

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a new information collection. RI 20-120, Request for Change to Unreduced Annuity, is a new form designed to collect information OPM needs to comply with the wishes of the retired Federal employee whose marriage has ended. We have always needed this information. In the past, we have considered the information originally provided in the correspondence from the retirees and have made further inquiries as needed. This new form will provide an organized way for the retiree to give us everything at one time.

We estimate we will process 5,000 RI 20-120's annually. This form takes an average of 30 minutes per response to complete. The annual burden is estimated to be 2,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or E-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please include your mailing address with your request.

**DATES:** Comments on this proposal should be received on or before February 18, 2003.

**ADDRESSES:** Send or deliver comments to:

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415-3540, and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING**

**ADMINISTRATIVE COORDINATION CONTACT:** Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget & Administrative Services Division, (202) 606-0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47177; File No. SR-Amex-2002-102]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Create a New Percentage Order Type To Be Called "Immediate Execution or Cancel Election"**

January 13, 2003.

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 December 10, 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 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 Amex proposes to amend Amex rule 131 to provide that if a percentage order is marked "Immediate Execution or Cancel Election," the elected portion of a percentage order with this designation is to be executed immediately, in whole or in part, at the price of the electing transaction. If the elected portion cannot be so executed, the election shall be deemed cancelled, and shall revert back to the percentage order and be subject to subsequent election or conversion.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

**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.

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

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

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

1. Purpose

Currently, Amex rule 131 provides for three types of percentage orders: straight limit, last sale, and "buy minus/sell plus." The election provisions of each type of percentage order operate as follows:

- *Straight Limit:* When a trade takes place, an amount of shares equal to the size of that trade is "elected" as a limit order, and becomes a "held" order executable at a price within the overall limit on the order. Typically, the limit price is above the market when the order is entered (in the case of an order to buy), or below the market (in the case of an order to sell).

- *Last Sale:* When a trade takes place, an amount of shares equal to the size of that trade is "elected" as a limit order, and becomes a "held" order executable at the price of that trade, or at a better price, as long as such price is within the overall limit of the order. Typically, the limit price is above the market when the order is entered (in the case of a buy order) or below the market (in the case of a sell order).

- *"Buy Minus/Sell Plus":* When a trade takes place, an amount of shares equal to the size of the trade is elected, and becomes a "held" order executable only on stabilizing ticks within the overall limit of the order. An order of this type must be qualified by placing an overall limit price on the order.

As described below, the Exchange believes that the application of the election provisions does not meet the interests of some investors placing percentage orders, particularly last sale percentage orders:

- *Last Sale:* The Exchange believes that investors entering last sale percentage orders seek to trade along with the trend of the market, without initiating price changes or otherwise influencing the equilibrium of buying and selling interest. When a last sale percentage order is elected, it will typically receive an execution in one of two ways:

(1) There is sufficient additional liquidity at the price of the electing transaction for the elected portion to receive an immediate execution at the price of the electing transaction; or

(2) If the order cannot receive an immediate execution at the price of the electing transaction, it is sequenced with other limit orders at that price, and will receive an execution if and when there is sufficient contra side interest for trades to be effected at that price.

Executions pursuant to (2) above may not always be able to be effected, as the market trend may continue to move away from the price at which the order may be executed. Elected portions of the last sale percentage order may lag behind movement of the market, which defeats the investor's purpose in entering the order.

In response, the Exchange proposes to adopt a percentage order type called "Immediate Execution or Cancel Election." The Exchange believes that, consistent with the underlying philosophy of the percentage order rules, any proposed approach to accommodating investors should limit the specialist's discretion in representing such orders, while still allowing a degree of flexibility to meet the needs of those entering the orders. The Exchange notes that "Immediate or Cancel" is a recognized order type under Exchange rule 131(k). By placing this designation on the percentage order, the investor would require the specialist to treat an election as cancelled unless the elected portion can be executed immediately (in whole or in part) at the price of the electing transaction. If the order cannot be so executed, the election would be cancelled, and the unexecuted elected portion would revert to the percentage order, subject to subsequent election (and execution/cancellation as above) or conversion (if that instruction also is specified on the order).

For example, where an "Immediate Execution or Cancel Election" buy percentage order for 1,000 shares at 30.50 is placed with the specialist and the next transaction consists of 500 shares at 30.25, the specialist would elect 500 shares and must immediately execute the order at the price of the electing transaction, 30.25, or better. If there is liquidity sufficient to execute only 300 shares at the price of the electing transaction, 30.25, or better, the specialist would execute 300 shares at that price, and the election of the remaining 200 shares would be canceled, and the 200 shares would revert back to an unelected percentage order. If, instead, there is no further market interest to sell at 30.25, and the market moves away from the price of the electing transaction to, for instance, 30.30, the entire election would be canceled,<sup>3</sup> and the unexecuted elected

<sup>3</sup> The specialist would not execute the order at 30.30, even though such an execution is within the maximum limit of the percentage order (30.50). In this regard, an Immediate Execution or Cancel Election percentage order is treated similar to a last sale percentage order. Telephone conversation between David Fisch, Managing Director, Amex,

portion would revert back to a percentage order.

The Amex believes that this approach sets forth objective criteria to guide the specialist's representation of the order, while ensuring that the elected portion does not lead the market by initiating any significant price change, thereby defeating the investor's objectives. The investor's instructions, not the specialist's discretion, would dictate how the order is handled. The Exchange notes that an investor seeking to have a percentage order executed under current rules would be free to continue to do so by simply designating the order as one of the three currently existing order types.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of section 6(b)<sup>5</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 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.

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

The proposed rule change will 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

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

and Sapna Patel, Attorney, Division of Market Regulation, Commission on January 10, 2003.

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

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

(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 Amex. All submissions should refer to file number SR-Amex-2002-102 and should be submitted by February 7, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret McFarland,**  
Deputy Secretary.

[FR Doc. 03-1104 Filed 1-16-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47164; File No. SR-BSE-2002-04]

### Self-Regulatory Organizations; the Boston Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Amend the Exchange's Minor Rule Violation Plan

January 10, 2003.

On May 17, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> a proposed rule change to amend its Minor Rule Violation Plan ("Plan"). The BSE amended the proposed rule change

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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