

Formal orders of investigation;
Post-argument discussion; and
Opinions.

The subject matter of the Open Meeting scheduled for Thursday, July 10, 2003 will be:

1. The Commission will hear oral argument on an appeal by the Division of Enforcement and the Office of the Chief Accountant from an initial decision of an administrative law judge. The law judge found that Michael J. Marrie and Brian L. Berry did not engage in improper professional conduct within the meaning of Rule of Practice 102(e) during the course of an audit by the accounting firm of Coopers & Lybrand LLP (Coopers) of the 1994 fiscal year financial statements of California Micro Devices, Inc. (CMD), a public company. Marrie, a certified public accountant and former partner with Coopers, was the engagement partner for the audit of CMD. Berry, a certified public accountant and former manager with Coopers, was the audit manager for the CMD audit.

The Division alleges that Marrie and Berry recklessly failed to comply with applicable standards of professional conduct in their audit of CMD's 1994 fiscal year financial statements in three areas: (a) CMD's write-off of \$12 million of accounts receivable; (b) confirmation of CMD's accounts receivable, and (c) CMD's sales returns and allowances for sale returns. The Division maintains that Marrie and Berry recklessly failed to conduct the audit in accordance with Generally Accepted Auditing Standards as a result of their failure to exercise professional skepticism and to obtain sufficient competent evidential matter with respect to these audit areas.

Among the issues likely to be considered are:

- a. Whether respondents committed the alleged violations; and
- b. if so, whether sanctions should be imposed in the public interest.

2. The Commission will also hear oral argument on an appeal by Michael A. Flanagan, Ronald O. Kindschi, and Spectrum Administration, Inc. of an initial decision of an administrative law judge. During the period covered by this Commission proceeding, Flanagan and Kindschi were registered representatives with FSC Securities Corporation, a registered broker-dealer. Kindschi also was associated with Spectrum Administration, a registered investment adviser.

The law judge found that Flanagan and Kindschi willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. The law judge also found that Spectrum Administration violated Sections 206(1) and (2) of the Investment Advisers Act of 1940, and that Kindschi, in his role as an associated person of Spectrum Administration, aided and abetted Spectrum Administration's violations. The law judge concluded that the Respondents committed fraud by steering certain customers to purchase Class B shares in various mutual funds without disclosing all material facts regarding the costs associated with those purchases, thereby depriving these customers

of the discounts on sales charges that would have been applicable to their investments had the customers purchased Class A shares in like amounts.

Based on these violations, the law judge suspended Flanagan from association with any broker or dealer for four months, and ordered him to pay a civil money penalty of \$10,000 and to disgorge \$12,469. The law judge suspended Kindschi from association with any broker, dealer, or investment adviser for three months, and ordered him to pay a civil money penalty of \$7,500, and to disgorge \$3,762. The law judge also censured Spectrum Administration and imposed cease-and-desist orders on Flanagan, Kindschi, and Spectrum Administration.

Among the issues likely to be considered are:

- a. Whether respondents committed the alleged violations; and
- b. if so, whether sanctions should be imposed in the public interest.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: June 30, 2003.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48101; File No. SR-AMEX-2003-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 by the American Stock Exchange LLC Relating to the Dissemination of Option Quotations

June 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 4, 2003, 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 Amex. On May 15, 2003, the Amex filed Amendment No. 1 to the proposed rule change.³ On June 12, 2003, the Amex

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 12, 2003 ("Amendment

filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex proposes to permit the dissemination of option quotes in sizes of less than ten (10) contracts. Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].

* * * * *

Rule 958A. Application of the Firm Quote Rule

- (a) No Change
- (b) No Change
- (c) Obligations of a Responsible Broker or Dealer—

(i) Pursuant to SEC Rule 11Ac1-1 each responsible broker or dealer for each series of each listed option class shall promptly communicate to the Exchange its best bid, best offer, quotation size and aggregate quotation size. No responsible broker or dealer shall communicate a quotation size or aggregate quotation size for less than [ten] *one* contract[s]. This obligation may be fulfilled by the use of an automated quotation system.

(A) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any customer order in an option series in an amount up to its published quotation size.

(B) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any order for the account of a U.S. registered or foreign broker or dealer in a listed option in an amount up to the quotation size established and periodically published by the Exchange which quotation size shall be for at least one contract.

(C) Subject to the provisions of paragraph (d) of this Rule, each responsible broker or dealer shall comply with the Thirty Second Response provisions set forth in paragraph (d)(3) of SEC Rule 11Ac1-1.

No. 1"). In Amendment No. 1, the Exchange made modifications to the purpose section of this notice to provide more detail and specificity regarding the proposal. The substance of Amendment No. 1 has been incorporated in this notice in its entirety.

⁴ See Letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 11, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange made minor technical amendments to language in the purpose section. The substance of Amendment No. 2 has been incorporated in this notice in its entirety.

(ii) No Change

(d) No Change

Commentary

.01 No specialist or registered options trader shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist and registered options traders responsible for the published bid or published offer shall be obligated as set forth in paragraph (c) of Rule 11Ac1-1 but only to the extent of [ten] *one* contract[s].

.02 No Change

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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 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. 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

In 2001, the Exchange amended the firm quote requirement in Amex Rule 958A to accommodate the application of Rule 11Ac1-1 (the "Quote Rule") under the Act.⁵ The amendments to the Commission's Quote Rule in 2000 were made to apply the firm quote requirements to the option exchanges and option market makers, thereby, requiring a corresponding revision to the rules of the options exchanges.⁶ At that time, the Amex proposed in Rule 958A that "no responsible broker or dealer shall communicate a quotation

size or aggregate quotation size for less than ten (10) contracts."

In applying the Quote Rule to the options markets, the Commission has given the options exchanges the flexibility to determine whether they will collect from responsible brokers or dealers and make available to quotation vendors the size associated with each quotation or choose instead to establish by rule the size for which their disseminated bid and offer in each option series is firm and not collect and disseminate size with each quotation. The Commission has also given the options exchanges the flexibility to disseminate quotations with sizes at which the specialist and registered traders are firm for customer accounts, and, at the same time, establish by rule a different size for which specialists and registered traders must be firm for orders from the accounts of broker-dealers.

As indicated above, the Amex previously determined that it would disseminate a size of ten (10) contracts for all of its option quotations regardless of the underlying "actual" size associated with such quote. In connection with the dissemination of option quotations, the Exchange amended and received Commission approval of Amex Rule 958A requiring that the communicated and disseminated size be a minimum of ten (10) contracts. Therefore, responsible brokers or dealers on the Amex are required to disseminate a minimum size of ten (10) contracts for all options quotations regardless of whether such quotations may represent a customer or broker-dealer order.

The operation of Amex Rule 958A in paragraph (c)(i)(A) requires that each responsible broker or dealer execute customer orders in an option series in an amount up to its published quotation size. As a result, specialists and registered options traders ("ROTs") are required to be firm for customer orders of up to 10 contracts regardless of the actual size of the customer order. Paragraph (c)(i)(B) of Amex Rule 958A provides that specialists and ROTs are obligated to be firm for the account of broker-dealer orders, including foreign broker-dealers, for at least one (1) contract.

The effect of the instant proposal will be that if the disseminated quotation on behalf of a customer order is for an order of less than ten (10) contracts, the Exchange would no longer disseminate a minimum size of ten (10) contracts, but instead, would disseminate the actual size of the associated customer order. As a result, the responsible broker or dealer would not be required to

execute a minimum size of ten (10) contracts for a customer order that has an actual size of less than ten (10) contracts. Therefore, under the proposed amendment to Amex Rule 958A, the responsible broker or dealer will now be firm to customers based upon the actual size of the order rather than an artificial minimum of ten (10) contracts.⁷ The proposed rule change also provides for a corresponding amendment to Commentary .01 to Amex Rule 958A so that the specialist and ROT responsible for the published bid or offer is obligated for one (1) contract rather than ten (10) contracts in connection with an erroneous bid or offer that is the result of an error or omission by the Exchange or a quotation vendor.

For purposes of the application of the Options Intermarket Linkage (the "Linkage"), the Amex represents that the proposal will not affect the Exchange's Linkage rules. In particular, "Firm Customer Quote Size"⁸ and "Firm Principal Quote Size"⁹ as defined in Amex Rule 940 will not be revised.¹⁰ Accordingly, the obligation of

⁷ An example of the rule's current operation is as follows: An Exchange specialist disseminates a market of 2 bid, 2.20 asked, in a particular option series at the minimum size of 10 contracts. An incoming order to buy one contract for 2.10 is entered making the new best bid and offer 2.10 bid, 2.20 asked. The Exchange disseminates 10 contracts as the size of the 2.10 bid. If a market order to sell 10 contracts is then entered in that series, the responsible broker-dealer (generally the specialist) is obligated to buy the 9 contracts at a price of 2.10. This proposal would eliminate the responsible broker or dealers obligation to be firm for the balance between the actual size of a customer limit order and ten contracts as illustrated under this example.

⁸ Exchange Rule 940(b)(7) defines "Firm Customer Quote Size" as the lesser of: (a) The number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. The number shall be at least 10.

⁹ Exchange Rule 940(b)(8) defines "Firm Principal Quote Size" as the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10.

¹⁰ See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Original Linkage Plan Approval); 44482 (June 27, 2001), 66FR 35470 (July 5, 2001) (Plan Amendment No. 1 Approval); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002) (Plan Amendments No. 2 and 3 Approval); 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Plan Amendment No. 4 Approval); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003) (Plan Amendment No. 5 Approval); and 47297 (January 31, 2003), 68 FR

⁵ See Securities Exchange Act Release No. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001); and Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001).

⁶ See Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

the specialist to execute at least a size of ten (10) contracts will be unchanged in connection with Linkage Orders. With respect to automatic executions ("Auto-Ex") outside of Linkage, the proposed change will not affect the current minimum Auto-Ex size of ten (10) contracts. Accordingly, orders that are not Auto-Ex eligible¹¹ or are subject to an exception in Amex Rule 933(f), will be manually handled by the specialist and will receive an execution size of up to the disseminated size of the quoted market.

The Exchange believes that the instant proposal to revise the operation of Amex Rule 958A so that option quotes are disseminated in actual size should provide greater transparency to investors and the marketplace because the actual size of orders will be disclosed rather than an artificial minimum size. In addition, the Amex further believes that the proposal to disseminate the actual size of quotes will better reflect the true state of liquidity being offered at that time by the trading crowd. The Exchange notes, that as a result of the proposed rule change, the responsible broker or dealer would be permitted to disseminate a size of less than ten (10) contracts. Currently, the responsible broker or dealer is required to disseminate a size of at least ten (10) contracts.

The Exchange submits that the adoption of this proposal will foster increased competition by the Amex against markets that disseminate quotes with actual size. The Auto-Ex system at the Amex available for both customer and broker-dealer orders would not be impacted by this proposal.¹² In

6526 (February 7, 2003) (Approval of Amex Linkage Rules).

¹¹ The minimum eligible Auto-Ex size is ten (10) contracts while the maximum eligible Auto-Ex size is determined by the Exchange subject to a 500 contract ceiling (except in the case of options on QQQs which may be 2,000 contracts for the two near term months and 1,000 contracts for all other months).

¹² See Securities Exchange Act Release Nos. 22610 (November 8, 1985), 50 FR 47480 (November 18, 1985) (pilot program for XMI options); 23544 (August 20, 1986), 51 FR 30601 (August 27, 1986) (permanent approval of XMI pilot); 24714 (July 17, 1987), 52 FR 28396 (July 29, 1987) (expansion to competitively traded options); and 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002) (automatic execution of broker-dealer option orders). Auto-Ex is an automated execution system that enables member firms to route public customer market and limit orders in options for automatic execution at the bid or offer at the time the order is entered. Auto-Ex executes, at the displayed bid or offer, customer market and immediately executable limit option orders up to a specified number of contracts routed through the Common Message Switch (CMS) and the Amex Order File ("AOF"). There are, however, some situations in which orders otherwise eligible for execution on Auto-Ex are routed to the specialist's book, known

in addition, the dissemination of actual size quotes should also enable specialists and ROTs to better manage their risks by enabling such specialists and/or ROTs to reflect the size in quotes based on market factors rather than regulatory requirements. The Amex seeks through this proposal to match other option exchanges that currently are able to disseminate actual size market quotations for customer orders.¹³ We believe that this proposal should lead to increased competition on the basis of size among the options exchanges, enabling investors to receive better executions.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,¹⁴ in general, and furthers the objectives of section 6(b),¹⁵ in particular, in that they are designed 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.

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

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

as the Amex Options Display Book or "AODB," for an execution. These situations occur when (i) the best bid or offer is represented by a limit order on the AODB, (ii) the best bid or offer is locked or crossed, (iii) there is a better bid or offer being displayed by a competing market, or (iv) when certain systems allowable parameters have been exceeded.

¹³ See Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (Phlx 2002-15); 46029 (June 4, 2002), 67 FR 40362 (June 12, 2002) (PCX 2002-30); and 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (CBOE 2001-70).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

(ii) as to which the Amex consents, the Commission will:

(A) By order approve the 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-2003-24 and should be submitted by July 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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¹⁶ 17 CFR 200.30-3(a)(12).