

proprietary capacity; ordered Feeley to cease and desist from committing or causing any violations or any future violations of the antifraud provisions of the Securities Act and the Exchange Act; ordered Feeley to cease and desist from aiding and abetting and causing any violations or any future violations of the antifraud provisions or specified reporting and recordkeeping provisions of the Advisers Act; ordered FWAM and Feeley jointly and severally to disgorge \$95,000 plus prejudgment interest; and ordered FWAM and Feeley to pay civil money penalties of \$150,000 and \$15,000 respectively.

Among the issues likely to be argued are:

1. Whether respondents committed the alleged violations; and
2. If respondents committed violations, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, June 4, 2003 will be: post-argument Discussion.

The subject matter of the Closed Meeting scheduled for Thursday, June 5, 2003 will be: institution of administrative proceedings of an enforcement nature; and institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: May 29, 2003.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47914; File No. SR-AMEX-2002-112]

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

May 23, 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

19, 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 Amex. On May 1, 2003, the Amex amended the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex proposes to revise its performance evaluation and allocations procedures. Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].⁴

* * * * *

Performance Committee

Rule 26. (a) The Committee on Floor Member Performance (the "Performance Committee") shall consist of *twelve* [16] persons comprised as follows: *three* [four] representatives of upstairs member firms and *nine* [twelve] Floor members divided as equally as possible among specialists, registered traders and brokers *provided, however, that in situations where specialist relations with listed companies or sponsors of Exchange Traded Funds ("ETFs") are in issue a representative of issuers or ETF sponsors as applicable shall be substituted for one of the nine Floor members.* The Performance Committee shall be drawn from a roster of not less than 32 persons representing *issuers and ETF sponsors*, upstairs member firms, specialists, registered traders and brokers. The minimum quorum for the transaction of business by the Performance Committee shall be *seven* [nine] persons including at least one representative of an upstairs member firm. The Performance Committee shall be chaired by a Floor Governor who may not vote except to make or break a tie. In the event that no Floor Governor is able to chair the Committee, a Senior Floor Official may chair the Committee.

³ See letter from William Floyd Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 30, 2003 ("Amendment No. 1"). In Amendment No. 1 the Exchange submitted a new Form 19b-4 which replaced the original filing in its entirety.

⁴ The Exchange requested that the Commission correct a typographical error in Amex rule 26(e) and Amex rule 29(d) of the proposed rule language. Telephone discussion between William Floyd Jones, Assistant General Counsel, Amex, Christopher B. Stone, Special Counsel, and Mia C. Zur, Attorney, Division, Commission (January 30, 2003).

The Performance Committee may delegate any or all of its responsibilities to one or more subcommittees consisting of *four* [six] persons including at least one representative of an upstairs member firm, provided, however, that a subcommittee only may take the following actions: (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 full Performance Committee with or without a recommendation, (4) prohibit registered option traders from effecting opening transactions for specific periods of time for failing to meet zone requirements, or (5) counsel members on how to improve their performance. The minimum quorum for the transaction of business by a subcommittee shall be *three* [four] persons including one representative of an upstairs member firm.

(b) through (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. 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 *deliver to the Amex staff coordinator for the Performance Committee copies of all materials that they will provide to the Performance Committee and the names of any persons that they intend to present to the Performance Committee at least three business days prior to the meeting. Such member or members, likewise, shall be given access to all written material to be provided by the Amex staff to [reviewed by] the Performance Committee and the names of all persons that the staff will present to the Committee at least three business days prior to the meeting. [, and a] 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.