

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2002-79 and should be submitted by November 5, 2002.

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

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

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46610; File No. SR-Amex-2002-72]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the eQPriority Pilot Until October 11, 2002

October 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 13, 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 Amex. Amex has designed the proposed rule change as

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

<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.

"non-controversial" under Rule 19b-4(f)(6),<sup>3</sup> thus rendering it immediately effective. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to extend through October 11, 2002, Commentary .03 to Amex Rule 126 to continue a pilot program for processing electronically transmitted orders for the common stock of business corporations admitted to dealings on the Exchange ("eQPriority<sup>sm</sup>"). The text of the proposed rule change is available at the Office of the Secretary of the Exchange and from the Commission's Public Reference Room.

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

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

On September 12, 2000, the Commission approved Amex's eQPriority initiative on a six-month pilot basis.<sup>4</sup> The pilot program was extended for six-month periods in each of March 2001,<sup>5</sup> August 2001,<sup>6</sup> and March 2002.<sup>7</sup> Amex now seeks to extend the pilot through October 11, 2002.

eQPriority is intended to encourage persons to route marketable electronic orders to the Exchange by assuring them that orders sent to the specialist electronically will be filled either: (i) At the Amex Published Quote ("APQ") up

to the displayed size at the time the order is announced, or (ii) at an improved price.<sup>8</sup> Amex believes that the program provides orders for stocks sent to the floor electronically with the optimal combination of speed, certainty of execution, and price improvement opportunities. eQPriority applies only to orders for common stock admitted to dealings; it is not available for orders for options, Exchange Traded Funds, or other Amex-listed securities. It also does not apply to openings and reopenings and to block trades executed at a "clean-up" price pursuant to Amex Rule 155.

eQPriority works in the following manner. Once the specialist announces the electronic order, members may not withdraw or modify bids and offers incorporated into the APQ on the opposite side of the market from the incoming order *except* to provide price improvement. When an eQPriority order is executed in part at an improved price, the remainder of the order is executed at the APQ up to the number of shares then available (*i.e.*, the size of the APQ at the time the order was announced, less any shares that provided price improvement). The eQPriority order does not have to match with any other trading interest on the same side of the market. In the event that an eQPriority order is larger than the APQ at the time the order is announced, the order is filled up to the size of the APQ according to the eQPriority procedures, and the unexecuted balance is filled according to the Exchange's customary auction market processes.

The purpose of eQPriority is to provide incoming electronic orders with an execution at the displayed offer (or lower) in the case of an electronic buy order, or at the displayed bid (or higher) in the case of an electronic sell order. eQPriority is not intended to allow an incoming electronic order to obtain priority over orders that already have established priority in the market. Thus, an eQPriority order does not have priority over bids and offers that were announced prior to the time that the eQPriority order is represented. This arises only in situations where the market is quoted at the minimum fractional variation and is best

<sup>8</sup> Amex records both the time and the quoted market at the time the electronic orders are received by the specialist's limit order book. The Exchange has an exception report that identifies situations where an electronic limit order is executed at a price that is inferior to the quoted market at the time that it is received by the limit order book. Amex has represented that the Exchange's regulatory staff reviews any situation identified by this exception report to determine if the specialist's actions were consistent with the Commission's Firm Quote Rule, 17 CFR 240.11Ac1-1, and the Exchange's eQPriority rule.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release No. 43284 (September 12, 2000), 65 FR 57410 (September 22, 2000).

<sup>5</sup> See Securities Exchange Act Release No. 44049 (March 7, 2001), 66 FR 14947 (March 14, 2001).

<sup>6</sup> See Securities Exchange Act Release No. 44702 (August 15, 2001), 66 FR 43925 (August 21, 2001).

<sup>7</sup> See Securities Exchange Act Release No. 45536 (March 11, 2002), 67 FR 12065 (March 18, 2002).

illustrated by an example provided by the Exchange:

Assume the market is quoted 20.00 to 20.01, 5,000 x 5,000, and the bid represents a limit order on the book. Further assume that the specialist announces an eQPRIORITY order to buy 1,000 and that a broker in the crowd is willing to sell 1,000 at 20.00. In this example, the limit order to buy on the book had established a bid of 20.00 prior to the representation of the eQPRIORITY order. The booked limit order, consequently, would buy the 1,000 shares sold by the broker at 20.00, and the eQPRIORITY order would be filled at 20.01.

## 2. Statutory Basis

Amex believes that the proposed rule change is consistent with section 6(b) of the Act<sup>9</sup> in general and furthers the objectives of section 6(b)(5)<sup>10</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Amex also believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

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

Amex has stated that the proposed rule change would impose no burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Amex has stated that, because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

Amex has requested that the Commission waive the 30-day pre-operative period under Rule 19b-4(f)(6)(iii). Under that rule, the Commission may designate that the rule will become effective in less than 30 days if such action is consistent with the protection of investors and the public interest.<sup>13</sup> Acceleration of the operative date will allow the pilot program to continue without disruption to market participants. Therefore, the Commission finds that waiving the 30-day pre-operative period meets these criteria, and the proposed rule change may become operative immediately.<sup>14</sup>

Rule 19b-4(f)(6) also requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days before doing so (or such shorter time as designated by the Commission). Amex also has requested that the Commission waive this five-day pre-filing requirement. The Commission hereby waives the five-day pre-filing period.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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

<sup>13</sup> See *id.*

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-72 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46619; File No. SR-BSE-2002-17]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Boston Stock Exchange, Inc. To Amend Its Transaction Fee Schedule To Revise the Monthly Transaction Related Revenue It Must Generate Before Sharing Excess Revenue With Eligible Firms**

October 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 27, 2002, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The BSE proposes to amend its Transaction Fee Schedule to revise the monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible firms. The text of the proposed rule change is available at the BSE and at the Commission.

<sup>15</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. 78s(b)(3)(A)(ii).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).