

certain investors; (ii) the New Common Stock has been listed on the New York Stock Exchange, Inc. ("NYSE") since March 19, 2002; and (iii) the Issuer sought to simplify its operations, and determined to maintain listing of the New Common Stock only on the NYSE. The Issuer notes that the New Common Stock is not listed on the BSE and only trades on the Exchange on an unlisted trading privileges basis.

The Issuer stated in its application that it has met the requirements of the BSE rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and from registration under Section 12(b) of the Act<sup>3</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before March 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47374; File No. SR-Amex-2002-102]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC to Create a New Percentage Order Type to be Called "Immediate Execution or Cancel Election"

February 19, 2003.

#### I. Introduction

On December 10, 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 its Rule 131 to create a new percentage order type to be called Immediate Execution or Cancel Election. The proposed rule change was published for public comment in the **Federal Register** on January 17, 2003.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Currently, Amex Rule 131 provides for three types of percentage orders: straight limit, last sale, and "buy minus/sell plus." 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. The Exchange believes that investors rely on last sale percentage orders as a way to trade along with the trend of the market without initiating price changes or otherwise influencing the equilibrium or buying and selling interest. However, executions 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. In addition, 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 amend Amex Rule 131(k) to adopt a percentage order type called Immediate Execution or Cancel Election. Under the terms of the proposal, the elected portion of a percentage order marked Immediate Execution or Cancel Election would be required to be executed immediately, in whole or in part, at the price of the electing transaction, or better. If the elected portion cannot be executed at that price or better, the election would be deemed canceled, and the unexecuted elected portion would revert back to a percentage order, subject to subsequent election or conversion.

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, 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>4</sup> and the unexecuted elected portion would revert back to a percentage order.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's procedures be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>7</sup>

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market by providing additional flexibility to investors entering percentage orders. Specifically, the proposed Immediate Execution or Cancel Election percentage order should allow investors to achieve their investment goals while continuing to limit the specialist's discretion in representing such orders. The Commission believes that requiring the specialist to treat an election as canceled, unless the elected portion can be executed immediately at the price of the electing transaction or better, should ensure that the investor will not be trading ahead of, nor lagging behind, the market when there is insufficient interest to execute the elected portion of

<sup>4</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, and Sapna Patel, Attorney, Division of Market Regulation, Commission, on January 10, 2003.

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

<sup>6</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

<sup>4</sup> 15 U.S.C. 78j(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 47177 (January 13, 2003), 68 FR 2592.

the order at the price of the electing transaction.

The Commission also believes that the proposed approach sets forth adequate objective criteria to guide the specialist's representation of the order. Although the execution of certain percentage orders, particularly percentage orders that have been converted by a specialist, may present issues relating to the proper amount of discretion allowed to the specialist executing such orders, Immediate Execution or Cancel Election percentage orders do not raise such concerns. Specifically, a specialist must execute an Immediate Execution or Cancel Election percentage order at the instructed election price immediately upon the occurrence of a trade at the electing price or better, or treat the transaction as canceled.

In addition, the Commission notes that Amex's proposed Immediate Execution or Cancel Election percentage order is similar to the Immediate Execution or Cancel Election percentage order adopted by the New York Stock Exchange, Inc. ("NYSE").<sup>8</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-2002-102) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47369; File No. SR-CHX-2003-01]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

February 14, 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 January 30, 2003, the Chicago Stock Exchange,

Incorporated ("CHX" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II and III below, which Items have been prepared by the Exchange. The CHX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange 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 Exchange proposes to amend its membership dues and fees schedule (the "Schedule"), effective February 1, 2003, to modify various technology charges and establish a new connectivity fee. The proposed fee schedule is available at the CHX 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 CHX 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 CHX 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 proposed rule change amends the Schedule by revising the charges assessed to on-floor member firms for the computer equipment and other technology that the Exchange provides. In some cases, these costs have decreased; in other cases, these costs have increased.<sup>4</sup> The Schedule also contains updated references to the equipment provided by the Exchange and combines, in one list, the previously separated charges for equipment provided to floor brokers and

to specialists trading listed and OTC securities.

In addition to the changes to existing charges, the Exchange also proposes to begin charging a fee for the connectivity it provides its on-floor members to three separate networks. In the past, these charges had been partially included in other fees, such as those for monitors and computers. By charging separately for the connectivity provided to member firms, the Exchange can more appropriately pass on connectivity costs directly to the firms that receive specific services.

###### 2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>5</sup> in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

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

The CHX does not believe that the proposed rule change will result in 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

No written comments were either solicited or received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>7</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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

<sup>8</sup> See NYSE Rule 13; see also Securities Exchange Act Release No. 39837 (April 8, 1998), 63 FR 18244 (April 14, 1998) (order approving NYSE-97-38).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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>4</sup> For example, the fees for monitors would be substantially decreased, while the Exchange would charge a higher fee for soon-to-be-acquired laser printers.

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).