve based upon their scores with respect to the market quality criteria.<sup>8</sup> A rating of "1" would

represent the best possible score. A UTP Specialist unit that receives a "5" rating in any two of four consecutive quarters, or ratings of "4" or "5" in any three of six consecutive quarters, would be referred to the Market Quality Committee for consideration of reallocation or other appropriate remedial action.

The Exchange proposes to change the market quality criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions. The Exchange proposes to notify UTP Specialists of any changes to the criteria and weightings prior to implementation.<sup>9</sup> The Exchange proposes the following market quality criteria at the outset of the program to evaluate UTP Specialist performance:

- Net price improvement
- Effective spread
- Quote size
- Execution speed
- Percentage of marketable customer orders sent away to another market for execution
- Floor Broker Questionnaire rankings

With respect to market share reviews, the Exchange proposes to establish minimum market share criteria for UTP securities based upon market conditions, and may establish different criteria for securities with different trading characteristics (e.g., average daily volumes or numbers of competing market makers). Specialists that fall below the minimum market share criteria established by the Exchange in one or more UTP securities would be referred to the Market Quality Committee for consideration of reallocation or other appropriate remedial action.

The Exchange proposes to change the minimum market share criteria used to evaluate UTP Specialists from time to time as warranted by market conditions. The Exchange would notify UTP Specialists of any changes to the market share criteria prior to implementation. The Exchange also would notify UTP Specialists of their market share.

As proposed, the market share evaluation program would be separate from the performance ratings system described above. Thus, for example, a

would reflect the performance of specialists relative to one another rather than theoretical performance levels. Telephone Conference.

<sup>9</sup> The Exchange represented to the Commission that notification of any criteria or weighting changes generally will take place within a month before the implementation of such changes. Moreover, criteria and weightings changes would only be implemented at the beginning of a rating quarter. Telephone Conference.

<sup>6</sup> According to Amex, the Commission, in its decision *In the Matter of the Application of Pacific Stock Exchange's Options Floor Post X-17*, Administrative Proceeding File No. 3-7285, Exchange Act Release No. 31666 (December 29, 1992), determined that performance evaluation processes fulfill a combination of business and regulatory interests at exchanges. The Commission stated in the *Post X-17* case: We believe that [a self-regulatory organization's ("SRO's")] need to evaluate market maker and specialist performance arises from both business and regulatory interests in ensuring adequate market making performance by its market makers and specialists that are distinct from the SRO's enforcement interests in disciplining members who violate SRO or Commission Rules. An exchange has an obligation to ensure that its market makers or specialists are contributing to the maintenance of fair and orderly markets in its securities. In addition, an exchange has an interest in ensuring that the services provided by its members attract buyers and sellers to the exchange. To effectuate both purposes, an SRO needs to be able to evaluate the performance of its market makers or specialists and transfer securities from poor performing units to the better performing units. This type of action is very different from a disciplinary proceeding where a sanction is meted out to remedy a specific rule violation. (Footnotes omitted.)

<sup>7</sup> The Exchange clarified that the reference to "such action as the Market Quality Committee believes appropriate" and corresponding language in the proposed rule text (Rule 29(e)) is not meant to expand the remedial power of the Market Quality Committee otherwise provided for in the proposed Amex Rule 29(b). Telephone Conference.

<sup>8</sup> The Exchange explained that UTP specialists would be rated on a curve and, thus, such ratings

UTP Specialist with performance ratings that would not trigger remedial action could be referred to the Market Quality Committee for consideration of reallocation or other action based upon sub-standard market share in one or more UTP securities.

As noted above, under the UTP Specialist evaluation procedures, performance reviews can result from: (1) Complaints or surveillance reviews, (2) low scores under the UTP Specialist market quality ratings systems, or (3) low market share in one or more UTP securities. As proposed, a performance review could result in a variety of possible actions, ranging from recommendations for performance improvement, a determination not to permit a firm to seek new allocations, to a reallocation of one or more UTP securities from a UTP Specialist. The Committee would not be precluded from reallocating UTP securities based on a single instance of deficient performance or a single quarter of poor ratings or low market share. Conversely, the Committee would not be required to take such actions. Rather, the purpose of the rules and processes is to identify circumstances that warrant review by the Market Quality Committee. The nature of the appropriate remedial actions is necessarily subject to professional judgment, dependent on such matters as the UTP securities being traded, competition on other market centers, personnel, and systems changes, and other factors.<sup>10</sup> Accordingly, such determinations are left to the expertise, discretion, and judgment of the Market Quality Committee.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,<sup>11</sup> in general, and section 6(b)(5) of the Act,<sup>12</sup> in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest by encouraging good performance and competition among markets and specialists.

<sup>10</sup> The phrase "necessarily a subjective matter" has been replaced with "necessarily subject to professional judgment" in both the purpose section and the proposed rule text in Commentary .03. As noted above, the Exchange has committed to submitting a conforming amendment during the comment period of the rule filing. Telephone Conference.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it believes that the proposed rule will enhance and encourage competition both within the Exchange, and, more significantly, between and among the Exchange and other markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing (although this, too, is important), but rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public. The Exchange believes that the procedures as set forth in the proposed rule change for reviewing the performance of specialists and taking remedial action, are necessary to ensure quality markets and thereby attract buyers and sellers to the Exchange.

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

The Exchange has neither solicited nor received written comments on 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 Exchange. All submissions should refer to File No. SR-AMEX-2002-19 and should be submitted by August 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. 02-18252 Filed 7-18-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46198; File No. SR-Amex-2002-08]

### Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the American Stock Exchange LLC Relating to Specialist Unit Fees

July 12, 2002.

On February 7, 2002, the American Stock Exchange LLC ("Exchange" or "Amex") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change, 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> to modify its Member Fee Schedule to pass through to Amex specialist units any fee paid by the Exchange to a third party in connection with the listing and trading of a security allocated to such specialist unit. On March 13, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 18, 2002, the Amex submitted Amendment No. 2 to the proposed rule

<sup>13</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 letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2002.