

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

1. Purpose

Issuers of structured products, exchange-traded funds, trust issued receipts and other novel securities products have found that the Exchange is extremely receptive to accommodating product innovation in our marketplace. New products, however, can pose some measure of added litigation risk as a result of third party claims of infringement of property rights, or for other reasons.

As part of its effort to reduce the Exchange's potential legal exposure in this area, the Exchange proposes to amend the Amex Listing Agreement to provide that issuers of such products agree, in connection with their execution of the Listing Agreement, that, in the event they are sued by a third party for any reason regarding an Amex-listed security, they will not implead, cross-claim against or sue the Amex or its affiliates. This would include, for example, claims of patent infringement or any other intellectual property rights.

The proposed amendments to the Exchange Listing Agreement will be applicable to issuers of securities listed under section 106 (*Currency and Index Warrants*) and 107 (*Other Securities*) of the Company Guide; and Rules 1000 (*Portfolio Depositary Receipts*), 1000A (*Index Fund Shares*) and 1200 (*Rules of General Application*; Trust Issued Receipts). The Listing Agreement for these issuers, therefore, would differ from that for common stock issuers. The proposed amended Listing Agreement would apply to (1) new issuers, and (2) new series of securities listed under Rules 1000, 1000A or 1200 or sections 106 and 107 of the Company Guide by issuers that currently list securities under those provisions.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>3</sup> in general and furthers the objectives of Section 6(b)(5)<sup>4</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market

and a national market system, 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 does not believe that the proposed rule change will impose any 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**

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.

**V. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the proposed rule change and amendments will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-

2002-46 and should be submitted by August 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46213; File No. SR-Amex-2002-21]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1, 2, 3 and 4 Thereto by the American Stock Exchange LLC to Permit Limited Side-by-Side Trading and Integrated Market Making**

July 16, 2002.

**I. Introduction**

On March 18, 2002, 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 amend Exchange Rules 174, 175, 193, 900, and 958 to (1) permit affiliates of Amex specialists in securities admitted to dealings on an unlisted basis to act as a specialist, Registered Options Trader ("ROT") or other registered market maker in the related options provided there are Exchange-approved information barriers between the stock specialist and the options specialist, ROT or other registered options market maker established pursuant to Exchange Rule 193, and (2) provide that specified Exchange-Traded Fund Shares ("ETFs") or Trust Issued Receipts ("TIRs") and their related options may be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without information or physical barriers or other restrictions. The Exchange filed Amendment No. 1 to the proposed rule change on March 22, 2002.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on March 27, 2002.<sup>4</sup> The Exchange filed Amendment No. 3 to the

<sup>5</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> On March 22, 2002, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> On March 27, 2002, the Exchange filed a second amended Form 19b-4 ("Amendment No. 2").

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

<sup>4</sup> 15 U.S.C. 78f(b)(5).

proposed rule change on April 5, 2002.<sup>5</sup> The Exchange filed Amendment No. 4 to the proposed rule change on June 4, 2002.<sup>6</sup> The proposed rule change, as amended by Amendments Nos. 1, 2, 3, and 4, was published for comment in the **Federal Register** on June 12, 2002.<sup>7</sup> The Commission received one comment letter on the proposed rule change.<sup>8</sup> This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The Exchange proposes to permit limited side-by-side trading<sup>9</sup> and integrated market making<sup>10</sup> for certain securities. Specifically, Amex proposes to permit limited integrated market making of securities admitted to dealings on an unlisted trading privileges ("UTP") basis and their related options so long as information barriers are established, approved and maintained. In addition, Amex proposes to permit side-by-side trading and integrated market making of certain ETFs, TIRs, and options overlying such ETFs and TIRs. These proposals are discussed more fully below.

### A. Securities Admitted to Dealings on an Unlisted Basis

Currently, Amex Rule 175(c) prohibits approved persons<sup>11</sup> and other affiliates ("specialist affiliates") of an Amex equity specialist from acting as an options specialist or functioning in any capacity involving market making responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such. The Amex proposes to amend Exchange Rule 175 to permit Amex specialists in stocks admitted to

dealings on an unlisted basis to act as options specialists, ROTs and registered market makers with respect to the related options provided there are Exchange-approved procedures restricting the flow of material, non-public corporate or market information established pursuant to Amex Rule 193. In addition, stocks admitted to dealings on an unlisted basis and their related options would be traded in areas of the Exchange Floor that are separated from each other so that no side-by-side trading would be permitted.<sup>12</sup>

### B. ETFs and TIRs

The Exchange proposes to amend Amex Rules 174, 175, 900, and 958 to allow side-by-side trading and integrated market making of certain ETFs and TIRs and their related options so long as the ETF or TIR meets the criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A.<sup>13</sup> Specifically, the Exchange proposes to amend Amex Rule 175(c) to permit specialists registered in ETFs or TIRs that meet the criteria in Commentary .03(a) of Amex Rule 1000 or Commentary .02(a) of Amex Rule 1000A to also act as specialists, ROTs or other registered market makers in the related options without information barriers or physical barriers. In addition, the Exchange proposes to amend Amex Rule 175(c) to provide that specialists of these ETFs and TIRs, their member organizations, and their approved persons may trade the related options without the limitations of Amex Rule 175(b) and the Guidelines to Amex Rule 175.<sup>14</sup> The Exchange also proposes to

amend Amex Rule 958 to permit ETF and TIR specialists to act as ROTs.

The Exchange also proposes to amend Amex Rule 174 to require an ETF or TIR specialist that is also the specialist in the related option in a side-by-side environment to disclose on request to participants in the ETF, TIR, and option trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the ETF, TIR or option limit order books.

Finally, the Exchange proposes to amend the definition of "Paired Security" in Amex Rule 900 to provide that ETFs and TIRs that meet the criteria of Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A may trade side-by-side with their related options.

## III. Summary of Comments

The Commission received one comment letter on the proposed rule change.<sup>15</sup> In general, CBOE supported Amex's proposal to permit integrated market making of securities admitted to dealings on an unlisted basis and the related options as long as information barriers are established. CBOE did, however, raise concerns about the sufficiency of Amex's Rule 193 information barriers and whether they are as comprehensive as those required by the New York Stock Exchange, Inc. ("NYSE") under NYSE Rule 98. As discussed further below, the Commission believes that the information barriers required under Amex Rule 193 are sufficient to prevent the flow of material non-public information between affiliates engaged in integrated market making.

In addition, CBOE expressed concerns about Amex's proposal to permit side-by-side trading and integrated market making in certain ETFs and TIRs and their related options without any information or physical barriers or other restrictions. As discussed further below, the Commission believes that Amex has limited its proposal to address regulatory concerns.

## IV. Discussion

After careful review, 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.<sup>16</sup> In particular, the

to Amex Rule 175 provides the conditions for opening options transactions to hedge existing specialty stock positions.

<sup>15</sup> See CBOE Letter, *supra* note 8.

<sup>16</sup> In approving this proposed rule change, the Commission has considered the proposed rule's

<sup>5</sup> On April 5, 2002, the Exchange filed a third amended Form 19b-4 ("Amendment No. 3").

<sup>6</sup> On June 4, 2002, the Exchange filed a fourth amended Form 19b-4 ("Amendment No. 4").

<sup>7</sup> See Securities Exchange Act Release No. 46036 (June 5, 2002), 67 FR 40357.

<sup>8</sup> See letter to Jonathan Katz, Secretary, Commission, from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Inc. ("CBOE"), dated July 11, 2002 ("CBOE Letter").

<sup>9</sup> "Side-by-side trading" refers to the trading of securities and related derivative products at the same location, though not necessarily by the same specialist.

<sup>10</sup> "Integrated market making" refers to the trading of securities and related derivative products by the same specialist and/or specialist firm.

<sup>11</sup> The Exchange defines an "approved person" as an individual or corporation, partnership or other entity which controls a member or member organization, or which is engaged in the securities business and is under common control with, or controlled by, a member or member organization or which is the owner of a membership held subject to a special transfer agreement. See Article I, Section 3(g) of the Exchange Constitution. The term "control" is defined in Exchange Definitional Rule 13.

<sup>12</sup> See Amex Rules 900(b)(38), (40) and (41). See also Amex Rule 958(f), which prohibits an ROT from executing a trade in an option if he or she has been in the "Designated Stock Area" for the related option within the previous 60 minutes.

<sup>13</sup> The criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A is as follows:

- Component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least \$75 million.
- The component securities representing 90% of the weight of the portfolio each have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.
- The most heavily weighted component security cannot exceed 25% of the weight of the portfolio and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio.
- The underlying portfolio must include a minimum of 13 securities.
- All securities in the portfolio must be listed on a national securities exchange or the Nasdaq Stock Market.

<sup>14</sup> Generally, Amex Rule 175(b) only permits a specialist to trade options on its specialty stock for the purpose of offsetting the risk of making a market in the underlying specialty security. The Guidelines

Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>17</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

When considering a side-by-side trading or integrated market making proposal, the Commission must balance the potential improvements in the quality of the markets for the stocks and their related options against the competitive, regulatory, and surveillance concerns.<sup>18</sup> In this regard, the Commission must consider whether a side-by-side trading or integrated market making proposal would permit market participants to possess undetectable, material non-public market information, which could give certain market participants a trading advantage over other market participants. Thus, the Commission must evaluate the extent of the proposed side-by-side trading or integrated market making, as well as the characteristics of the market center putting forth the proposal.

Historically, the Commission has had concerns regarding side-by-side trading and integrated market making.<sup>19</sup> The Commission staff also discussed the regulatory issues raised by side-by-side trading and integrated market making in the Options Study. More specifically, the Commission staff noted that side-by-side trading and integrated market making raise the concern that participants engaging in such trading practices could unfairly use non-public market information to their advantage because such participants have access to non-public market information about both a stock and its related option. In addition, side-by-side trading and integrated market making could result in certain market participants gaining an unfair competitive advantage over other market participants because of their access to and ability to use non-public

impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> See Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985). See also Report of the Special Study of the Options Markets to the Securities and Exchange Commission, H.R. Rep. No. IFC 3, 96th Cong. 1st sess. (Comm. Print 1978) ("Options Study").

<sup>19</sup> See, e.g., Securities Exchange Act Release Nos. 22026, *supra* note 18; 21759 (February 14, 1985), 50 FR 7250 (February 21, 1985) (approving SR-NYSE-84-3 and SR-NYSE-84-10); 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988) (approving SR-Amex-88-16); and 28556 (October 19, 1990), 55 FR 43233 (October 26, 1990) (approving SR-CBOE-90-08).

market information. For example, in a side-by-side trading environment or integrated market making environment on a single exchange floor, floor members, by virtue of their positions on the floor of an exchange, are able to react instantaneously to market information by executing orders before the information is publicly disseminated. Similarly, because an integrated entity that operates on two different floors may also have access to non-public market information regarding a stock and its related option, it too could execute orders before information is publicly disseminated. Accordingly, in evaluating whether Amex's proposal is consistent with the Act, the Commission considered the extent to which additional non-public market information and competitive advantages would accrue to stock and options market makers on the Exchange, and their affiliates off the exchange.

In addition, in the Options Study, the staff expressed concerns about the potential for manipulation and other improper trading practices that could result from side-by-side trading and integrated market making, and that such improper conduct would be hard, if not impossible, to surveil.<sup>20</sup> For example, much of the market information that may be used in a side-by-side trading or integrated market making environment may never be publicly disseminated, and thus may never be available for surveillance purposes. In addition, a side-by-side trading environment may increase a specialist's or market maker's ability to observe and utilize information regarding orders, transactions, and patterns of trading and quoting and may permit such specialist or market maker to continuously and accurately assess risks that could be associated with improper trading conduct. For example, in the Options Study, the staff noted that manipulations of stock prices to benefit options positions may be undertaken with greater precision if a market participant on an exchange floor is able to evaluate accurately the supply of, and demand for, a security by observing the buying and selling interest in the crowd, the depth of orders in the book and the trading patterns of market participants at the trading post. This concern may be present in an integrated market making situation when a firm acts as a specialist

<sup>20</sup> The Commission staff noted that substantial profits could be made from options positions as a result of small movements in the price of the underlying stock. Further, the staff noted the relative ease by which the price of the underlying security could be moved and the difficulty in detecting improprieties associated with small price movements. See Options Study, *supra* note 18.

in a stock on one exchange and as a specialist in the option on another exchange because of its ability to observe transactions, order flow, and trading and quoting patterns on both floors.

Finally, the Commission staff noted concerns about the potential conflicts of interest that may arise when an integrated entity, whether on the same or different exchange floors, has an obligation to make markets in both an option and its underlying equity.

#### A. Securities Admitted to Dealings on an Unlisted Basis and Related Options

Amex proposes to permit limited integrated market making by allowing affiliates of Amex specialists registered as such in securities admitted to dealings on an unlisted basis to act as a specialist, ROT or other registered market maker in the related options provided there are Exchange-approved information barriers between the stock specialist and the options specialist, ROT or other registered options market maker established pursuant to Amex Rule 193. These information barriers must be approved by the Amex and are subject to annual review by the Amex. By requiring strict information barriers designed to prevent the flow of non-public information, the Amex seeks to limit the concerns raised by integrated market making.

Specifically, the related entities must establish procedures that are sufficient to restrict the flow of non-public information. The Guidelines to Amex Rule 193 set forth the conditions to be met by the related entities in order to satisfy this requirement. For example, Guideline (b)(i) requires organizational separation of the specialist and approved person such that each entity is a separate and distinct organization. Guideline (b)(i) further requires that while the affiliates may be under common management, the management of the approved person may not exercise influence over or control the stock specialist's conduct or vice versa. In addition, any general management oversight must not conflict or compromise in any way the specialist's market making responsibilities. Guideline (b)(ii) requires the establishment of procedures to preserve confidentiality of trading information of both the specialist and the affiliate. Specifically, Guideline (b)(ii) requires the establishment of procedures to prevent the use of material, non-public corporate or market information in the possession of the affiliate to influence the specialist's conduct and avoid the misuse of the specialist's market information to influence the affiliate's

conduct. These procedures must also include means to prevent the disclosure of trading positions and each specialist's book. Finally, the Guidelines require that the specialist and approved person maintain, among other things, separate books and records, financial accounting and capital requirements.

The Commission believes that these procedures set forth in the Guidelines address the regulatory issues raised by the proposed rule change regarding integrated market making of securities admitted to dealings on an unlisted basis and their related options.<sup>21</sup> The requirement of clearly separate and distinct organizations, along with the other informational barriers and restrictions, should prevent Exchange specialists and their related options specialists or market makers from sharing restricted, non-public market information. Further, Amex Rule 193 requires the Exchange to review and approve the organizational structure and information barriers of the integrated entities. The Commission notes that the Exchange has had extensive experience reviewing its Rule 193's organizational requirements and information barriers and thus should be able to ensure that the integrated entities do not improperly use their affiliations. In addition, organizational separation and information barriers must be established and maintained between an Exchange specialist, any approved person of the specialist that acts as a specialist, ROT, or registered market maker in an option based on the specialist's specialty stock, and any other persons affiliated with them.

The Commission expects the Exchange to assess, as it gains experience with integrated market making, whether any other informational barriers are necessary to prevent the flow of market information between the related entities. Of course, any new information barriers proposed would have to be submitted to the Commission for approval. The Commission also expects that the Exchange will surveil the integrated entities to ensure that the information barriers and organizational structure prevent the flow of non-public market information.

In conclusion, the Commission believes that the Exchange has

sufficiently minimized the potential for manipulative and improper trading conduct by requiring strict organizational separation and information barriers.<sup>22</sup> Therefore, the Commission believes that the potential improvements to liquidity and quality of the markets by the Amex's proposal outweigh the regulatory concerns.

#### *B. ETFs, TIRs and Related Options*

In addition, the Exchange proposes to permit specified ETFs and TIRs and their related options to be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without information or physical barriers or other restrictions, *i.e.*, side-by-side trading and integrated market making. The Commission believes that Amex's side-by-side trading and integrated market making proposal regarding certain ETFs, TIRs and their related options is consistent with the Act and is sufficiently limited to address regulatory concerns.<sup>23</sup> Specifically, the Commission notes that ETFs and TIRs are securities that are based on groups of stocks. ETF and TIR prices are based on the prices of their component securities. Accordingly, the Commission believes that a market participant's ability to manipulate the price of the ETF, TIR or related option is limited.

In addition, Amex has limited its proposal to permit side-by-side trading and integrated market making only in broad-based ETFs and TIRs. Specifically, each ETF and TIR must have a minimum of 13 securities in its underlying portfolio, the most heavily weighted component securities cannot exceed 25% of the weight of the portfolio, and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio. By limiting the proposal to broad-based ETFs and TIRs, concerns regarding informational advantages about individual securities are lessened.

In addition, Amex has sought to ensure that the ETFs and TIRs that may be traded side-by-side or by integrated market makers are composed of highly capitalized and liquid component securities and that the component securities are listed on an exchange or the Nasdaq Stock Market. For example,

<sup>22</sup> The Commission notes that side-by-side trading of UTP stocks and their related options will not be permitted. Accordingly, the UTP stocks and their related options must trade at physically separate trading locations on the Exchange's floor. See Amex Rule 900(b)(38), (40), and (41).

<sup>23</sup> The Commission notes that it has previously approved side-by-side trading and integrated market making of related derivative products. See Securities Exchange Act Release No. 27383 (October 26, 1989), 54 FR 45846 (October 31, 1989).

the component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least \$75 million. In addition, the component securities representing 90% of the weight of the portfolio each must have a minimum trading volume during each of the last six months of at least 250,000 shares. The Commission believes that these capitalization and liquidity requirements should reduce the likelihood that any market participant has an unfair information advantage about the ETF, TIR, its related options, or its component securities, or that a market participant would not be able to manipulate the prices of the ETFs, TIRs, or their related options.

Moreover, to mitigate the potential information advantages, Amex has proposed to require integrated specialists in a side-by-side trading environment to disclose trading interest in both the ETF or TIR and related options limit order books upon request. By providing all market participants with market information in the limit order books, no market participant should have an unfair competitive advantage over others in the crowd.

Finally, Amex has proposed to permit specialists in ETFs and TIRs and approved persons of such specialists to trade options on such ETFs and TIRs without the limitations set forth in Amex Rule 175(b). Generally, Amex Rule 175(b) only permits a specialist to trade options on its specialty stock for the purpose of offsetting the risk of making a market in the underlying security. The Commission believes that it is consistent with the Act to permit ETF and TIR specialists to trade options based on their specialty ETF or TIR because integrated specialists in ETFs and TIRs would not be able to perform their market making responsibilities in the related options if they were limited to only executing hedging transactions.

The Commission expects the Exchange to assess its surveillance procedures to determine whether they are adequate for the new trading arrangements to ensure that market participants do not engage in manipulative or improper trading practices. Further, the Commission expects Amex to consider whether any additional surveillance procedures or trading restrictions are necessary to prevent manipulative or other improper trading practices. Of course, any new trading restrictions proposed would have to be submitted to the Commission for approval.

The Commission believes that trading efficiencies may be realized as a result of these new trading arrangements for

<sup>21</sup> The Commission notes that it approved a similar NYSE proposal to permit NYSE specialists to be affiliated with specialists and primary market makers in options related to the NYSE specialist's specialty stock so long as information barriers are established, approved, and maintained. See Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567 (February 25, 2002).

ETFs and TIRs and their related options. For example, operational efficiencies may be realized because orders in ETFs and TIRs and their related options may receive faster executions. In addition, combination orders may be executed in a more efficient and timely fashion. Therefore, the Commission believes that the potential improvements to liquidity and quality of the markets in ETFs and TIRs and their related options by the Amex's proposal outweigh the regulatory concerns.

For these reasons, the Commission finds that the proposed rule change permitting side-by-side trading and integrated market making of certain ETFs and TIRs and their related options is consistent with section 6(b)(5) of the Act.<sup>24</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-Amex-2002-21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

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

[FR Doc. 02-18562 Filed 7-22-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46220; File No. SR-BSE-2002-08]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Boston Stock Exchange, Inc. To Extend its Specialist Performance Evaluation Program on a Pilot Basis

July 17, 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 25, 2002, the Boston Stock Exchange ("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 Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to extend its Specialist Performance Evaluation Program until September 30, 2002. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deleted language is in brackets.

\* \* \* \* \*

#### Chapter XV

##### Specialists

##### Specialist Performance Evaluation Program

Sec. 17 (a)-(e) no change.  
(f) This program will expire on [June 30, 2002] September 30, 2002, unless further action is taken by the Exchange.

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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, 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 proposes to extend its Specialist Performance Evaluation Program ("SPEP") pilot, until September 30, 2002. Under the SPEP pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP program has been a very successful and effective tool for measuring specialist performance, it realizes that modifications are necessitated as a result of recent changes in the industry, particularly decimalization. Accordingly, the

Exchange is seeking to extend the pilot period of this program so that evaluation and modification can be undertaken before permanent approval is requested.

###### 2. Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Exchange Act,<sup>3</sup> in that the proposed rule change is 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 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 does not believe that the proposed rule change will impose any 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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder<sup>5</sup> because the proposal (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from June 25, 2002, the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and BSE has provided the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time the Commission may designate. At any time within 60 days of the filing of such proposed rule

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</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> 15 U.S.C. 78f(b)(5).

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

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