

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48998; File No. SR-Amex-2003-101]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Membership's Duty to Report Fraudulent or Manipulative Conduct

December 29, 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 November 21, 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. 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 Rule 3 of the Amex's *General and Floor Rules* to require Amex members or member organizations to report to the Exchange fraudulent or manipulative conduct in connection with the trading of securities on the Floor.

The text of the proposed rule change appears below. Proposed new language is *italicized*; proposed deletions are [bracketed].

\* \* \* \* \*

#### [Excessive Dealing] General Prohibitions and Duty to Report

Rule 3. (a)-(g) no change

(h) *It shall be deemed an act detrimental to the interest or welfare of the Exchange for any member, member organization or employee thereof to fail to report immediately to the Exchange any fraudulent or manipulative conduct in connection with the trading of securities on the Floor (i) of which the member, member organization or employee thereof has knowledge, or (ii) that the member, member organization or employee thereof has been asked to perform. Reports to the Exchange of fraudulent or manipulative conduct shall be made in such form and to such person(s) as the Exchange shall*

*prescribe from time to time in a notice to the membership.*

\* \* \* \* \*

#### 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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Paragraphs (b) and (c) of Article V, Section 4 of the Amex Constitution grant the Exchange the authority to discipline any member or member organization that engages in fraud and fictitious transactions.<sup>3</sup> Furthermore, Paragraph (j) of Article V, Section 4 of the Amex Constitution grants the Exchange broad authority to discipline members and member organizations for conduct that is detrimental to the interest or welfare of the Exchange. The Exchange deems any fraudulent or manipulative conduct in connection with the trading of securities on the Exchange's Floor to be a violation of the Amex Constitution and detrimental to the interest and welfare of investors and the Exchange.

The Exchange states that, at present, no Amex rule exists requiring members or member organizations to report to the Exchange fraudulent or manipulative acts that occur in connection with transactions on the Floor. Accordingly, the Exchange believes that there is an opportunity to enhance its ability to police such behavior. The Exchange therefore proposes to add paragraph (h) to Amex Rule 3 to require any member and member organization to report immediately to the Exchange fraudulent or manipulative conduct in connection with the trading of securities on the

<sup>3</sup> In addition to the prohibitions of Article V, Section 4 of the Amex Constitution, Rule 4 of the Amex's *General and Floor Rules* prohibits transactions executed "for the purpose of creating or inducing a false, misleading or artificial appearance of activity in [a] security or for the purpose of unduly and improperly influencing the market price of [a] security or for the purpose of making a price which does not reflect the true state of the market in [a] security."

Floor of which the member or member organization has knowledge or has been asked to perform.

In addition to adding paragraph (h), the Exchange proposes to use this opportunity to amend the title of Amex Rule 3. By way of background, Amex Rule 3 ("Excessive Dealings") contains various prohibitions impacting members and member organizations. For example, among other prohibitions, Amex Rule 3 forbids a member or member organization from: (i) Effecting trades for an account in which the member or member organization has a direct or indirect interest where such trades are excessive in view of that member or member organization's financial resources or in view of the market for the security; (ii) circulating rumors of a sensational character that might affect market conditions; (iii) improperly using or disclosing confidential information entrusted to the member or member organization by customers; and (iv) in the case of a regular or options principal member, effecting a transaction with an associate member or non-member on the Floor of the Exchange unless permitted by rule. In light of the unrelated prohibitions of the rule and the proposed addition of paragraph (h), the Exchange proposes to change the title of Amex Rule 3 from "Excessive Dealings" to "General Prohibitions and Duty to Report."

###### 2. Statutory Basis

The Amex 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)(5) of the Act<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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The proposed rule change will impose no burden on competition.

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

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

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

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

*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

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Amex-2003-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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. Amex-2003-101 and should be submitted by January 27, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48996; File No. SR-CBOE-2003-49]**

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Time Periods Within the Membership Process**

December 29, 2003.

On October 21, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("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 that would extend the time periods (i) after which an individual's inactive nominee status will be terminated and (ii) during which a former individual member may reapply for membership through the renewal/change of status application process. The **Federal Register** published the proposed rule change for comment on November 24, 2003.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that CBOE's rules be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change should increase the flexibility of the Exchange's membership process without compromising its standards. In addition, the Commission believes that the proposed rule change should

<sup>6</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> Securities Exchange Act Release No. 48797 (November 17, 2003), 68 FR 65975.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

prevent former members from trying to obtain the lower renewal applicant fee without following through on their applications or membership approvals on a timely basis.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-CBOE-2003-49) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-49004; File No. SR-CHX-2002-09]**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated To Amend Its Minor Rule Violation Plan**

December 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 11, 2002, the Chicago Stock Exchange, Incorporated ("CHX" 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 CHX amended the proposed rule change on December 22, 2003,<sup>3</sup> and again on December 23, 2003.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</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 December 17, 2003 letter from Ellen J. Neely, Senior Vice President ("SVP") and General Counsel ("GC"), CHX, to Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original filing.

<sup>4</sup> See December 22, 2003 letter from Ellen J. Neely, SVP and GC, CHX, to Joseph P. Morra, Special Counsel, Division, Commission, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1.