

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46779; File No. SR-Amex-2001-07]

### 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 the Review of a Floor Official's Market Decision

November 6, 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 February 14, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and amended such proposed rule change on August 27, 2001<sup>3</sup> and October 8, 2002,<sup>4</sup> 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 change, as amended, from interested persons.

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

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

<sup>3</sup> See letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 24, 2001, replacing Form 19b-4 in its entirety ("Amendment No. 1"). In Amendment No. 1, the Amex, in part, amended the Exchange Constitution to clarify that there is no right to appeal a Floor Official's market decision or ruling to the Board of Governors ("Board"); clarified the definition of "market decision" and what types of market decisions may be subject to arbitration; provided more detail regarding the appeal process; and clarified the individuals who can hold various offices and hear appeals.

<sup>4</sup> See letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 7, 2002, replacing Form 19b-4 in its entirety ("Amendment No. 2"). In Amendment No. 2, the Amex deleted the proposed amendment to the Exchange Constitution originally proposed in Amendment No. 1; provided a separate procedure in Amex Rule 22 for appealing a decision of a Floor Official that is made with the concurrence of a Senior Floor Official; and amended the rule text to state that not all decisions or rulings on the Trading Floor may be subject to arbitration.

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

The Amex proposes to amend Exchange Rule 22 to change the procedure for reviewing a Floor Official's market decision and to eliminate the right of appealing a Floor Official's market decision or ruling to the Board. Below is the text of the proposed rule change, as amended.<sup>5</sup> New text is italicized. Deleted text is bracketed.

\* \* \* \* \*

#### Authority of Floor Officials

Rule 22. (a) through (d). No change.  
(d) Review of Rulings.—[On request of a] *Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a Floor Official's market decision, [or a decision required to be made by a Floor Official with the concurrence of a Senior Floor Official, the Market Operations Division] shall, forthwith and in the presence of the ruling Floor Official, present the matter to an Exchange Official [arrange a meeting of the Senior Supervisory Officer on the Floor and the available Senior Floor Officials,] who shall confirm, amend, or overrule the decision. An Exchange Official's decision in a matter may be promptly presented on appeal to a Governor who shall confirm, amend, or overrule the decision. A Governor's decision in a matter may be promptly presented on appeal to a panel of three Governors who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Governor. In the event that three Governors are not available, Senior Floor Officials who have not already ruled on the matter may serve on a panel. Any remaining vacancies on a panel may be filled by Exchange Officials (who have not already ruled on the matter) in order of their seniority as Exchange Officials. Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a market decision of a Floor Official made with the concurrence of a Senior Floor Official shall, forthwith and in the presence of the ruling Floor Official and Senior Floor Official, present the matter to a panel of three Governors who have not already ruled on the matter.*

<sup>5</sup> The proposed rule text in Amendment No. 2 replaces the proposed rule text in the original rule filing and Amendment No. 1 in its entirety. Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on November 4, 2002.

*Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a market decision of a Floor Official made with the concurrence of a Senior Floor Official shall, forthwith and in the presence of the ruling Floor Official and Senior Floor Official, present the matter to a panel of three Governors who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Governor. In the event that three Governors are not available, Senior Floor Officials who have not already ruled on the matter may serve on a panel. Any remaining vacancies on a panel may be filled by Exchange Officials (who have not already ruled on the matter) in order of their seniority as Exchange Officials.*

The decision or ruling of a Floor Official or Officials, [or, if reviewed, the determination of the] *Exchange Official, Governor, or three-Governor panel [Senior Supervisory Officer on the Floor and Senior Floor Officials,] shall be binding on members[, subject to any right of appeal under the Constitution or Rules of the Exchange]. Notwithstanding the foregoing, at any point after establishing a loss (or profit) through clearance and complying with the highest decision (if any) made in a matter, either party to the matter may elect to submit it to arbitration pursuant to Article VIII of the Constitution. The final decision or ruling on the Trading Floor shall not be binding on the arbitrators, but they may give it such weight as they feel is appropriate. Not all decisions or rulings on the Trading Floor may be subject to arbitration.*

Commentary \* \* \* No change.

\* \* \* \* \*

### 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 Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 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

Floor Officials are generally responsible for the supervision of operations on the Exchange Floor.<sup>6</sup> There are four classifications of a Floor Official. In ascending order of responsibility, these classifications are: (1) Floor Official, (2) Exchange Official, (3) Senior Floor Official, and (4) Senior Supervisory Officer. The Vice Chairman of the Exchange is a Floor Governor and serves as the Senior Supervisory Officer.<sup>7</sup> Governors of the Exchange that spend a substantial amount of time on the Floor are Senior Floor Officials.<sup>8</sup> The Board, in addition, may appoint additional Senior Floor Officials from among the Exchange Officials who have previously served on the Board and who spend a substantial part of their time on the Floor.<sup>9</sup> Three Floor Governors and three former Floor Governors currently serve as Senior Floor Officials. Article II, Section 3 of the Exchange Constitution ("Delegation of Powers") authorizes the Board to appoint a number of members and persons that are associated with member organizations in a senior capacity as Exchange Officials. Exchange Officials that spend a substantial portion of their time on the Floor are deemed to be Floor Officials.<sup>10</sup> Currently, there are approximately 38 on-Floor Exchange Officials that function as Floor Officials. Amex Rule 21(b) also authorizes the Chairman to appoint as Floor Officials, "such other persons familiar with the Floor as the Chairman, or the Chief Executive Office if delegated by the Chairman, shall determine to be necessary for the effective and orderly supervision of the operations on the Floor."<sup>11</sup> Currently there are approximately 80 "other" Floor Officials. Numerous provisions of the Exchange's rules specifically call for a

Floor Official's involvement in the Exchange's operations.

Floor Officials make "rulings" or "market decisions" (the terms are synonymous) in two distinct sets of circumstances.<sup>12</sup> In the first set of circumstances, Floor Officials make rulings on behalf of the Exchange on matters that require action or review by the Exchange. Examples of situations where Floor Officials make decisions on behalf of the Exchange include decisions to (1) halt or reopen trading in a security,<sup>13</sup> (2) approve the specialist granting a stop in a minimum variation market,<sup>14</sup> (3) approve the cancellation or revision of a trade,<sup>15</sup> and (4) approve the specialist as a dealer electing a stop order by taking the offer or hitting the bid.<sup>16</sup> In the second set of circumstances, Floor Officials rule with respect to market disputes submitted to them by members.<sup>17</sup> An example of where Floor Officials may be called upon to resolve market disputes includes a situation where there is a disagreement between two members as to the price or size of a trade. In either circumstances, a Floor Official may not rule on a matter in which the Floor Official has a personal interest. A Floor Official also may not decide, or be part of a panel that decides, an appeal of a ruling that the same Floor Official previously made.

Members are not required to submit market disputes to Floor Officials for rulings. However, once they do so, they must conduct themselves in accordance with the rulings. The Exchange believes that the ability of Floor Officials to make prompt rulings on market disputes submitted to them by members is a time honored and important feature both of the Exchange and other Floor-based markets. The Exchange believes that a Floor Official's review of member disputes permits the prompt (*i.e.*, prior to settlement) resolution of trading disputes and thereby limits financial risk to members and their customers from such disputes. Therefore, the Exchange believes that the ability of Floor Officials to rule on member

disputes is in the public interest and the interest of investors.

Exchange Rule 22(d) currently provides that a member wishing a prompt, on-Floor review of a Floor Official's market decision (or a decision required to be made by a Floor Official with the concurrence of a Senior Floor Official) could request and Market Operations would "arrange a meeting of the Senior Supervisory Officer on the Floor and the available Senior Floor Officials, who shall confirm, amend or overrule the decision." Currently, the decisions would be binding, subject to a right of appeal under Article II, Section 3 of the Exchange Constitution.

When the Floor Official and appeal systems were originally adopted, the Amex had a different mix of securities, a smaller Trading Floor, fewer members, and far less volume than it has currently.<sup>18</sup> Aside from the new securities and a larger Trading Floor, the Exchange believes that the increased number of orders and transactions on the Floor and the speed with which market prices change and information needs to be provided to customers make the current appeals process unsatisfactory. Further, the Exchange believes that the ability to subject a ruling of a Floor Official to review by the Board or a Board level committee facilitated pointless rather than constructive appeals since, by the time the Board considered the appeal, the trade had long since settled and the Board could not award monetary damages.

To address these concerns, the Exchange is proposing to change the system of appealing Floor Official rulings. The Exchange believes that the proposed system takes advantage of the increased number of Exchange Officials as well as the speed with which an appeal could be handled if conducted by a single Exchange Official in the same vicinity as the matter in question.

As is currently the case, a member that seeks a Floor Official review either of a dispute or an event that requires a Floor Official's approval would seek a Floor Official with an understanding of the matter at hand and is in close physical proximity to the member. For example, a member with a market dispute involving options is unlikely to contact a Floor Official with limited options experience to rule on the matter. Under the proposed system, a member concerned with the appropriateness of the initial Floor Official's ruling could appeal to an Exchange Official. Next, a

<sup>6</sup> See Exchange Rule 21(b).

<sup>7</sup> See Exchange Rule 21(a). Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on November 4, 2002 (clarifying the applicability of a reference to Amex's Constitution).

<sup>8</sup> See Exchange Rule 21(a).

<sup>9</sup> See Exchange Rule 21(a).

<sup>10</sup> See Exchange Rule 21(b).

<sup>11</sup> There was a technical correction in this quoting of the rule text in Exchange Rule 21(b). Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on November 4, 2002.

<sup>12</sup> Floor Officials also may issue fines under the Exchange's Minor Rule Violation Fine Plan. The review of these fines is subject to a separate process described in Exchange Rule 590 that is not changed by the current proposal. See Part 2 of Exchange Rule 590. Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on November 4, 2002 (clarifying the Floor Officials' authority to issue fines only under Part 2 of Exchange Rule 590).

<sup>13</sup> See Exchange Rule 22(c)(2).

<sup>14</sup> See Exchange Rule 109(c).

<sup>15</sup> See Exchange Rule 135.

<sup>16</sup> See Exchange Rule 154.04.

<sup>17</sup> See Exchange Rule 22(c)(3).

<sup>18</sup> In 1965, there were 650 members, 25 Floor Officials, 2 Senior Floor Officials, and 10 Floor Governors.

member aggrieved by an Exchange Official's ruling could then appeal the Exchange Official's ruling to a Floor Governor. The third appeal would be to a three-Governor panel. The proposed appeal process thus provides three levels of prompt review of a Floor Official's ruling. The Exchange believes that the several levels of review would assure that Floor Officials' decisions are fair and impartial as well as prompt.

There would be a slightly different appeal process for the limited number of situations where a Floor Official and a Senior Floor Official must rule together.<sup>19</sup> In these situations, the appeal would go directly to a three Governor panel since a Senior Floor Official either is a Floor Governor or is the equivalent of a Floor Governor in his or her authority to make rulings.

The proposed rule change, as amended, would eliminate the right of appeal to the Board which the Exchange believes only facilitates pointless appeals due to the time required to convene the Amex Adjudicatory Council to review matters.<sup>20</sup> The proposed rule change, as amended, however, would leave unchanged any right that a member or its customer may have to submit a market dispute to arbitration. The rule filing does not seek in any way to define the matters that may be brought to arbitration, and the arbitrability of claims would remain a matter to be determined by arbitrators or the courts.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>22</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing for the prompt and fair resolution of a Floor Official's market decision.

<sup>19</sup> See Amendment No. 2, *supra* note . An example of a situation where a Floor Official must act jointly with a Senior Floor Official is found in Commentary .02 to Amex Rule 1. This rule provides that if an option trading rotation is in progress prior to 4:02 p.m., and a Senior Floor Official and a Floor Official determine that a final trading rotation is needed to assure a fair and orderly market, the rotation in progress shall be halted and the final rotation begun as promptly as possible after 4:02 p.m.

<sup>20</sup> The Board has delegated to the Amex Adjudicatory Council, a board level committee, the responsibility for reviewing appeals to the Board.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change, as amended, 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

The Exchange neither solicited nor received written comments with respect to the proposed rule change, as amended.

## 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, as amended, 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 No. SR-Amex-2001-07 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46792; File No. SR-CME-2002-01]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto, by Chicago Mercantile Exchange, Inc. Relating to Customer Margin Requirements for Security Futures

November 8, 2002.

On September 27, 2002, Chicago Mercantile Exchange, Inc. ("CME" or "Exchange") submitted to 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 relating to customer margin requirements for security futures. On October 7, 2002, CME submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on October 21, 2002.<sup>4</sup> On November 7, 2002, CME submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> The Commission received no comment letters directly addressing the proposed rule change. However, the Commission received nine comment letters from ten commenters regarding a proposed rule change submitted by OneChicago, LLC ("OneChicago"), which is substantially similar to CME's proposed rule change.<sup>6</sup> Accordingly, the Commission has considered those comments in its review of the proposed

<sup>23</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 Phupinder S. Gill, Managing Director and President, Clearing House Division, CME, to Office of Market Supervision, Division of Market Regulation, Commission, dated October 4, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced in its entirety the Form 19b-4 filed on September 27, 2002.

<sup>4</sup> Securities Exchange Act Release No. 46637 (October 10, 2002), 67 FR 64672.

<sup>5</sup> In Amendment No. 2, CME modified certain aspects of its exclusion for market making activity.

<sup>6</sup> See Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707.