

certain investors; (ii) the New Common Stock has been listed on the New York Stock Exchange, Inc. ("NYSE") since March 19, 2002; and (iii) the Issuer sought to simplify its operations, and determined to maintain listing of the New Common Stock only on the NYSE. The Issuer notes that the New Common Stock is not listed on the BSE and only trades on the Exchange on an unlisted trading privileges basis.

The Issuer stated in its application that it has met the requirements of the BSE rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and from registration under Section 12(b) of the Act<sup>3</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before March 14, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47374; File No. SR-Amex-2002-102]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC to Create a New Percentage Order Type to be Called "Immediate Execution or Cancel Election"

February 19, 2003.

#### I. Introduction

On December 10, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities

and Exchange Commission ("SEC" or "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 amend its Rule 131 to create a new percentage order type to be called Immediate Execution or Cancel Election. The proposed rule change was published for public comment in the **Federal Register** on January 17, 2003.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Currently, Amex Rule 131 provides for three types of percentage orders: straight limit, last sale, and "buy minus/sell plus." The Exchange believes that the application of the election provisions does not meet the interests of some investors placing percentage orders, particularly last sale percentage orders. The Exchange believes that investors rely on last sale percentage orders as a way to trade along with the trend of the market without initiating price changes or otherwise influencing the equilibrium or buying and selling interest. However, executions may not always be able to be effected, as the market trend may continue to move away from the price at which the order may be executed. In addition, elected portions of the last sale percentage order may lag behind movement of the market, which defeats the investor's purpose in entering the order.

In response, the Exchange proposes to amend Amex Rule 131(k) to adopt a percentage order type called Immediate Execution or Cancel Election. Under the terms of the proposal, the elected portion of a percentage order marked Immediate Execution or Cancel Election would be required to be executed immediately, in whole or in part, at the price of the electing transaction, or better. If the elected portion cannot be executed at that price or better, the election would be deemed canceled, and the unexecuted elected portion would revert back to a percentage order, subject to subsequent election or conversion.

For example, where an Immediate Execution or Cancel Election buy percentage order for 1,000 shares at 30.50 is placed with the specialist and the next transaction consists of 500 shares at 30.25, the specialist would elect 500 shares and must immediately execute the order at the price of the

electing transaction, 30.25, or better. If there is liquidity sufficient to execute only 300 shares at the price of the electing transaction, 30.25, or better, the specialist would execute 300 shares at that price, the election of the remaining 200 shares would be canceled, and the 200 shares would revert back to an unelected percentage order. If, instead, there is no further market interest to sell at 30.25, and the market moves away from the price of the electing transaction to, for instance, 30.30, the entire election would be canceled,<sup>4</sup> and the unexecuted elected portion would revert back to a percentage order.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's procedures be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>7</sup>

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market by providing additional flexibility to investors entering percentage orders. Specifically, the proposed Immediate Execution or Cancel Election percentage order should allow investors to achieve their investment goals while continuing to limit the specialist's discretion in representing such orders. The Commission believes that requiring the specialist to treat an election as canceled, unless the elected portion can be executed immediately at the price of the electing transaction or better, should ensure that the investor will not be trading ahead of, nor lagging behind, the market when there is insufficient interest to execute the elected portion of

<sup>4</sup> The specialist would not execute the order at 30.30, even though such an execution is within the maximum limit of the percentage order (30.50). In this regard, an Immediate Execution or Cancel Election percentage order is treated similar to a last sale percentage order. Telephone conversation between David Fisch, Managing Director, Amex, and Sapna Patel, Attorney, Division of Market Regulation, Commission, on January 10, 2003.

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

<sup>6</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 47177 (January 13, 2003), 68 FR 2592.

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

<sup>9</sup> 15 U.S.C. 78(g).

<sup>10</sup> 17 CFR 200.30-3(a)(1).