

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 Act⁶ in general and furthers the objectives of Section 6(b)(5)⁷ 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.⁸

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")¹ and Rule 19b-4² 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.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 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 ("eQPRIORITYSM"). 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

the date of SEC approval. The SEC approved this rule change on September 12, 2000.]

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

On September 12, 2000, the Commission approved the Exchange's eQPriority initiative on a six-month pilot basis.³ eQPriority is intended to encourage persons to route marketable electronic orders to the Exchange by assuring them that orders sent to the specialist electronically will be filled either (i) at the Amex Published Quote ("APQ") up to the displayed size at the time the order is announced, or (ii) at an improved price. Amex believes that the program provides orders for stocks sent to the floor electronically with the optimal combination of speed, certainty of execution, and price improvement opportunities. eQPriority applies only to orders for common stock admitted to dealings; it is not available for orders for options, Exchange Traded Funds, or other Amex-listed securities. It also does not apply to openings and reopenings or to block trades executed at a "clean-up" price pursuant to Amex Rule 155. The eQPriority pilot program is scheduled to expire on March 12, 2001.

eQPriority works in the following manner. Once the specialist announces the electronic order, members may not withdraw or modify bids and offers incorporated into the APQ on the opposite side of the market from the incoming order *except* to provide price improvement. When an eQPriority order is executed in part at an improved price, the remainder of the order is executed at the APQ up to the number of shares then available (*i.e.*, the size of the APQ at the time the order was announced, less any shares that provided price

improvement). The eQPriority order does not have to match with any other trading interest on the same side of the market. In the event that an eQPriority order is larger than the APQ at the time the order is announced, the order is filled up to the size of the APQ according to the eQPriority procedures, and the unexecuted balance is filled according to the Exchange's customary auction market processes.

The purpose of eQPriority is to provide incoming electronic orders with an execution at the displayed offer (or lower) in the case of an electronic buy order, or at the displayed bid (or higher) in the case of an electronic sell order. eQPriority is not intended to allow an incoming electronic order to obtain priority over orders that already have established priority in the market. The Exchange, therefore, is proposing a clarifying revision to the text of Commentary .03 to Amex Rule 126 to provide that an eQPriority order does not have priority over bids and offers that were announced prior to the time that the eQPriority order is represented. This clarification would apply only to situations where the market is quoted at the minimum price variation and is best illustrated by an example. Assume the market is quoted 20.00 to 20.01, 5000 × 5000, and the bid represents a limit order on the book. Further, assume that the specialist announces an eQPriority order to buy 1000, and that a broker in the crowd is willing to sell 1000 at 20. In this example, the limit order to buy on the book had established a bid of 20 prior to the representation of the eQPriority order. The booked limit order, consequently, would be filled by the 1000 shares sold by the broker at 20, and the eQPriority order would be filled at 20.01.

Amex is proposing to extend the eQPriority pilot program for another six months so that it can better assess the program.

2. Statutory Basis

Amex states that the proposed rule change is consistent with Section 6(b) of the Act⁴ in general and furthers the objectives of Section 6(b)(5)⁵ in particular in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; 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. Amex also states that the proposed rule change is not designed to

permit unfair discrimination between customers, issuers, brokers, and dealers, consistent with Section 6(b)(5).

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

Amex states that the proposed rule change will impose no 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

Amex has stated that, because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate) it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6)⁷ thereunder. Amex provided the Commission with written notice of its intent to file the proposed rule change, along with a description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.⁸ At any time within 60 days of the filing of the 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.

Amex requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of filing. Pursuant to Rule 19b-4(f)(6)(iii) under the Act,⁹ the Commission may designate a shorter time period by which a proposed rule change filed under Rule 19b-4(f)(6) may become operative, if such action is consistent with the protection of investors and the public interest. The Commission finds that waiving the 30-day pre-operative period is consistent with the protection of investors and the

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ The Commission deems the filing of SR-Amex-01-09, which was withdrawn and replaced by the present submission (SR-Amex-01-13), to fulfill the five-day notice requirement.

⁹ 17 CFR 240.19b-4(f)(6)(iii).

³ See Securities Exchange Act Release No. 43284 (September 12, 2000), 65 FR 57410 (September 22, 2000).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

public interest. The Commission believes that the existing eQPriority pilot provides beneficial services to investors. Acceleration of the operative date will allow the pilot to continue without interruption and ensure that those benefits do not lapse. Accordingly, the Commission waives the 30-day pre-operative period, and the proposed rule change has become operative immediately.¹⁰

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 filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-01-13 and should be submitted by April 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44044; File No. SR-NASD-00-04]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 5 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to its Corporate Financing Rule

March 6, 2001.

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 February 4, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 5³ to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The proposed rule change, incorporating Amendment Nos. 1, 2, and 3, was published for comment in the **Federal Register** on April 11, 2000.⁴ The Commission is publishing this notice to solicit comments on Amendment No. 5 from interested persons.

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

In response to comments on the original proposal, NASD Regulation is proposing additional amendments to Rules 2710 and 2720 of the NASD's Conduct Rules. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets. The text of the proposed rule change is marked to show additions and deletions from the NASD Corporate Financing Rule as it currently exists. The discussion section of this notice, however, focuses on the changes made in Amendment No. 5. For an explanation of the original filing, see the release cited in footnote 4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 4, filed December 11, 2000, amends the original filing and Amendment Nos. 1, 2, and 3 to respond to comments. Amendment No. 5 supersedes Amendment No. 4 in its entirety and makes certain technical corrections to the proposed rule change.

⁴ See Securities Exchange Act Release No. 42619 (April 4, 2000), 65 FR 19409.

2710. Corporate Financing Rule— Underwriting Terms and Arrangements

(a) Definitions

(1) Issuer

The issuer of the securities offered to the public, any selling security holders offering securities to the public, any affiliate of the issuer or selling security holder, and the officers or general partners, directors, employees and security holders thereof[;].

(2) Net Offering Proceeds

Offering proceeds less all expenses of issuance and distribution[;].

(3) Offering Proceeds

Public offering price of all securities offered to the public, not including securities subject to any overallocation option, securities to be received by the underwriter and related persons, or securities underlying other securities[;].

(4) *Participating Member(s)*

Any NASD member that is participating in a public offering, any associated person of the member, any members of their immediate family, and any affiliate of the member.

(5) Participation or Participating in a Public Offering

Participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the issuer related to the offering, but not the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to SEC Rule 13e-3[; and].

[[5]] (6) Underwriter and Related Persons

[Includes underwriters,] *Consists of* underwriter's counsel, financial consultants and advisors, finders, [members of the selling or distribution group,] *any participating member* [participating in the public offering], and any [and all] other persons [associated with or] related to *any participating member* [and members of the immediate family of any of the aforementioned persons].

(b) Filing Requirements

(1)–(3) No change.

(4) Requirement for Filing

(A) Unless filed by the issuer, the managing underwriter, or another

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).