

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:**

Paper and computer storage media.

**RETRIEVABILITY:**

By name and other unique identifier.

**SAFEGUARDS:**

Printed records and computers containing information within this system of records are maintained in a building with controlled access. To gain access to the building and access to controlled areas within the building, individuals must have authorized badges and/or card keys. Computer systems are protected with an installed security software package, the use of computer log-on IDs, and operating system controls.

**RETENTION AND DISPOSAL:**

PS Forms 8105-B will be destroyed either by shredding, burning, or other acceptable method of destruction five (5) years from the end of the accounting period in which they were created. Related automated information will be retained for the same period and purged from the system quarterly after the date of creation.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief Financial Officer, Finance, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260-5000.

**NOTIFICATION PROCEDURE:**

While the Privacy Act provides for the release of certain information, the portion of the Bank Secrecy Act dealing with suspicious activity states a financial institution (in this case the Postal Service) may not notify any person involved in the suspicious transaction that the transaction has been reported (31 U.S.C. 5318(g)(2)). Therefore, it would be contrary to the statutory mandates concerning collection of this information to provide notification thereof. It is the Postal Service's understanding that the "non-notification" clause in the Bank Secrecy Act supercedes the provision for the release of information in the Privacy Act. Therefore, this system has been exempted from the notification, access, and amendment requirements of the Privacy Act by regulation set out as 39 CFR 266.9.

**RECORD ACCESS PROCEDURES:**

See Notification Procedure above.

**CONTESTING RECORD PROCEDURES:**

See Notification Procedures above.

**RECORD SOURCE CATEGORIES:**

Information resident in this system of records is provided through transaction analysis and by postal employees in accordance with the provisions of the Bank Secrecy Act.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

The Postal Service has established regulations at 39 CFR 266.9 that exempt information contained in this system of records from various provisions of the Privacy Act in order to conform to the prohibition in the Bank Secrecy Act, 31 U.S.C. 5318(g)(2), against notification of the individual that a suspicious transaction has been reported.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00-32961 Filed 12-26-00; 8:45 am]

**BILLING CODE 7710-12-P**

**SECURITIES AND EXCHANGE COMMISSION****Proposed Collection; Comment Request**

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Industry Guides, SEC File No. 270-69, OMB Control No. 3235-0069; Notice of Exempt Roll-Up Preliminary Communication, SEC File No. 270-396, OMB Control No. 3235-0452.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Industry Guides are used by registrants in certain specified industries as disclosure guidelines in preparing Securities Act of 1933 ("Securities Act") and Securities Exchange Act of 1934 ("Exchange Act") registration statements as well as other Exchange Act filings. The Commission estimates for administrative purposes only, that the total annual burden with respect to the Industry Guides is one hour. The Industry Guides do not directly impose any disclosure burden.

A Notice of Exempt Preliminary Roll-Up Communication ("Notice") is required to be filed by a person making

such a communication by Exchange Act Rules 14a-2(b)(4) and 14a-6(a). The Notice provides public information regarding the person's ownership interest and any potential conflicts of interest. The Notice takes approximately .25 hours per response and is filed by 4 respondents for a total of 1 annual burden hour.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 13, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-32943 Filed 12-26-00; 8:45 am]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43736; File No. SR-Amex-99-16]

**Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Rule 108, Priority and Parity at Openings**

December 18, 2000.

On April 28, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change 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> relating to Amex Rule 108, Priority and Parity at Openings. On July 13, 1999, the Amex filed an amendment to the

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

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

proposed rule change.<sup>3</sup> Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on February 28, 2000.<sup>4</sup> The Commission received one comment letter regarding the proposal.<sup>5</sup> This order approves the proposed rule change, as amended.

### I. Introduction and Background

The proposed rule change would amend Amex Rule 108, Priority and Parity at Openings, by adding Commentary .02 to modify procedures applicable to proprietary orders sent by market makers in other Intermarket Trading System ("ITS") participant markets to the Amex by means of the Common Message Switch ("CMS") and Amex Order File ("AOF") or through a floor broker before an ITS pre-opening notification or indication of an anticipated opening price range is issued by the Exchange specialist.

Presently, the Amex pre-opening procedures allow market makers on other ITS participant markets to enter orders into CMS and AOF or through a floor broker for their own account before an indication or ITS pre-opening notification is issued, and then to receive an execution in full at the opening price (or the re-opening price following a halt or suspension in trading).

### II. Description of the Proposal

Proposed Commentary .02 to Amex Rule 108, would set forth procedures that apply to an order for the account of market makers on another ITS participating market center entered on the Exchange before the Amex specialist issues an ITS pre-opening notification or an indication through the Consolidated Tape. Paragraph (a) would provide that the Amex specialist would not be required to execute such orders if they would add to the imbalance at the opening or re-opening, but the specialist could execute all or part of such orders in his or her discretion, and any portion not executed at the opening or re-opening would be canceled. Paragraph (b) would provide that, if such orders would offset the imbalance, the Amex specialist may take or supply

as principal 50 percent of the imbalance at the opening price, rounded up or down to avoid allocation of odd-lots. Where orders have been received from more than one market maker, the Amex specialist would allocate the remaining imbalance among them in proportion to the amount that each obligated itself to take or supply. For purposes of paragraph (b), multiple market makers, in the same security in the same market would be deemed to be a single market maker. Paragraph (c) would note that Paragraphs (a) and (b) of Commentary .02 would only apply if the Amex specialist issues an ITS pre-opening notification or indication through the Consolidated Tape. Paragraph (d) would provide that proprietary orders from market makers in other ITS participant markets shall be marked and identified as such.

### III. Summary of Comments

The Commission received one comment letter on the proposed rule change.<sup>6</sup> In general, the Commenter stated that the proposed rule change would place an unnecessary burden on competition, hinder, rather than facilitate, transactions in securities, create an obstacle to price discovery at the opening, and serve to restrict rather than to promote a free and open market.<sup>7</sup>

Specifically, the Commenter stated that under the Amex's current practice, the Amex specialist is able to allow the full supply and demand for the security to determine the opening price because all trading interests are aggregated at the opening, including proprietary orders of other market makers. However, the Commenter opined that allowing the Amex specialist to reject orders of regional specialists is contrary to the concept of a national market system because it singles out a particular form of trading interest for exclusion from the opening.<sup>8</sup>

In addition, the Commenter stated that the proposal, if approved, would allow Amex specialists, upon issuance of a pre-opening indication, to exclude proprietary trading interest if it increases an imbalance, even if such interest was entered before an indication was published. As a result, the proposal would hinder price discovery, and by discriminating against regional exchange specialists, might further fragment the National Market System ("NMS")<sup>9</sup>

The Commenter stated that the proposal would impose an unnecessary burden on regional specialists, who, believing that they have taken appropriate steps to minimize risk exposure in given issues prior to the opening by entering orders on the Amex for execution at the opening, would find it necessary to monitor the Amex market for the possibility of a pre-opening indication. The specialist would then have to cancel orders out of the Amex system and re-enter trading interest through ITS to ensure participation in the opening. The Commenter further opined creating additional differences between the pre-opening procedures on the Amex and the NYSE would be overly burdensome.<sup>10</sup>

The Commenter recommended that the Commission not approve the Amex's proposed rule change, in order to avoid unfair discrimination, obstacles to price discovery and transactions of regional specialists, and further fragmentation of the NMS.<sup>11</sup>

The Amex responded by stating that (1) the proposal would benefit investors; and (2) the proposed procedures have already been reviewed and approved by the Commission in the context of interest of market makers on other ITS participant markets that is sent to the Amex after an indication or pre-opening notification.<sup>12</sup>

In response to the Commenter's issues regarding price discovery, discrimination, and unnecessary burden on competition, the Amex stated that the proposed procedures are comparable to those already in effect at the Amex and other markets for pre-opening interest sent by ITS Participants after a pre-opening notification or indication has been sent by the Exchange.<sup>13</sup> The Amex stated that applying the proposed procedures to the orders of the market makers before, rather than after, an indication or pre-opening notification does not place any burden on transactions in securities that the Commission has not already reviewed and approved.<sup>14</sup> The Amex believes it is therefore reasonable and consistent with the Act to conform the procedures for handling orders that are received before a notification or indication to the procedures that would apply to interest

<sup>3</sup> See Letter from William Floyd-Jones, Assistant General Counsel, Amex, to Michael Walinskas, Associate Director, Division of Market Regulation ("Division"), Commission (July 8, 1999) ("Amendment No. 1"). Amendment No 1 replaces and supercedes the original filing.

<sup>4</sup> Securities Exchange Act Release No. 42441 (February 18, 2000), 65 FR 10571 (February 28, 2000) (SR-Amex-99-16).

<sup>5</sup> See Letter from Peter G. Armstrong, Vice President, San Francisco Equity Operations, Pacific Exchange, Inc. ("PCX") to Jonathan G. Katz, Secretary, Commission, (April 7, 2000).

<sup>6</sup> See note 5, *supra*.

<sup>7</sup> See note 5, *supra*, p. 1.

<sup>8</sup> See note 5, *supra*, p. 2.

<sup>9</sup> See note 5, *supra*, p. 2.

<sup>10</sup> See note 5, *supra*, p. 2.

<sup>11</sup> See note 5, *supra*, p. 3.

<sup>12</sup> See Letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Assistant Director, Division, Commission (July 28, 2000).

<sup>13</sup> *Id.* at p.1.

<sup>14</sup> See ITS Plan, Exhibit A, Paragraph (b)(i)(B).

received after a pre-opening notification or indication.<sup>15</sup>

In response to the issue of further fragmentation of the NMS, the Amex provided an illustration in which a riskless principal transaction by a market maker on other ITS participant markets may result in a double printing of trades and a misleading appearance of activity in a stock.<sup>16</sup> The Amex states that the practice, along with the generation of tape revenue for the regional exchange, which is used to subsidize cash payments for order flow arrangements, may lead to further fragmentation in the market. However, the Amex opined the proposal would reduce fragmentation and enhance price discovery at openings and re-openings because the proposal is designed to help provide more accurate pricing at the opening.<sup>17</sup>

Finally, the Amex noted that the proposal made no changes in the procedures for handling specific customer orders or net imbalances or agency interest.<sup>18</sup> If a specialist on a regional market is unable to execute the agency orders, he or she may send the orders via an ITS commitment to the Amex at no charge to the regional specialist and those orders will be treated as any other customer orders at the Amex. The Amex believes that the proposal will neither impede price discovery nor increase market fragmentation so long as the regional specialist continues to send orders that the regional specialist is either unable or unwilling to execute, to the Exchange via ITS.<sup>19</sup> The Amex also noted that the proposal would only affect the occasional regional specialist proprietary order.<sup>20</sup>

#### IV. Discussion

After careful review, the Commission finds that the proposal is consistent with the requirements of Section 6(b) of the Act in general,<sup>21</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with respect to facilitating transactions in securities, 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.<sup>23</sup>

The Commission also finds that the changes are consistent with Section 11A(a)(1)(D) of the Act,<sup>24</sup> in that the linking of markets for qualified securities through communication and data processing facilities should help to foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders.

In determining that the proposed procedures that apply to orders entered on the Exchange before the Amex specialist issues an ITS pre-opening notification or indication through the Consolidated Tape are reasonable and consistent with Section 6(b)(5)<sup>25</sup> and 11A(a)(1)(D)<sup>26</sup> of the Act, the Commission has considered carefully the Commenter's concerns that the proposed procedure place an unnecessary burden on competition, hinder transactions in securities, create obstacles to price discovery and restrict rather than promote a free and open market. The Commission is not persuaded by these arguments. The proposed procedures should reduce the imbalances of buy or sell orders at openings or re-openings, and decrease the market risk on the Amex specialist, thus helping to facilitate orderly openings and re-openings. In addition, the orders of market makers in other ITS participant markets entered before an indication or pre-opening notification has been sent will be treated in a manner comparable to the manner such orders would be handled pursuant to the ITS Plan if they were entered after an indication or pre-opening notification.

The Commission also has considered carefully the Commenter's concern of further market fragmentation because of discrimination against regional exchange specialists. The Commission believes that the proposed procedures will help to contribute to enhance execution of orders and foster cooperation and coordination with other ITS participant markets because the proposal is designed to promote accurate pricing at the opening; orders of market makers in other ITS participant markets would be executed in accordance with the current procedures if the Amex specialist does

not issue a notice or indication before the opening or re-opening. The proposal does not make any changes to the Amex's current procedures of handling specific customer orders or net imbalances of agency interest.

#### V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposal, as amended (SR-Amex-99-16), be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-32892 Filed 12-26-00; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43737; File No. SR-Amex-00-42]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to the Auto-Ex By-Pass Provisions

December 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 9, 2000, 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 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 American Stock Exchange LLC proposes to allow options orders to bypass Auto-Ex when the best bid or offer is represented by either a registered trader or a floor broker.

#### 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 Exchange included statements concerning the purpose of and basis for

<sup>15</sup> See note 12, *supra*, p. 1.

<sup>16</sup> See note 12, *supra*, pp. 2-3.

<sup>17</sup> See note 12, *supra*, p. 2.

<sup>18</sup> See note 12, *supra*, p. 2. These are two of the three types of orders that PCX sends to the Amex.

<sup>19</sup> See note 12, *supra*, p. 2.

<sup>20</sup> See note 12, *supra*, p. 2.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</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.