certain but is set to expire upon completion of the associated work project. In any event, KeySpan states that with respect to each of the KSI Nonutilities, none of the Guarantees, including any associated warranty period, are expected to terminate later than the dates set forth below:

Delta KeySpan, LLC: February 28, 2007
Granite State Plumbing & Heating, LLC: September 30, 2006
Northern Peabody, LLC: February 28, 2006

KeySpan also requests that the Commission reserve jurisdiction over the maintenance, for an interim period of time, of certain existing Guarantees and other credit support mechanisms, previously issued under the Financing Order and directly related to the proposed divestiture of the following additional KSI subsidiaries: WDF Inc. (''WDF''), and its subsidiaries, Binsky & Snyder, LLC (''Binsky'') and its subsidiaries and Binsky and Snyder Service, LLC (''Binsky Service'').[3]

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27998 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[3] KeySpan states that WDF, and its subsidiaries provide mechanical contracting services, which are primarily the design, construction, alteration, maintenance and repair of plumbing and HVAC, systems including related piping installation and welding, to large scale commercial, institutional and industrial customers in the New York area. KeySpan states that Binsky and its subsidiaries are specialty mechanical contractors which install heating, ventilating and air conditioning systems, which use electricity or gas, for commercial and industrial customers located primarily in New Jersey. KeySpan states that engaged in installing HVAC systems for commercial and industrial customers located primarily in New Jersey.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50866; File No. SR–Amex–2003–90]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to the Amendment of Exchange Rule 153 and Amendment No. 1 Thereto

December 16, 2004.

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 October 9, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II below, which Items have been prepared by the Exchange. On December 15, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] 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 its Rule 153 relating to the creation of an electronic audit trail. The text of the proposal rule change is set forth below. New text is in italics; deletions are in brackets.

* * * * *

Record of Orders

Rule 153. (a) Every member or member organization shall maintain a record of every order and every modification and cancellation of such order transmitted to the Floor of the Exchange, which record shall include the name, amount and price of the security and the time when such order, modification or cancellation was so transmitted.

(b) Every member or member organization shall maintain a record of every order and every modification and cancellation of such order received by such member or member organization on the Floor of the Exchange. Such record shall include the name, amount and price of the security and the time when such order, modification or cancellation was received. With respect to orders that are eligible for input into the Exchange's electronic order processing facilities, members and member organizations shall comply with their record keeping obligations under this Rule by inputting immediately upon receipt eligible orders, modifications and cancellations that are not already systematized into the Exchange's electronic order processing facilities and retaining the record of such orders provided to them by the Exchange for this purpose.

(c) Rescinded.

(d) Every member or member organization shall preserve for at least three years a record of every commitment or obligation to trade issued from the Floor and cancellation thereof, which record shall include the name, amount, and price of the security, the destination market center, and the time when such commitment was issued or cancelled.

(e) Every member or member organization shall maintain for at least three years a record of every order and every modification and cancellation of such order entered into the After-Hours Trading Facility (as Rule 1300 (After-Hours Trading: Applicability and Definitions) defines that term), which record shall include the name and amount of the security, the terms of the order, the time when it was so entered, and the time at which a report of execution was received. Every specialist shall maintain for at least three years reports of all executions and modification and cancellations of orders placed with the specialist through the After-Hours Trading Facility.

(f) Every member or member organization shall maintain a record for at least three years of every report of the execution of an order, commitment or obligation covered by paragraph (a), (b), (d) or (e) of this rule in addition to the record required by such paragraphs, which shall include the time of the receipt of such report.

(g) Before any order, commitment or obligation covered by paragraph (a), (b), (d) or (e) of this rule is executed, there shall be placed upon the order slip or other record the name or designation of the account for which such order, commitment or obligation is to be executed; no change in such account name or designation shall be made unless the change has been authorized by any member or officer in the member organization or authorized representative thereof who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.

(h) All records required to be maintained under this rule shall include such information and shall be preserved for such period as required by the Securities Exchange Act of 1934 and the rules thereunder relating to the requirements for the retention of orders.

(i) The term ''order'' as used in this Rule 153 includes any modification to or cancellation of such order.

* * * *Commentary*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange: (1) Applied the proposed rule change to index options that are exclusively traded on Amex, (2) changed a deadline in the proposed rule, (3) provided that orders for FLEX options and accommodation trades do not need to be systematized prior to representation, (4) provided for the use of the Exchange's ''Order Ticket'' enhancement to BARS as a second acceptable means for systematizing order, (5) clarified that the systemization prior to representation requirement applies to modifications and cancellations of orders, and (6) made minor corrections to the text of the rule and filing.

.01 Consolidated Options Audit Trail System Requirements—Non-System Orders—COATS Phase V—. The Exchange has undertaken with the other options exchanges to build a Consolidated Options Audit Trail System (COATS) which, when fully implemented, will provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions in listed options on the exchanges. Rule 153(b) currently requires members and member organizations to systematize ''immediately upon receipt'' orders ''that are eligible for input into the Exchange's electronic order processing facilities'' if such orders are not already systematized in the Exchange's electronic order processing facilities. Commencing on January 10, 2005, members and member organizations must systematize in BARS those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system prior to representing the order in the crowd. Members and member organizations also must record in BARS immediately upon receipt information pertaining to the execution of option orders.

The Exchange currently is developing an enhancement to its BARS system (called ''Order Ticket'') to facilitate order systemization by floor brokers and their clerks. This enhancement will be available by the end of the first quarter in 2005. The Order Ticket enhancement will allow members and member organizations to create electronic, time stamped, handwritten order tickets which will be saved by the Exchange as JPEG files. This enhancement, when implemented, will provide members and member organizations with a second acceptable means for complying with their COATS Phase V obligation to systematize orders prior to representation. The following information must be recorded in an Order Ticket if this enhancement is used to record an option order prior to representing it:

- *Buy/Sell*
- *Symbol*
- *Quantity*
- *Call/Put (calls are assumed unless ''P'' is written)*
- *Expiration*
- *Strike (fractions are assumed, e.g., ''22½'' should be written as ''22'')*
- *Price term (a limit order is assumed if a price is written, e.g., ''1.20'' means a 1.20 limit. Market orders are blank or represented by a dash)*
- *Contingencies (if applicable, e.g., NH, AON, FOK, IOC)*
- *Open/Close (close is assumed unless ''O'' is written)*
- *Customer/Firm/Member Market Maker/Non-Member Market Maker (customer is assumed unless ''F'', ''P'' or ''N'' is written.)*
- *Give up*

At the first mark on the Order Ticket, the Exchange's systems will automatically time stamp the ticket. When a broker or clerk finishes entering the information on the Order Ticket, he or she should hit a ''save'' button, and the Order Ticket will be assigned a specific sequence number. Once the ''save'' button is hit, the Order Ticket cannot be modified and is stored by the Exchange as a JPEG file. After the Order Ticket is saved, a broker or clerk must enter the order information into BARS as soon as possible, and the Order Ticket enhancement will transfer both the time stamp and the sequence number from the Order Ticket into BARS. Brokers and their clerks also must enter information relating to any modification or cancellation of an order into BARS prior to representing the revised order in the crowd. Brokers and their clerks must record in BARS immediately upon receipt information pertaining to the execution of option orders.

Any proprietary system approved by the Exchange on the Exchange's trading floor which receives orders will be considered an Exchange system for the purpose of systematizing those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system prior to representing the orders in the crowd. Any proprietary system approved by the Exchange shall have the functionality to comply with the requirements of COATS.

Members and member organizations do not need to systematize orders for accommodation trades (Rule 959) or FLEX options (Rules 900G through 909G) prior to representing the orders in the crowd. Information about these orders must be submitted to the Exchange on trade date no later than ten minutes after the close of trading. The Exchange will maintain information submitted to it pertaining to FLEX option and accommodation trades in the COATS format.

* * * * *

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.

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

1. Purpose

The Exchange has undertaken with the other options exchanges to build a Consolidated Options Audit Trail System (''COATS'') which, when fully implemented, will provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions in listed options on the exchanges. In connection with the implementation of COATS, the Exchange has modified its Booth Automated Routing System (''BARS'')[4] to accept option order types that are not otherwise eligible for input into the Exchange's order routing facilities (*e.g.,* complex orders) so that members and member organizations may systematize these orders, and the Exchange can integrate them into COATS. The Exchange also is in the process of developing a further enhancement to BARS called Order Ticket, which, when implemented, the Exchange believe will provide a second acceptable means for brokers and clerks to comply with their COATS Phase V obligation to systematize orders prior to representation.

Amex Rule 153(b) currently requires members and member organizations to systematize ''immediately upon receipt'' orders, and modifications or cancellations of orders, ''that are eligible for input into the Exchange's electronic order processing facilities'' if such orders are not already systematized in the Exchange's electronic order processing facilities.[5] To comply with the COATS standard for an accurate time sequencing of option orders, transactions and quotations, the Exchange is proposing that members and member organizations should systematize, prior to representation, either in BARS or in the Order Ticket

[4] *See* Exchange Act Release No. 45782 (April 18, 2002), 67 FR 20559 (April 25, 2002). BARS is an order routing system that allows brokers to manage and route orders for Amex traded securities. BARS also has a ''Market Look'' functionality that allows floor brokers to transmit information to booth clerks by means of time stamped JPEG files. The Exchange maintains these files.

[5] *See,* Exchange Act Release No. 34–45794 (April 22, 2002), 67 FR 20849 (April 26, 2002).

enhancement to BARS described below, those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system. The obligation to systematize orders prior to representation would commence on January 120, 2006.[6]

In the case of an order that is not systematized when it reaches the Exchange, a floor broker or a broker's clerk would systematize the order by (1) opening an Order Entry Template (''OET'') on the Exchange's BARS booth or hand held terminal, (2) entering the order terms into the OET, and (3) transmitting the order to the Amex Order File (''AOF''). The first keystroke in the OET would be captured by the Exchange's systems as the time of order receipt. Brokers and their clerks also would enter information relating to any modification, cancellation or execution of an order into BARS. The Exchange incorporates order and execution information in the AOF into the COATS file. In addition to entering a non-system order directly into BARS, the Amex has designed an enhancement to the BARS system (called ''Order Ticket'') to facilitate order systemization by floor brokers and their clerks. The Exchange anticipates that the Order Ticket enhancement will be available by the end of the first quarter of 2005. The Order Ticket enhancement will allow floor brokers and their clerks to create electronic, time stamped, handwritten order tickets which will be saved by the Exchange as JPEG files.

A broker or clerk who wants to use the BARS order Ticket enhancement would select a new ''Order Ticket'' button on the booth or hand held BARS terminal. This would create a blank image template on a screen that already exists on both the booth and hand held BARS terminals Brokers and their clerks would write on the screen with a stylus and, in this manner, record order terms just as if they were using a paper order ticket. A person using the Order Ticket enhancement would be required to record the following order terms on the ticket prior to representing the order in the trading crowd.

- Buy/Sell.
- Symbol.
- Quantity.
- Call/Put (calls would be assumed unless ''P'' is written).
- Expiration.
- Strike (fractions would be assumed *e.g.,* ''22½'' would be written as ''22'').
- Price term (a limit order would be assumed if a price were written, *e.g.,* ''1.20'' would mean a 1.20 limit. Market orders would be blank or represented by a dash).
- Contingencies (if applicable, *e.g.,* NH, AON, FOK, IOC, stock).
- Open/Close (close would be assumed unless ''O'' is written).
- Customer/Firm/Member Market Maker/Non-Member Market Maker (customer would be assumed unless ''F,'' ''P'' or ''N'' is written.).
- Give-up.

At the first mark on the template, the Order Ticket would be automatically time stamped by the Exchange's systems to the nearest second. When the broker or clerk finishes entering the information on the Order Ticket, he or she would hit a ''save'' button, and the Order Ticket would be assigned a specific sequence number. Once the ''save'' button is hit, the Order Ticket could not be modified and would be stored by the Exchange as a JPEG file.

Once the order is systematized in Order Ticket, the member or member organization that accepted the order must transfer the order terms into BARS so that a record of the order may be maintained in the Exchange's AOF system and any trade information submitted to comparison. In order to enter the order into BARS, a floor broker or clerk would open a BARS OET on a saved Order Ticket by selecting a new OET button within the image. This would cause both the time stamp and the sequence number from the Order Ticket to be automatically transferred from the Order Ticket to the OET. The transfer of the time stamp and sequence number would be done by the Exchange's systems and could not be modified by the broker or clerk. The broker or clerk then would enter the required order terms into the OET and transmit the order to AOF. The broker or clerk also would enter any information pertaining to a modification or cancellation of an order, or the execution of an order, firectly into BARS from where it would be transmitted to AOF. Information pertaining to order modifications and cancellations would have to be systemized prior to representation of the revised order in the crowd. As previously noted, order information in AOF is incorporated into the COATS file.

Any proprietary system approved by the Exchange on the Exchange's trading floor which receives orders will be considered an Exchange system for the purpose of systematizing those options orders and modifications and cancellations of such orders that are not already systematized in an Amex system prior to representing the orders in the crowd. Any proprietary system approved by the Exchange shall have the functionality to comply with the requirements of COATS.

Orders for FLEX options and accommodation trades would not have to be systematized prior to representation. Information about these orders would be submitted to the Exchange on trade date no later than 10 minutes after the close of trading. The Exchange will maintain information submitted to it pertaining to FLEX option and accommodation trades in the COATS format.

The Exchange believes that the systemization of options orders directly into BARS or through the Order Ticket enhancement to BARS (once it is available) both would provide acceptable means for brokers and clerks to comply with their COATS Phase V obligation to systematize orders prior to representation. The Order Ticket enhancement, moreover, would facilitate COATS Phase V compliance by persons who are unfamiliar with keyboard style data entry because Order Ticket uses handwriting on an electronic pad similar to the traditional paper order tickets. [7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [8] in general and furthers the objectives of Section 6(b)(5) [9] in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, 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, and, in general, to protect investors and the public interest; and is not designed to

[6] COATS Phase V obligates the options exchanges to ''incorporate into the audit trail all non-electronic orders such that the audit trail provides an accurate, time sequenced record of electronic and other orders, quotations and transactions * * * beginning with the receipt of an order * * * and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order, which audit trail shall be readily retrievable in the common computer format.''

[7] The Exchange recognizes the need for effective and proactive surveillance for activities such as trading ahead and frontrunning. It currently conducts surveillance for such activities and will incorporate a review of order systemization as part of such surveillance. The Exchange also intends to implement supplementary surveillance and examination programs related to the systemization of order requirement promptly after this requirement is instituted, and which will support, among other things, trading ahead and frontrunning surveillances.

[8] 15 U.S.C 78f(b).

[9] 15 U.S.C. 78f(b)(5).

permit unfair discrimination between customers, issuers, brokers and dealers.

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 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 (ii) as to which the self-regulatory organization 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2003–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2003–90. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2003–90 and should be submitted on or before January 12, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27969 Filed 12–21–04; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50871; File No. SR–Amex–2004–72]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Amend Its Minor Rule Violation Plan

December 16, 2004.

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 August 23, 2004, 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. On November 23, 2004, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Amex proposes to amend Exchange Rule 590, its Minor Rule Violation Fine Plan (''Plan''). The text of the proposed rule change is available at Amex's Office of the Secretary and at the Commission's Public Reference Room.

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, as amended, and discussed any comments it received. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has had the Plan since 1976 which provides a simplified procedure for the resolution of minor rule violations. Codified in Amex Rule 590, the Plan has three distinct parts: Part 1 (''General Rule Violations'') covers more substantive matters that, nonetheless, are deemed ''minor'' by Amex; Part 2 (''Floor Decorum'') covers floor decorum and operational matters; and Part 3 (''Reporting Violations'') covers the late submission of routine reports.

Amex is proposing to amend Part 1 of Amex Rule 590 to bring additional rules within its coverage. Amex believes that inclusion of such matters within Part 1 of Amex Rule 590 would provide a fair means of prompt resolution of minor rule violations that do not rise to the level of a formal enforcement action. Specifically, Amex is proposing to add the following violations to Part 1 of Amex Rule 590:

(i) Failure to comply with trade reporting requirements for options (Amex Rule 992 requires the member initiating the options transaction to report, or ensure the transaction is reported, within 90 seconds of the

[3] Amendment No. 1 replaced the original proposed rule change in its entirety.