

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [64 FR 55323, October 12, 1999].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: October 12, 1999.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Tuesday, October 13, 1999, following the open meeting, has been cancelled.

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 at (202) 942-7070.

Dated: October 12, 1999.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 99-27075 Filed 10-13-99; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 18, 1999.

An open meeting will be held on Tuesday, October 19, 1999, at 10:00 a.m. A closed meeting will be held on Tuesday, October 19, 1999, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the open meeting scheduled for Tuesday, October 18, 1999, at 10:00 a.m. will be:

The Commission will consider adopting amendments to the registration, proxy and tender offer rules relating to business combination transactions and security holder communications. If adopted, the amendments will permit increased communications with security holders, balance the treatment of cash and stock tender offers, and update, simplify and harmonize the rules and regulations governing business combination transactions. For further information, please contact Dennis O. Garris or James J. Moloney in the Office of Mergers and Acquisitions in the Division of Corporation Finance at (202) 942-2920.

The Commission will consider adopting amendments to the tender offer and registration rules relating to cross-border transactions. U.S. residents holding stock in foreign issuers are often excluded from tender offers and rights offers for the foreign issuers' securities because of conflicts between U.S. and foreign regulation of these offers. Many foreign companies have been unwilling to comply with U.S. securities law requirements that they view as burdensome and are hesitant to subject themselves to increased litigation risk. As a result, U.S. shareholders of foreign issuers are unable to benefit from any premium offered in a tender offer or business combination or are unable to purchase additional securities at a discount in a rights offering. These amendments are intended to facilitate the inclusion of U.S. holders of foreign securities in tender and exchange offers, business combinations and rights offerings. For further information, please contact David Sirignano at (202) 942-2870, or Dennis O. Garris or Laura B. Baldian in the Division of Corporation Finance at (202) 942-2920.

The subject matter of the closed meeting scheduled for Tuesday, October 19, 1999, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations 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 at (202) 942-7070.

Dated: October 12, 1999.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 99-27155 Filed 10-13-99; 3:48 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41985; File No. SR-Amex-99-36]

### Self-Regulatory Organizations; Notice of Filing of Proposed Change by the American Stock Exchange LLC Relating to Solicitation of Options Transactions

October 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 2, 1999, the American Stock Exchange LLC ("Amex" 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 Amex.<sup>2</sup> 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 Amex proposes to amend Amex Rule 950(d), Commentary .02 to provide that a member firm seeking to facilitate its own public customer's order or 400 contracts or more will be permitted to participate in the firm's proprietary account as the contra-side of that order to the extent of at least 25% of the order, provided that no public customer order has priority over the facilitation order. If a public customer order on the specialist's book or represented in the trading crowd has priority over the facilitation order, the member firm may participate to the extent of at least 25% of only those contracts remaining after the public customer's order has been filled. In addition, the Amex proposes to adopt Commentary .04 to Amex Rule 950(d), which will require members to share information about solicited, facilitated, and crossed orders with the trading crowd.

#### 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 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

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

<sup>2</sup> The proposal replaces an earlier proposal (File No. SR-Amex-98-19), which the Amex has withdrawn. See Securities Exchange Act Release No. 41864 (September 10, 1999).

in Item IV below. The 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*

(a) Purpose

The Amex proposes to amend Exchange Rule 950 to provide 25% participation right to member firms facilitating customer transactions of 400 or more equity option contracts.<sup>3</sup> Amex Rule 950(d), Commentary .02 provides for the execution of facilitation orders.<sup>4</sup> A member that engages in facilitation cross on behalf of its public customer must comply with the procedures set forth in Commentary .02.<sup>5</sup> Other market participants may compete only with the member firm order by accepting the bid or offer made on behalf of the public customer. Because other market participants may not compete with the public customer side of the order, use of its facilitation rule assures that the public customer's order is executed completely.

According to the Amex, member firms believe that when a member seeks to facilitate a large public customer options order with an order for the firm's proprietary account, the firm should be able to participate to some extent with its customer's order. Therefore, the Amex proposes to amend Amex Rule 950(d), Commentary .02 to provide that a member firm whose proprietary account is facilitating its own customer's options order of 400 contracts or more may participate as contra-party to the extent of at least 25% of the trade.<sup>6</sup> The member firm must follow the procedures set forth in Commentary .02 for the facilitation of a

public customer order to be eligible for the proposed participation guarantee.

Under the proposed rule, public customer orders on the specialist's book or represented in the crowd will have priority over the member firm's guaranteed participation; therefore, a member firm's minimum participation will be 25% of the number of contracts remaining after public customer orders with priority have been filled. For example, if there is a public customer order to buy 250 contracts on the specialist's book or represented in the trading crowd, the member firm facilitating its customer order to sell 1,000 contracts will have a guaranteed 25% participation only on the remaining 750 contracts. In addition, if the trading crowd betters the bid or offer, the member firm will be given a reasonable opportunity to determine whether the member firm wishes to participate and receive the minimum 25% of the trade at the crowd's bettered market.

The Exchange believes that providing a guaranteed 25% participation (subject to the limits described above) to member firms seeking to facilitate their own public customer orders will provide an incentive for member firms to bring large option orders to the floor of the Amex rather than to the floor of another options exchange or to the over-the-counter market. The Amex notes that the Chicago Board Options Exchange ("CBOE") has filed a similar proposal with the Commission,<sup>7</sup> and that other actual and potential options market competitors also have announced plans to provide similar participation guarantees to member firms.<sup>8</sup> Thus, the Amex believes that the proposed rule change is necessary for it to remain competitive.

The Exchange also proposes to adopt Amex Rule 950(d), Commentary .04 to prohibit the use of non-public information received during the facilitation and solicitation processes. The Amex notes that members generally solicit participation in large size orders and/or orders with more complex terms

and conditions, including orders involving both stock and options. The facilitation rule provides procedures that allow the customer's order to be completely executed and prohibits the trading floor from supplanting the customer.

Because the facilitation and solicitation rules are designed to promote the interaction of orders in an open-outcry auction, both rules require disclosure of information to the trading crowd to provide the crowd with an opportunity to participate in the transaction with the facilitating member of the solicited party. These rules impose order exposure requirements on floor brokers seeking to cross buy orders and sell orders and seek to reconcile these practices with the rules and practices of the auction market. The Amex believes that providing trading crowds with an opportunity to participate in transaction from which they had been excluded results in more competitive markets and executions for customers at the best available prices. In furtherance of the effort, the Exchange seeks to codify and expand its policy prohibiting either a member or a person associated with a member from using non-public information for the member's or associated person's benefit by trading in the underlying stock or in related instruments. Use of such non-public information by the member or associated person (regardless of whether that party ultimately completes the options transaction) is generally considered conduct inconsistent with just and equitable principles of trade.

Thus, the Amex proposes to adopt Amex Rule 950(d), Commentary .04, which states that it may be inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and condition of (1) an originating order and a solicited order, (2) an order being facilitated, or (3) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or any order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (1) all the terms of the order and any changes in the terms or condition of the order of which the member or associated person has knowledge are disclosed to the trading crowd, or (2) the trade can no longer reasonably be considered imminent in view of the passage of time

<sup>3</sup> For a multi-part or spread order, at least one leg of the order must be for 400 contracts or more.

<sup>4</sup> Facilitation orders are orders in which a member or member organization executes a crossing transaction with an order for a public customer. See also Amex Floor Members Circular #89-614 (facilitation occurs when a member representing an order in options agrees to take the contra-side of the transaction or has another customer order which he can use to fill the terms of the order.)

<sup>5</sup> Commentary .02 permits a member to cross an order for a public customer of a member and a facilitation order if the member discloses all of the terms of the public customer order, requests bids and offers, identifies the order as being subject to facilitation, and bids/offers above/below the highest bid/lowest offer.

<sup>6</sup> Amex Rule 904G(e)(iii) provides a similar participation right to member firms executing FLEX trades. Specifically, Amex Rule 904G(e)(iii) permits a Submitting Member to execute 25% of the contra-side of the trade where the member has indicated an intention to cross or act as principal on the trade and has matched or improved the best bid or offer.

<sup>7</sup> See Securities Exchange Act Release No. 41609 (July 8, 1999), 64 FR 38494 (July 16, 1999) File No. SR-CBOE-99-11 (notice of filing of proposed rule change). Under the CBOE's proposal, a floor broker seeking to execute an equity option order for 500 contracts or more (the "original order") will have priority to cross a specified percentage of the original order against other customer orders from the firm that generated the original order of the firm that generated the original order.

<sup>8</sup> The International Securities Exchange ("ISE") has applied for registration as a national securities exchange under Section 6 of the Act. See Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29867 (June 1, 1999). Proposed ISE Rule 716 provides a guaranteed participation for a facilitating Electronic Access Member.

since the order was received.<sup>9</sup> The purpose of this policy is to prevent members and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely related instrument in advance of persons represented in the trading crowd. Without this prohibition, such trading can threaten the integrity of the auction market or disadvantage other market participants. Given the similarity between the facilitation and solicitation rules, the Amex believes that applying the same prohibitions concerning the use of non-public information to the facilitation rule is necessary and appropriate to prevent similar misuse of such information.

#### (b) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5) of the Act, 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.

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

The Amex believes 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

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 data if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed

<sup>9</sup> For purposes of Commentary .04, an order to buy or sell a "related instrument," means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

rule change, or 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. 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 Amex. All submissions should refer to File No. SR-Amex-99-36 and should be submitted by November 5, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 99-26890 Filed 10-14-99; 8:45 am]

BILLING CODE 8010-01-M

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41990; File No. SR-NASD-99-44]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Marketable Limit Orders

October 7, 1999.

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 September 10, 1999, the National Association of Securities Dealers, Inc. ("NASDA" or "Association"), through its wholly owned subsidiary Nasdaq Stock Market, Inc. ("Nasdaq") filed

<sup>10</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.

with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A) of the Act, which renders the rule effective upon the Commission's receipt of this filing. On September 28, 1999, Nasdaq submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

Nasdaq is proposing to amend Interpretive Material 2110-2 ("Manning Rule") of the NASD to provide an exclusion from the Manning Rule for limit orders that are marketable upon time of receipt. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

#### IM-2110-2. Trading Ahead of Customer Limit Order

##### (a) General Application

There are no changes to the existing language.

##### (b) Exclusion for Limit Orders that are Marketable At Time of Receipt

*The Association has previously recognized the functional equivalency of marketable limit orders and market orders. Accordingly, it has adopted the following interpretation. IM-2110-2 shall not apply to a customer limit order if the limit order is marketable at the time it is received by a market maker. These orders shall be treated as market orders for purposes of determining execution priority, however, these orders must continue to be executed at their limit price or better.*

*The exclusion for marketable customer limit orders from the general application of IM-2110-2 is limited solely to customer limit orders that are marketable when received by a market maker. If a customer limit order is not marketable when received by a market maker, the limit order must be accorded the full protections of IM-2110-2. In*

<sup>3</sup> In Amendment No. 1, Nasdaq made a technical change to the proposed rule language. See letter to Richard Strasser, Assistant Director, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated September 24, 1999.