

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52592; File No. SR-Amex-2004-76]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Contingency Trading Procedures

October 12, 2005.

#### I. Introduction

On September 10, 2004, the American Stock Exchange LLC (“Amex” 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> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt Amex Rule 119A regarding contingency trading procedures. On August 26, 2005, the Exchange submitted Amendment No. 1 to the proposal.<sup>3</sup> On August 29, 2005, the Exchange submitted Amendment No. 2 to the proposal.<sup>4</sup> The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on September 7, 2005.<sup>5</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change, as amended.

#### II. Description of Proposal

As set forth in the Notice, the Amex proposes to adopt a new Rule 119A, setting forth the Exchange’s contingency trading with respect to the use of the Exchange’s “Alternative Trading Facility” (“ATF”), which is a remote facility established by the Exchange for

trading securities admitted to dealings in the event that the Exchange’s primary trading facility at 86 Trinity Place is wholly or partially unusable.

Under proposed Amex Rule 119A(b) the provisions of the Constitution and Rules of the Exchange are applicable to trading conducted on the ATF, except to the extent that the provisions of Amex Rule 119A govern, or unless the context otherwise requires. Paragraph (c) of proposed Amex Rule 119A provides that the Exchange’s Executive Vice President for Market Operations and Trading Floor Systems or his or her designee(s) shall have authority to designate the individuals who will be allowed to conduct a securities business on the ATF from among those members, member organizations, and persons associated with those members and member organizations who are entitled to trade and support trading at the Exchange’s facility at 86 Trinity Place. Not all persons who generally conduct business at the Exchange’s regular facility will be able to use the ATF due to occupancy restrictions at the facility. One or more individuals from each broker and specialist unit will be allowed to conduct business on the ATF. Registered Option Traders (“ROTs”) will be allowed to conduct business on the ATF to the extent that there is space in the ATF to accommodate them based upon their volume of trading. Paragraph (d) to proposed Amex Rule 119A provides that if a ROT is not allowed to trade on the ATF, the ROT may initiate opening trades for his or her market maker account from off the ATF without reference to in-person requirements or the requirement that off-floor orders be effected only for hedging, reducing risk, rebalancing or liquidating positions.

The Exchange states that, although it has installed tethered telephones at the ATF, it has not replicated its wireless telephone system at this facility. As a result, the Amex is proposing to allow members to use personal cellular telephones to conduct business on the ATF subject to the same conditions that were applicable to the use of personal cellular telephones on the Amex following September 11, 2001. The conditions applicable to the use of personal cellular telephones on the ATF are set forth in paragraph (e) to the proposed rule. Paragraph (f) provides that Exchange Officials may substitute for Senior Floor Officials without reference to their seniority in the event that a Floor Official’s ruling is appealed

to a three Senior Floor Official panel and there is an insufficient number of available Senior Floor Officials to consider the appeal.<sup>6</sup>

#### III. Discussion

After careful consideration, the Commission finds that the Amex’s proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities.<sup>9</sup>

The Commission believes that the Amex’s proposed rule change, as amended, is an important element of ongoing contingency planning and reasonably designed to permit trading in the event that the Exchange’s primary facilities are not available. As proposed, the Commission believes that the ATF is reasonably designed to provide a venue sufficient to accommodate a minimum threshold of Amex members and personnel to support continued operations of the Exchange on a contingency basis. The Commission further believes that the provisions of proposed Amex Rule 119A are reasonably designed to permit the fair and orderly trading of Amex-listed securities on the ATF.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-2004-76), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>6</sup> The Exchange recently amended Amex Rule 22 to establish a three-level review process in which Floor Official decisions, as needed, may be appealed to a three Senior Floor Official Panel. See Securities Exchange Act Release No. 52527 (September 29, 2005), 70 FR 58246 (October 5, 2005) (SR-Amex-2005-052).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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> In Amendment No. 1, the Exchange substantially revised the proposed rule text and corresponding description of the proposal in its Form 19b-4. Amendment No. 1 replaced Amex’s original filing in its entirety.

<sup>4</sup> In Amendment No. 2, the Exchange made minor corrections to the rule text.

<sup>5</sup> See Securities Exchange Act Release No. 52360 (August 30, 2005), 70 FR 53260 (“Notice”).