

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier thereof was possible.

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 (202) 942-7070.

Dated: September 21, 2001.

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44810; File No. SR-Amex-2001-73]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rule 220 Relating to Floor Broker Acceptance of Orders at the Specialist's Post

September 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on September 6, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "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 Exchange proposes to amend Exchange Rule 220 to allow floor brokers to accept orders over telephones at or near the specialist's post.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

#### Section 6. Floor Wires

Rule 220 Communications to and on the Floor

No member shall establish or maintain any telephonic or electronic communication between the Floor and

any other location, or between locations on the Floor, without the prior written approval of the Exchange.

#### Commentary

.01 With the approval of the Exchange, a member or member organization may establish and maintain a telephone line which permits a non-member located off the Floor to communicate with such member or member organization on the Floor. *Except as provided in Commentary .03 below, [T]he Exchange will not approve the use of a portable telephone or other portable communication device on the Floor which would permit direct voice communication between members and non-members.*

.02 No change.

.03 *With the approval of the Exchange, floor brokers may use wireless telephone devices to receive off-floor orders from any source (i.e., members, broker-dealers, non-broker-dealers, or public customers) at the specialist's post where the security is traded. The following requirements and conditions shall apply to the floor broker's use of telephone services at the specialist's post:*

(1) *Only those quotations that have been publicly disseminated pursuant to SEC Rule 11Ac1-1 may be provided over telephones at or near the specialist's post.*

(2) *Floor Brokers may only receive orders over the telephone lines at the specialist post or the wireless telephone device during outgoing telephone calls initiated by the floor brokers.*

(3) *Only those floor brokers properly qualified in accordance with applicable rules and regulations may accept orders from public customers pursuant to this Commentary.*

.04 [.03] No change.

.05 [.04] No change.

#### 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 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 Exchange 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

Exchange rules and policies currently prohibit floor brokers from taking orders from off-floor at the specialist's post and require off-floor orders to be received at the floor broker's booth. The Exchange believes that this prohibition, at times, impacts the fast and efficient routing and execution of orders at the Exchange. Therefore, the Exchange is now proposing to amend Exchange Rule 220 regarding communications to and on the floor to allow floor brokers to use telephones at or near the specialist's post or Exchange-provided wireless telephone devices to receive off-floor orders from any source (i.e., members, broker-dealers, non-broker-dealers or public customers). However, such orders would only be permitted to be received during outgoing conversations initiated by the floor broker. The Exchange notes that the wireless telephone devices currently in use by the Exchange would need to be reconfigured to allow outgoing phone calls to be made. Members and their employees would continue to be prohibited from using personal wireless voice communication devices on the trading floor.

In addition, the following requirements and conditions would apply to the floor brokers' use of telephone services at or near the specialist's post: (i) only those quotations that have been publicly disseminated pursuant to SEC Rule 11Ac1-1 may be provided over telephones at or near the specialist's post; (ii) floor brokers may only receive orders over the telephones during outgoing telephone calls that they have initiated; and (iii) only those floor brokers properly qualified in accordance with applicable rules and regulations may accept orders from public customers.<sup>3</sup> The Exchange's policy regarding the use of time clocks at the specialist post would also be amended to allow floor brokers receiving orders over the telephone at or near a specialist post to use the time clock to stamp such order.

The Exchange intends to police compliance with the conditions applicable to use of telephones by floor

<sup>3</sup> For example, floor brokers accepting orders from public customers are required to be qualified pursuant to Exchange Rule 341. Any floor broker accepting an order from a public customer is required to be Series 7 qualified and registered with the Exchange by a member organization approved to conduct non-member customer business.

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

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

brokers for the receipt of orders at the specialist's post through oversight and review of complaints from members at the trading posts as well as observations of floor officials and Exchange personnel.

The Exchange believes that the use of the telephones by floor brokers to receive off-floor orders would provide more efficient order routing and execution, increase the speed of execution, and satisfy member and non-member customers in an increasingly competitive environment.

#### (2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(5)<sup>5</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 persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act.<sup>6</sup> Under this Section, it is the Exchange's responsibility to prescribe standards for training, experience and competence for persons associated with Exchange members and member organizations. The Exchange believes that this proposed rule change will establish an additional mechanism for the administration of the education program, which will enable registered persons to satisfy their continuing education obligations.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

#### *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 Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4<sup>8</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-73 and should be submitted by October 16, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44811; File No SR-NYSE-2001-31]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rule 387 To Apply to Member or Member Organizations**

September 18, 2001.

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> notice is hereby given that on August 21, 2001, the New York Stock Exchange, Inc. ("NYSE" 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 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 proposed amendment to NYSE Rule 387 ("COD Orders") would clarify the Rule's application to all "member[s]" and "member organization[s]."

The text of the proposed rule change is available at the Office of the Secretary, the NYSE, 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 Exchange included statements concerning the purpose of and 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 Exchange 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, Proposed Rule Change*

##### (1) Purpose

Currently, NYSE Rule 387 enumerates the procedures for transactions

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</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.