

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47779; File No. SR-Amex-2003-23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Allocation and Performance Evaluation Procedures for Securities Admitted to Dealings on an Unlisted Trading Privileges Basis

May 1, 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 2, 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, 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 Exchange proposes to extend for six-months its pilot specialist allocation and performance evaluation rules for securities admitted to dealings on an unlisted trading privileges ("UTP") basis to permit these rules to remain in effect while the Commission considers permanent approval. The texts of the pilot rules are available at the Office of the Secretary, the principal office of the Amex, and at the Commission.

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 the 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its specialist allocation and performance evaluation rules for securities admitted to dealings on a UTP basis to permit the Commission to consider the permanent approval of these rules. The Commission approved on a pilot basis, through two independent approval orders, the Exchange's specialist allocation and performance evaluation procedures with respect to securities admitted to trading pursuant to UTP ("Pilots").³ Amex Rule 28, "Allocation of Securities Admitted to Dealings on an Unlisted Trading Privileges ("UTP") Basis," details the Exchange's specialist allocation rules for UTP trading and Amex Rule 29, "Market Quality Committee" details the Exchange's specialist performance evaluation rules for UTP trading. The proposed rule change does not alter the operation of either of the Pilots in any way.⁴ This filing extends the effective dates of both Amex Rule 28 and Amex Rule 29 until October 5, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁵ in general, and the provisions of section 6(b)(5) of the Act,⁶ in particular, which requires, among other things, that the rules of an exchange be 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, and, in general, to protect investors and the public interest. The Exchange also believes that the continued trading of securities on a UTP basis will provide investors with increased flexibility in satisfying their investment needs by providing additional choice and increased competition in markets to effect transactions in the securities subject to unlisted trading.

³ For a description of the Pilots, see Securities Exchange Act Release Nos. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002), and 46750 (October 30, 2002), 67 FR 67880 (November 7, 2002).

⁴ Telephone conference between Bill Floyd-Jones, Associate General Counsel, Amex, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (April 23, 2003). The Exchange's filing contained a detailed description of the Pilots. That description has not been included in this notice because it is duplicative of the descriptions contained in the original approval orders for the Pilots.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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

The proposed rule change will impose no burden on competition. The proposed rule change, in fact, will tend to enhance competition by providing investors with additional choice and increased competition in markets to effect transactions in securities.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or the Commission waives such prior notice. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁹

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. Waiving the pre-filing notice and accelerating the operative date will permit the continuous operation of Amex's specialist allocation and performance evaluation rules with respect to the trading of securities pursuant to UTP. Moreover, during the

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.