

corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available.

**FILING DATES:** The application was filed on February 16, 2001, and amended on March 8, 2001.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609; Applicant, One Rockefeller Plaza, 14 West 49th Street, New York, New York 10020.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Kashtan, Senior Counsel, at (202) 942-0615, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application and a certification. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

**Applicant's Representations**

1. Harris is a New York corporation. On July 26, 1995, Harris elected to become regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940.

2. Harris proposes to qualify as a "regulated investment company" under section 851(a) of the Code pursuant to section 851(e) of the Code. Section 851(b) of the Code imposes certain portfolio diversification requirements on investment companies that seek to qualify as a regulated investment company. Section 851(e) of the Code provides an exemption from these diversification requirements if the investment company, among other things, obtains a certification from the SEC that the investment company is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available (collectively, "Development Corporations").

3. Harris has filed an application seeking a certification pursuant to section 851(e) of the Code for the fiscal year ended December 31, 2000. The application describes certain companies in Harris' portfolio during the fiscal year ended December 31, 2000, that Harris believes to be Development Corporations. Harris states that, in making this determination, it relied upon information provided by the portfolio companies to Harris and to others, including but not limited to, offering circulars, prospectuses, analyst reports, internal company memoranda, patent applications and similar documents. In addition, Harris generally is represented on the boards of directors of its portfolio companies through member or observer status, and also has direct access to senior management of the companies.

4. The following table shows the composition of the total assets of Harris as of each of the calendar quarters ended March 31, June 30, September 30, and December 31, 2000, as set forth in the application.

Assets (at value)	Mar. 31, 2000	June 30, 2000	Sept. 30, 2000	Dec. 31, 2000
Investments representing capital furnished to corporations believed to be Development Corporations .....	\$51,017,259	\$36,296,794	\$40,120,025	\$26,513,426
Other Investments, Cash and Cash Equivalents <sup>1</sup> .....	5,319,554	8,042,797	15,019,980	16,283,802
Other Assets .....	536,887	475,704	523,247	546,195
<b>Total Assets .....</b>	<b>56,873,700</b>	<b>44,815,295</b>	<b>55,663,252</b>	<b>43,343,423</b>

<sup>1</sup> In this category, the value of "Other Investments" was \$25,000 at the end of each calendar quarter of 2000.

As reflected in the table above, Development Companies comprised the following percentages of the total assets less cash and cash equivalents of Harris at the end of each calendar quarter of 2000: March 31, 98.9%; June 30, 98.6%; September 30, 95.1%; and December 31, 96.3. %.

**Certification**

On the basis of the information set forth in the application, it appears that Harris was principally engaged in the furnishing of capital to Development Corporations within the meaning of section 851(e) of the Code in the fiscal year ended December 31, 2000. It is therefore certified to the Secretary of the Treasury, or his delegate, pursuant to section 851(e) of the Code, that Harris was, for the twelve months ended December 31, 2000, principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or

products not previously generally available.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44048; File No. SR-Amex-01-08]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Restrictions on Specialist Affiliates**

March 7, 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 February 14, 2001, 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 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 Amex Rule 193 to make technical corrections and to provide an exemption to Amex Rules 186(a) and 950(i) to approved persons of Amex specialists that established, and obtain Exchange approval for, an information barrier

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

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

between them and the affiliated specialist. The text of the proposed rule change is set forth below. New text is in italics; deleted text is in brackets:

#### *Affiliated Persons of Specialists*

Rule 193. (a)–(b) No change.

(c) Notwithstanding the provisions of paragraph (a) of the Rule, an approved person or member organization which is affiliated with a specialist member organization shall not be subject to (i) Rule 170(e), (ii) Rule 175(a), (iii) *Rule 186(a)*, (iv) Rules 190(a) and (b) [and (iv)] (v) *Commentary to Rule 190*, (vi) *Commentary .01 to Rule 950(i)*, (vii) *950(k) and Commentary thereto*, and (viii) *950(n) insofar as it applies Rule 170(e)*, to options provided that it has established and obtained Exchange approval of procedures restricting the flow of material, non-public corporate or market information between itself and the specialist member organization, and any member, officer, or employee associated therewith.

(d)–(e) No change.

#### • • • *Commentary*

#### Guidelines for Exemptive Relief Under Rule 193 for Approved Persons or Member Organizations Affiliated With a Specialist Member Organization

(a) The Exchange Rules listed below impose certain restrictions on an approved person \* or member organization which is affiliated with a specialist unit (collectively referred to herein as an “affiliated upstairs firm”):

- Rule 170(e) provides that an affiliated upstairs firm may not purchase or sell any security in which the specialist is registered for any account in which such person or party has a direct or indirect interest.

- Rule 175 provides that an affiliated upstairs firm may not hold or grant any option in any stock in which the specialist is registered.

- *Rule 186(a) provides that no member in a specialist member organization or any officer, employee or approved person therein may be an officer or director of a corporation in whose securities the specialist is registered.*

- Rule 190(a) prohibits an affiliated upstairs firm from engaging in any business transaction with the issuer of a speciality stock and its insiders.

- Rule 190(b) prohibits an affiliated upstairs firm from accepting orders in speciality stock directly from the issuer, its insiders and certain designated institutions.

- Rule 190 Commentary prohibits an affiliated upstairs firm from “popularization” a stock in which a

specialist is registered, e.g., making recommendations and providing research coverage.

- *Rule 950(i) and its Commentary extend the prohibitions contained in Rule 186 to the trading of options contracts.*

- Rule 950(k) extends certain of the above prohibitions contained in Rule 190 and its Commentary to the trading of option contracts.

- *Rule 950(n) extends certain of the prohibitions contained in Rule 170 and its Commentary to the trading of options contracts.*

Exchange Rule 193 provides a means by which an affiliated upstairs firm may obtain an exemption from the restrictions discussed above. This exemption is only available to an affiliated upstairs firm which obtains prior Exchange approval for procedures restricting the flow of material nonpublic information between it and its affiliated specialist, i.e., a “Chinese Wall”. These guidelines set forth, at a minimum, the steps an affiliated upstairs firm must undertake to seek to qualify for exemptive relief. Any firm that does not obtain Exchange approval of its procedures in accordance with these guidelines will remain subject to the restrictions in the Rules set forth above.

\* An “approved person” is an individual or corporation, partnership or other entity which controls a member of member organization, or which is engaged in the securities business and is under common control with, or controlled by, a member or member organization or which is the owner of a membership held subject to a special transfer agreement. (The term “approved person” is defined in Article I, Section Footnote 3(g) of the Exchange Constitution and the term “control” is defined by Exchange Definitional Rule 13.)

(b)–(f) 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, Amex 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. 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

Currently, Exchange rules impose certain restrictions on an approved person<sup>3</sup> or a member organization that is affiliated with a specialist or specialist unit (collectively “specialist affiliates”). Amex Rule 193 provides specialist affiliates an exemption from various restrictions applicable to them, provided the specialist and its affiliates establish procedures to prevent the passage between them of corporate or market information that is material and non-public. The New York Stock Exchange (“NYSE”) has rules that restrict the activities of persons affiliated with NYSE specialists that are very similar to the Amex restrictions, and the NYSE also has an exemption to these rules: NYSE Rule 98. Both exemptions were adopted at the same time<sup>4</sup> and both were intended to facilitate the entry of full-service investment firms into the specialist business.

NYSE Rule 98 and Amex Rule 193 are identical in many respects. They differ, however, in that the NYSE rule does but the Amex rule does not provide an exemption to the general rule that prohibits a specialist affiliate from being an officer or director of a company that is the issuer of a security in which the affiliated specialist is registered.<sup>5</sup> Since investment banks frequently have personnel serving as directors of private and public companies, the absence of an exemption from Amex Rules 186(a) and 950(i) may be a disincentive to investment banks establishing or

<sup>3</sup> An “approved person” is an individual, corporation, partnership, or other entity which controls a member or member organization, or which is engaged in the securities business and is under common control with, or controlled by a member or member organization, or which is the owner of a membership held subject to a special transfer agreement. See Amex Constitution, Article I, Section 3(g). For the definition of “control,” see Amex Definitional Rule 13.

<sup>4</sup> See Securities Exchange Act Release No. 23768 (November 3, 1986), 51 FR 41183 (November 13, 1986) [approving SR-Amex-85-01 and SR-NYSE-85-25].

<sup>5</sup> NYSE Rule 460(b) provides that no member or his member organization or any other member, allied member, or approved person or officer or employee of the member organization shall be a director of a company if such member specializes in the stock of that company. Amex Rule 186(a) provides that no specialist or any member in his member organization, officer, employee, or approved person therein shall be an officer or director of a corporation which has a security admitted to trading on the Exchange in which security the specialist is registered. Amex Rule 950(i) provides that the provisions of Amex Rule 186 also apply to the trading of option contracts.

maintaining a specialist affiliate on the Exchange. Amex, accordingly, is proposing to conform its rules to those of the NYSE and provide an exemption to Rules 186(a) and 950(i) for specialist affiliates that establish Exchange-approved information barriers pursuant to Amex Rule 193.

Amex is also proposing technical corrections to Rule 193(c) to clarify the availability of the Rule 193 exemption with respect to Amex Rules 170 and 190 to the affiliates of options specialists.

## 2. Statutory Basis

Amex states that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by ensuring that there are no unnecessary disincentives to acting as a specialist on the Exchange.

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

Amex states that the proposed rule change will impose no burden on competition and will, in fact, tend to enhance competition by potentially eliminating a disincentive to acting as a specialist on the Exchange.

### 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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 Room. Copies of such filings will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-01-08 and should be submitted by April 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44049; File No. SR-Amex-01-13]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the eQPRIORITY Pilot Program for Six Months

March 7, 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 March 6, 2001, 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 from interested persons.

<sup>8</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.

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

The Exchange proposes to extend for an additional six months Commentary .03 to Amex Rule 126 to continue a pilot program for processing electronically transmitted orders for the common stock of business corporations admitted to dealings on the Exchange ("eQPRIORITY<sup>SM</sup>"). The text of the proposed rule change appears below. New text is in italics; deleted text is in brackets:

Rule 126, Commentary

\* \* \* \* \*

.03. Orders Delivered Electronically to the Specialist. At all times other than an opening or a reopening (Rule 108) or a block sold at a "clean-up" price (Rule 155), a round lot, regular way order for the common stock of a business corporation admitted to dealings on the Exchange that is sent to the specialist electronically and is executable according to its terms in whole or in part shall be handled in the following manner. Upon receipt of the electronic order by the specialist's order book, the specialist shall announce the order to the crowd, and the order shall establish priority with respect to all other bids and offers *except with respect to bids and offers that already had established priority before the electronic order was represented in the crowd*. Once the specialist has announced the order, members who have bids or offers incorporated in the Amex Published Quote ("APQ") shall not be permitted to withdraw or modify their interest except to provide price improvement (i.e., an execution between the APQ) to the incoming order. Following the announcement of the order, the specialist and members in the crowd shall have a brief opportunity to provide price improvement to the incoming order. In the event that the incoming order is price improved but not entirely filled at the improved price, the sale shall not remove all bids and offers, and the incoming order shall retain priority over other bids and offers up to the full size of the APQ that was displayed at the time of the announcement of the order less any interest that provided price improvement to the order. In the event that the incoming order is larger than the size displayed in the APQ, the order shall be executed according to these procedures and any unfilled balance of the order shall be handled according to the Exchange's customary auction market processes.

This Commentary .03 will expire *on September 12, 2001*. [six months from

<sup>6</sup> 15 U.S.C. 78f(b).

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