

SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Rules 26, 29, 171, and 950 To Revise Specialist Capital Requirements and the Method for Computing Specialist Capital Requirements and To Create an Early Warning Level With Respect to Specialist Capital

March 7, 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 December 10, 2002, 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. 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 Amex rules 26, 29, 171, and 950 to (1) revise specialist capital requirements and the method for computing specialist capital requirements, and (2) to create an early warning level with respect to specialist capital. The text of the proposed rule change is below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

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Performance Committee

Rule 26. (a) No change.

(b) The Performance Committee shall review, and approve, disapprove or conditionally approve, mergers and acquisitions of specialist units, transfers of one or more specialist registrations, specialist joint accounts, and changes in control or composition of specialist units. The Performance Committee shall approve a proposed transaction involving a specialist unit unless it determines that a countervailing institutional interest indicates that the transaction should be disapproved or conditionally approved. In determining whether there is a countervailing institutional interest, the Performance

Committee shall consider the maintenance or enhancement of the quality of the Exchange's market, taking into account the criteria that the Allocations Committee may consider in making an initial allocation determination (Rule 27(b)) and other considerations as may be relevant in the particular circumstances.

The Performance Committee shall evaluate specialists, individually and/or collectively as units, to determine whether they have fulfilled performance standards relating to, among other things: (1) Quality of markets, (2) competition with other markets, (3) observance of ethical standards, and (4) administrative factors. The Performance Committee may consider any relevant information, including but not limited to the results of the Specialist Floor Broker Questionnaire, trading data, a member's regulatory history, order flow statistics, and such other factors and data as may be pertinent in the circumstances. *The Performance Committee also may review specialists, individually and/or collectively as units, with respect to capital requirements and the "early warning level" set forth in Commentary .06 to rule 171.* The Performance Committee may take one or more of the following actions if it finds that a specialist or unit has failed to properly perform as a specialist: (1) Send admonitory letters, (2) refer matters to the Minor Floor Violation Disciplinary Committee for possible action pursuant to Exchange rule 590, (3) refer matters to the Exchange's Enforcement Department for investigation and possible disciplinary proceedings, (4) counsel specialists on how to improve their performance, (5) require specialists to adopt a performance improvement plan, (6) reorganize specialist units, (7) require the reallocation of securities, (8) suspend a specialist's or unit's registration as a specialist for a specific period of time, or (9) prohibit a specialist or unit from receiving allocations in a particular situation or for a specified period of time. In appropriate circumstances, the Performance Committee may confine a prohibition on new allocations to one of the three classes of securities traded on the Exchange (*i.e.*, equities, Exchange Traded Funds or options), or otherwise target a remedial action to a particular class of security traded by a specialist or unit.

(c) and (d) No change.

(e) The Performance Committee may meet with one or more specialists, specialist units, registered traders or brokers that may have failed to meet minimum performance standards,

capital requirements, or the "early warning level" set forth in Commentary .06 to rule 171. In such an event, the member or members shall be notified in writing of the grounds to be considered by the Performance Committee and afforded an opportunity to make a presentation of relevant information in rebuttal. Such member or members shall be given access to all written material to be reviewed by the Performance Committee, and all persons appearing before the Performance Committee may be represented by counsel. However, formal rules of evidence shall not apply in Performance Committee meetings. A failure to meet minimum performance standards, *capital requirements, or early warning level* may form the basis for Performance Committee remedial action against one or more specialists, specialist units, registered traders or brokers. Any member or member organization affected by a decision of the Performance Committee shall be informed in writing of the decision, which decision shall include the findings, conclusions, any remedial action to be taken (hereinafter "written notification"). (f) through end. No Change.

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Market Quality Committee

Rule 29. (a) No change.

(b) The Market Quality Committee shall evaluate the performance of specialists registered in securities admitted to dealings on an unlisted basis ("UTP Specialists") with respect to, among other things: (1) Quality of markets, (2) competition with other market centers, (3) administrative matters, and (4) willingness to promote the Exchange as a marketplace. The Market Quality Committee may consider any relevant information, including but not limited to trading data, order flow statistics, market quality statistics, and such other factors and data pertaining to both the Amex and other market centers as may be relevant in the circumstances. *The Market Quality Committee also may review specialists, individually and/or collectively as units, with respect to capital requirements and the "early warning level" set forth in Commentary .06 to rule 171.* The Market Quality Committee may take one or more of the following actions if it finds that the performance of the UTP Specialist is inadequate relative to one or more of the above factors: (1) Send advisory letters, (2) counsel UTP Specialists on how to improve their market quality, (3) require UTP Specialists to adopt a performance improvement plan, (4) require the reallocation of securities, (5) suspend a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.