

## SECURITIES AND EXCHANGE COMMISSION

### Requests Under Review by Office of Management and Budget

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

*Extension:* Rule 15g-6; SEC File No. 270-349; OMB Control No. 3235-0395. Rule 17a-8; SEC File No. 270-53; OMB Control No. 3235-0092.

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") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

### Rule 15g-6—Account statements for penny stock customers

Rule 15g-6 under the Securities Exchange Act of 1934 (the "Act") requires brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. The information is required to be provided to customers of broker-dealers that effect penny stock transactions in order to provide those customers with information that is not now publicly available. Without this information, investors would be less able to protect themselves from fraud and to make informed investment decisions.

The staff estimates that there are approximately 270 broker-dealers that are subject to the rule. The staff estimates that the firms affected by the rule will, at any one time, have approximately 150 new customers with whom they have effected transactions in penny stocks, each of whom would receive a maximum of 12 account statements per year, for a total of 1,800 account statements annually for each firm (150 customers × 12 account statements/customer). The staff estimates that a broker-dealer would expend approximately three minutes in processing the information required for each account statement. Accordingly, the estimated average annual burden would equal 90 hours (1,800 account statements × 3 minutes/account statement × 1 hour/60 minutes), and the estimated average total burden would equal 24,300 hours (90 hours × 270).

### Rule 17a-8—Financial Recordkeeping and Reporting of Currency and Foreign Transactions

Rule 17a-8 under the Act requires brokers and dealers to make and keep certain reports and records concerning their currency and monetary instrument transactions. The requirements allow the Commission to ensure that brokers and dealers are in compliance with the Currency and Foreign Transactions Reporting Act of 1970 ("Bank Secrecy Act") and with the Department of the Treasury regulations under that Act.

The reports and records required under this rule initially are required under Department of the Treasury regulations, and additional burden hours and costs are not imposed by this rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 14, 2003.

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

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47540; File No. SR-Amex-2001-92]

### Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the American Stock Exchange LLC To Simplify the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Customer's Contrary Exercise Advices

March 19, 2003.

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 October 29, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change seeking to modify the manner in which Contrary Exercise Advices ("CEAs") are submitted to the Exchange. The Amex amended its proposal on December 17, 2001.<sup>3</sup> The original proposal and Amendment No. 1 were published in the **Federal Register** on January 15, 2002 for notice and comment.<sup>4</sup> The Commission received four comment letters regarding the proposal.<sup>5</sup> The Amex responded to the commenters in Amendment No. 2, which the Amex filed with the Commission on June 19, 2002.<sup>6</sup> On March 6, 2003, the Amex submitted

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

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

<sup>3</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer L. Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 14, 2001 ("Amendment No. 1").

<sup>4</sup> Securities Exchange Act Release No. 45253 (January 8, 2002), 67 FR 2003.

<sup>5</sup> See letter from Mark R. Mudry, Chairman, the Options Operations Subcommittee of the OCC Roundtable, to Jonathan G. Katz, Secretary, Commission, dated February 22, 2002; letter from Margo R. Topman, Vice President, Assistant General Counsel, Goldman, Sachs & Co., to Jonathan G. Katz, Secretary, Commission, dated February 15, 2002; letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley, to Jonathan G. Katz, Secretary, Commission, dated February 11, 2002; and letter from Mark Straubel, Assistant Vice President, Pershing, to Secretary, Commission, dated February 5, 2002.

<sup>6</sup> See letter (with exhibit) from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 18, 2002 ("Amendment No. 2"). In Amendment No. 2, the Amex responded to the commenters and proposed to revise its original proposal to extend the one hour for all accounts to submit a CEA, to extend the deadline of 2 hours and 28 minutes following the time announced for the close of trading in equity options on that day instead of 6:30 p.m. (NY time) for all accounts to deliver a CEA or Advice Cancel where the Amex modifies the close of trading at expiration, and to require the Exchange to provide advance notice on the prior business day in order to establish earlier cut-off times for the submission of a CEA due to the Exchange modifying the close of trading or to unusual circumstances. The Exchange also proposed three new Commentaries to Amex Rule 980 to: (1) Clarify that cut-off times for the submission of a CEA may be extended due to operational and/or systems problems at the Exchange; (2) clarify that while option holders are required to make a final decision to exercise by 5:30 p.m. (NY time), member and member organizations will have one hour to process the CEA for delivery to the Exchange by 6:30 p.m. (NY time) if the CEA is expected to be electronically submitted, and 5:30 p.m. (NY time) for manual or physical delivery of a CEA at the Exchange; and (3) require firms that employ an electronic submission method to adopt specific written procedures for the electronic submission of CEAs.

Amendment No. 3 to the proposal.<sup>7</sup> This Amendment completely replaces and supersedes the original filing and Amendment Nos. 1 and 2. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 980: (i) To simplify the manner in which a CEA is submitted to the Exchange; (ii) to extend by one hour the cut-off time for members and member organizations to submit CEAs to the Exchange; and (iii) to add new paragraphs (g) and (h) for the purpose of establishing different cut-off times for the decision to exercise or not exercise an expiring option and for the submission of a CEA based on a modified trading session or due to "unusual circumstances." Below is the text of the proposed rule change, as amended. New text is italicized. Deleted text is bracketed.

\* \* \* \* \*

#### Rule 980. Exercise of Option Contracts

(a) [Subject to the restrictions established by the Exchange pursuant to Rule 905 and to such other restrictions which may be imposed by the Exchange pursuant to Rules 907 and 909 or by the Options Clearing Corporation ("OCC") pursuant to its rules, an outstanding option contract may be exercised during the time period specified in the rules of OCC by the tender to OCC of an exercise notice in accordance with its rules.] *An outstanding option contract may be exercised by the tender to the Options Clearing Corporation ("OCC") of an exercise notice made during the periods, and using the procedures, specified in OCC rules. An exercise notice may be tendered to OCC only by the clearing member in whose OCC account the option contract is carried. Option exercises are also subject to restrictions that are established by or may be imposed by the Exchange in Rules 905, 907 and 909, and in this rule. Members and member organizations may establish fixed procedures as to the latest [hour at which] time they will accept exercise instructions from customers.*

(a) [Final decisions by options holders to either exercise or not exercise expiring equity options must be made by members or member organizations not later than 5:30 p.m., New York time on the business day immediately prior to the expiration date ("the exercise cut-off time"). In this regard, members and member organizations must either] *Special procedures apply to the exercise of equity options on the last business day before their expiration ("expiring options"). Unless waived by OCC, expiring options are subject to the Exercise-by-Exception ("Ex-by-Ex") procedure under OCC Rule 805. This rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to OCC rules, the following Exchange requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:*

*[(ii)](i) take no action and allow exercise determinations to be made in accordance with OCC's [Exercise-by-Exception] Ex-by-Ex procedure where applicable[.]; or*

*[(i)](ii) submit a "Contrary Exercise Advice" to the Exchange by the deadline specified in paragraph (c) below. A Contrary Exercise Advice is a communication either: (A) [form prescribed by the Exchange for use by a member or member organization to indicate a final exercise decision committing an options holder] to not exercise an [equity] option[s position which] that would be automatically [be] exercised [pursuant to] under OCC's [Rule 805 Exercise-by-Exception] Ex-by-Ex procedure, or (B) to exercise an [equity] option [position which] that would not be automatically [be] exercised [pursuant to] under OCC's [Exercise-by-Exception] Ex-by-Ex procedure. A Contrary Exercise Advice[s can] may be submitted by a [any] member or member organization by using the Exchange's Contrary Exercise Advice Form, OCC's Clearing Management and Control System (C/MACS), a Contrary Exercise Advice form of any other [at a place designated for that purpose by any] national [options] securities exchange of which [they are] the firm is a member and where the option is listed, or [may be transmitted to the Exchange via OCC in a format prescribed by OCC; or] such other method as the Exchange may prescribe. A Contrary Exercise Advice may be canceled by filing an "Advice Cancel" with the Exchange or resubmitted at any time up to the submission cut-off times specified below.*

*(c) Exercise cut-off time. Option holders have until 5:30 p.m. New York time on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. For customer accounts, members and member organizations may not accept exercise instructions after 5:30 p.m. New York time but have until 6:30 p.m. New York time to submit a Contrary Exercise Advice. For non-customer accounts, members and member organizations may not accept exercise instructions after 5:30 p.m. New York time but have until 6:30 p.m. New York time to submit a Contrary Exercise Advice if such member or member organization employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Consistent with Commentary .04, members and member organizations are required to submit a Contrary Exercise Advice by 5:30 p.m. for non-customer accounts if such Members and/or member organization do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. [In those instances when OCC has waived the Exercise-by-Exception procedure, a Contrary Exercise Advice is still required to be submitted by members and member organizations wishing to exercise an option that would not have been automatically exercised, or exercise an option that would have been automatically exercised had the Exercise-by-Exception procedure been in effect. The applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the last sale price in the primary market for the underlying security. In cases where the Exercise-by-Exception procedure has been waived for an options class, OCC rules require that members and member organizations wishing to exercise such options must submit an affirmative Exercise Notice to OCC, whether or not a Contrary Exercise Advice has been filed.]*

*[Each member or member organization which maintains a proprietary or public customer account position in an expiring option is responsible for ensuring that final exercise decisions are indicated to the Exchange Member organizations who have accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member firm and shall take necessary steps to ensure that such decisions are properly indicated to the Exchange. Member organizations may establish a*

<sup>7</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated March 5, 2003, replacing Form 19b-4 in its entirety ("Amendment No. 3"). In Amendment No. 3, Amex made changes to its rule text and provided additional discussion in response to comments.

processing cut-off time prior to the Exchange's exercise cut-off time at which they will no longer accept final exercise decisions in expiring options from options holders for which they carry accounts.]

(d) If OCC has waived the Ex-by-Ex procedure for an options class, members and member organizations must either:

(i) submit to the Exchange, a Contrary Exercise Advice, in a manner specified by the Exchange, within the time limits specified in paragraph (c) above if the holder intends to exercise the option, or

(ii) take no action and allow the option to expire without being exercised.

In cases where the Ex-by-Ex procedure has been waived, OCC rules require that members and member organizations wishing to exercise such options must submit an affirmative Exercise Notice to OCC, whether or not a Contrary Exercise Advice has been filed with the Exchange.

(e) An Exchange member organization that has accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member firm shall take the necessary steps to ensure that such decisions are properly indicated to the Exchange. Such member organization may establish a processing cut-off time prior to the Exchange's exercise cut-off time at which it will no longer accept final exercise decisions in expiring options from option holders for whom it indicates final exercise decisions. Each member or member organization that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of its proprietary (including market maker) and public customer account positions are indicated in a timely manner to such broker-dealer.

[(d)] (f) Members and member organizations may make final exercise decisions after the exercise cut-off time but prior to expiration without having submitted a Contrary Exercise Advice:

(i) In order to remedy mistakes made in good faith; [,] (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange option transactions; [,] or (iii) where exceptional circumstances have restricted an option holder's ability to inform a member organization of a decision regarding exercise, or a member organization's ability to receive an option holder's decision by the cut-off time. The burden of establishing any of the above exceptions rests solely on the member or member organization seeking to rely on such exceptions.

(g) In the event the Exchange provides advance notice on or before 5:30 p.m. (NY time) on the business day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in equity options on such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. (NY time) deadline found in Rule 980(c). However, members and member organizations may deliver a Contrary Exercise Advice or Advice Cancel to the Exchange within 2 hours 28 minutes following the time announced for the close of trading in equity options on that day instead of the 6:30 p.m. (N.Y. time) deadline found in Rule 980(c) for customer accounts and non-customer accounts where such member firm employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, members and member organizations that do not employ an electronic procedure with time stamp for the submission of exercise instructions are required to deliver a Contrary Exercise Advice or Advice Cancel within 1 hour and 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. (NY time) deadline found in Rule 980(c).

(h)(1) The Exchange may establish extended cut-off times for decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case by case basis due to unusual circumstances.

(2) The Exchange with at least one (1) business day prior advance notice, by 12 noon on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a Contrary Exercise Advice be before the close of trading.

#### Commentary

.01 For purposes of this Rule 980, the terms "customer account" and "non-customer account" have the same meaning as defined in OCC By-Laws Article I(C)(25) and Article I (N)(2), respectively.

.02[.01] Each member organization shall prepare a memorandum of every

[final] exercise [decision] instruction received showing the time when such instruction was so [for which a Contrary Exercise Advice is required showing the time when such decision was made or] received. Such memoranda shall be subject to the requirements of SEC Rule 17a-4(b).

.03 In the event of an "unusual circumstance," Rule 980(h)(1) provides that the Exchange may extend the cut-off times for exercise instructions and the submission of a Contrary Exercise Advice beyond the normal time frames specified in Rule 980(c). For purposes of subparagraph (h)(1), an "unusual circumstance" includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences. Rule 980(h)(2) specifies that the Exchange may also reduce such cut-off times for "unusual circumstances." For purposes of subparagraph (h)(2), an "unusual circumstance" includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.

.04 Although the deadline for all option holders to make a final decision to exercise or not exercise is 5:30 p.m. (NY time), the deadline for the submission of the Contrary Exercise Advice in the case of non-customer accounts will depend on the manner of the decision to exercise or not exercise.

(i) For electronic timestamp submissions of the exercise decision by non-customer option holders, a Contrary Exercise Advice submitted by members and member organizations must be received by the Exchange by 6:30 p.m. (NY time).

(ii) For manual submissions of the exercise decision by non-customer option holders, members and member organizations must submit a Contrary Exercise Advice at the Exchange via the Contrary Exercise Advice Box by 5:30 p.m. (NY time).

.05 Each member organization shall establish fixed procedures to insure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options.

.06 [.02] In the event a member or member organization makes a final exercise decision after the exercise cut-off time pursuant to an exception set

forth in clauses (i), (ii) or (iii) of paragraph [(d)](f) of Rule 980, the member or member organization shall maintain a memorandum setting forth the circumstances regarding such exception and shall file a copy of the memorandum with the Exchange's Market Surveillance Department no later than 12 noon on the first business day following the respective expiration.

.07 [.03] The filing of a Contrary Exercise Advice required by this rule does not serve to substitute as the effective notice to OCC for the exercise or non-exercise of expiring options.

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### **I. 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, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified 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**

##### **1. Purpose**

The Options Clearing Corporation ("OCC"), the issuer of all Amex-traded options contracts, has an established procedure for options holders wishing to exercise in-the-money options<sup>8</sup> before they expire. Known as Ex-by-Ex, the procedure provides for the automatic exercise at expiration of any equity option contract that is  $\frac{3}{4}$  of a point or more in-the-money for customer accounts or  $\frac{1}{4}$  point or more in-the-money for any other accounts.<sup>9</sup> Option holders who wish to have their contracts exercised in accordance with the Ex-by-Ex procedure need to take no further action; those contracts that are in-the-money by the appropriate amount will be automatically exercised. Option holders who do not wish to have their options automatically exercised or who wish their options to be exercised under different parameters than the Ex-by-Ex

procedure, must file a CEA with the Exchange pursuant to Amex rule 980, and instruct OCC of their "contrary" intention.<sup>10</sup> The rule is designed to deter individuals from taking improper advantage of late-breaking news by requiring evidence of an option holder's intention to exercise or not exercise expiring equity options via the submission of a CEA. Members and member organizations satisfy the filing requirement by manually submitting a CEA form or by electronically submitting the CEA through OCC's Clearing Management and Control System (C/MACS).

The principal goal of Amex rule 980 is to maintain a level playing field between persons holding long and short positions in expiring equity options. The Amex believes that after trading has ended on the final trading day before expiration, persons who are short the option have no way to close out their short position. To put option holders on equal footing, Amex Rule 980 attempts to keep to a minimum the time period in which a holder can exercise the option after the close of trading on the last business day prior to expiration, generally known as "Expiration Friday."<sup>11</sup>

The current exercise cut-off time for an option holder to decide whether or not to exercise is 5:30 p.m. (NY time) on the business day immediately prior to the expiration date.<sup>12</sup> Under the proposal, the exercise cut-off time set forth in amended Amex Rule 980(c) will not change except in cases of a modified trading session or due to "unusual circumstances." Current Amex rule 980 imposes a uniform 5:30 p.m. cut-off time for the submission of CEAs for all accounts without differentiating between customer and non-customer accounts.

The proposed rule change was prompted by concerns expressed by clearing firms that the deadline for submitting CEAs is problematic for customer accounts,<sup>13</sup> due to the

logistical difficulties of receiving customer exercise instructions and processing them through their retail branch systems and back office areas before submitting them to the Exchange. Therefore, the Exchange proposes to adopt a cut-off time of 6:30 p.m. (NY time) for members and member organizations to submit CEAs for customer accounts. In response to concerns expressed by commenters, the Exchange also proposes to allow members and member organizations to submit CEAs for non-customer accounts<sup>14</sup> by 6:30 p.m. (NY time) provided such member or member organization employs an electronic procedure with time stamp recording for the submission of exercise instructions by options holders. In those cases where members or member organizations do not employ an electronic submission procedure for the submission of exercise instructions, CEAs for non-customer accounts must be submitted to the Exchange by 5:30 p.m. (NY time). The different CEA submission deadlines are set forth in amended Amex Rule 980(c) and new Commentary .04.

Although most firms have electronic submission procedures, the Exchange is concerned that those firms that manually submit CEAs could have an opportunity to improperly extend the 5:30 p.m. (NY time) deadline to exercise or not exercise an option if *all* non-customer accounts were subject to the 6:30 p.m. (NY time) deadline for the submission of CEAs. This concern on the part of the Exchange is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

Accordingly, in the case of non-customer accounts, the Exchange has proposed to limit the 6:30 p.m. (NY time) deadline for submitting CEAs to those member firms that have an electronic submission procedure for deciding whether to exercise or not exercise an option. In connection with the use of an electronic submission procedure by member firms, the Exchange proposes the addition of new Commentary .05 that requires members and member organizations employing electronic submissions to establish procedures to secure time stamps in connection with their electronic systems employed for the recording of

<sup>10</sup> A CEA may be canceled by filing an "Advice Cancel" with the Exchange at any time up to the submission cut-off deadline specified in proposed amended Amex Rule 980(c).

<sup>11</sup> "Expiration Friday" is generally the last business day prior to the expiration of an option contract.

<sup>12</sup> The "expiration date" of an options contract generally is the Saturday immediately following the third Friday of the expiration month of such option. See OCC By-Laws Article I (E)(k).

<sup>13</sup> A "customer account" is defined in OCC By-Laws Article I (C)(25) as an account of a Clearing Member which is confined to Exchange transactions cleared and positions carried by the Clearing Member on behalf of its securities customers, other than those transactions of market-makers which are cleared through a market-makers account. OCC By-Laws define a "securities customer" as a person

<sup>8</sup> "In-the-money" for a call option occurs if the current market value of the underlying security is above the exercise price of the option. For put options, "in-the-money" means the current value of the underlying security is below the exercise price of the option.

<sup>9</sup> See OCC Rule 805(d).

having a securities account at a broker or dealer other than a non-customer of such broker or dealer. See OCC By-Laws Article I (S)(1).

<sup>14</sup> A "non-customer account" generally means a person that is not a customer of a broker or dealer defined in Rule 8c-1 and 15c2-1 under the Act. See OCC By-Laws Article I (N)(2).

submissions to exercise or not exercise expiring options.

The OCC on occasion will suspend the use of its Ex-by-Ex procedure, such as when trading in the underlying stock has been halted or if accurate price data is unavailable for the determination of closing prices. When this occurs and there is no automatic exercise, all options contract holders must send an exercise notice to the OCC if they wish to exercise, regardless of whether the option is in or out-of-the-money. Currently, when the OCC suspends its Ex-by-Ex procedure for an option class, Amex rule 980 requires the submission of a CEA. Thus, when the OCC has waived the Ex-by-Ex procedure, option holders must determine what price would have been used, even though the only available price might be a stale last sale price (a price the OCC did not feel comfortable using). Option holders then must determine whether a CEA needs to be submitted to the Exchange evidencing the intention to exercise or not exercise.

In the Amex's view, the options exchanges have long viewed this process as cumbersome and confusing to option holders. Therefore, the Amex proposes to amend Amex rule 980(d) to eliminate the requirement that a CEA be submitted if the holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. As a result, when the Ex-by-Ex procedure has been waived, submission of instructions to the Exchange to exercise will be required only when the options holder wants to exercise the option contract.

The proposed rule change would also permit the Exchange to establish different exercise cut-off time as an exception to amended Amex Rule 980(c) to address situations where the Exchange has advanced prior knowledge or warning of a modified trading session at expiration, or in the case of "unusual circumstances."

Specifically, proposed Amex rule 980(g) would be applicable when a different or modified close of trading is announced due to a market-wide event. In such cases, the Exchange would have forewarning of the event and would be required to provide notice of a change in exercise cut-off time by 5:30 p.m. (NY time) on the business day prior to the last trading day before expiration. For example, if the day after Thanksgiving is the last trading day prior to expiration with a close of trading of 1 p.m. (NY time), then the Exchange would, with prior notice up to the Wednesday before Thanksgiving, be able to reduce the cut-off time of the decision to exercise or not exercise expiring options to 1 hour

28 minutes after the close of trading. With respect to the submission of a CEA by members and member organizations, the cut-off time would be reduced to 2 hours and 28 minutes after the close of trading for customer accounts and non-customer accounts where the member firm employs an electronic procedure with time stamp for the submission of exercise instructions. Member firms that do not employ an electronic submission procedure for exercise instructions would be required to submit a CEA within 1 hour and 28 minutes after the close of trading for its non-customer accounts. Accordingly, the normal exercise cut-off time would not apply and, similar to amended Amex Rule 980(c), the deadline for submitting CEAs to the Exchange for non-customer accounts would depend on the use of an electronic submission procedure for the submission of exercise instructions.

Proposed Amex rule 980(h)(1) would permit the Exchange to extend the cut-off time period for the decision to exercise or not exercise expiring options, as well as the submission of a CEA due to unusual circumstances. Situations that may arise that are deemed to be "unusual circumstances" are set forth in revised Commentary .03. An "unusual circumstance" for purposes of proposed paragraph (h)(1) includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences.

Proposed Amex Rule 980(h)(2) would permit the Exchange with one (1) business day prior advance notice by 12 noon (NY time) to establish a reduced cut-off time for the decision to exercise or not exercise expiring options as well as the submission of the CEA. The reduced cut-off time under this new paragraph for both the decision to exercise or not exercise and the submission of the CEA may not occur before the close of trading. The primary purpose of this proposed paragraph (h)(2) is to permit the Exchange to reduce cut-off times because of an "unusual circumstance," such as a significant news event occurring after the close. Revised Commentary .03 to Amex Rule 980 provides that for purposes of subparagraph (h)(2), an "unusual circumstance" is a significant news announcement concerning the underlying security of an option contract that is scheduled to be released after the close on the last trading day

prior to expiration. For example, a decision on whether a particular merger will be approved or whether a "blockbuster" new product will receive regulatory approval that occurs after the close of trading would justify a reduced cut-off time so that persons holding short positions are not prejudiced by being unable to close out their positions. The Exchange believes that this would maintain a level playing field between persons holding long and short positions in expiring options.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>16</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, 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.

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

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

### B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange received four comment letters<sup>17</sup> regarding the original proposal and Amendment No. 1. The Exchange believes that it has responded to the comments and concerns raised in these comment letters as reflected in Amendment Nos. 2 and 3.

## II. 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.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See *supra* note.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Amex. All submissions should refer to File No. SR-Amex-2001-92 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-7113 Filed 3-25-03; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47531; File No. SR-Amex-2002-33]

#### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change as Amended by Amendment No. 1 Thereto Relating to Proprietary Order Routing Facilities for Amex Listed Options and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto

March 19, 2003.

#### I. Introduction

On April 16, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to

prohibit members from using facilities that are not owned or operated by the Exchange to transmit orders electronically from the Amex floor to other exchanges through a direct electronic link, and to receive orders transmitted electronically to the Amex floor from other exchanges through a direct electronic link for the purchase or sale of Amex listed options after the complete implementation of the permanent intermarket linkage in the options market ("Options Linkage"). On April 30, 2002, Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published in the **Federal Register** on May 8, 2002.<sup>4</sup> The Commission received one comment letter on the proposed rule change.<sup>5</sup> On May 28, 2002, Amex submitted Amendment No. 2 to the proposed rule change.<sup>6</sup> On September 13, 2002, Amex submitted a response to the ISE Letter.<sup>7</sup> On December 30, 2002, Amex submitted an additional response to the ISE Letter.<sup>8</sup> This order approves the amended proposed rule change, provides notice of filing of Amendment No. 2 and grants accelerated approval to Amendment No. 2.

#### II. Description of the Proposal and Amendment No. 2

As originally filed, Amex proposed to prohibit members from using facilities that are not owned or operated by the Exchange to transmit orders<sup>9</sup> electronically from the Amex floor to other exchanges through a direct electronic link, and to receive orders transmitted electronically to the Amex floor from other exchanges through a

direct electronic link for the purchase or sale of Amex listed options upon the complete implementation of the Options Linkage.<sup>10</sup>

In Amendment No. 2, Amex limited the proposed rule change to apply only to facilities and services of another registered exchange on the Amex floor that provide a direct electronic link to the other exchange. The proposed rule change would not alter the current ability of members and member organizations, with the prior written approval of Amex, to use an electronic order routing facility or service owned and operated by a registered broker-dealer to transmit orders for Amex listed options to another registered exchange for execution.

#### III. ISE Letter and Amex Responses

##### ISE Letter

In the ISE Letter, ISE argues that Amex's proposal has significant customer protection and competitive implications because it would require an Amex floor broker that sees an ISE price that is superior to the Amex price to route the order off-floor for transmission to the ISE. ISE believes the delay caused by off-floor transmissions raises serious risks that the ISE market may not be available when the customer order reaches ISE. In addition, ISE believes the Amex floor broker may determine that the delay makes the possibility of ISE execution too risky and may execute the order on the Amex at the inferior price. ISE points out that once the Options Linkage is implemented, the Amex broker could incur trade-through liability if the broker executes the order on the Amex at the inferior price.

ISE argues that in limiting members' ability to send orders electronically to other markets, the Amex impedes competition because, without this limitation, free market forces and price competition would lead to the sending of order flow to exchanges displaying superior prices. ISE stated its view that, under the proposal, market makers could use only the Options Linkage to access competing exchanges electronically, even if there may be more efficient methods of access, and that the Options Linkage will provide only limited access because: (1) Brokers will not have direct access to the Options Linkage; (2) market makers are prohibited from using the Options Linkage as an order delivery system for

<sup>3</sup> See letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 29, 2002 ("Amendment No. 1"). In Amendment No. 1, Amex included the text of the proposed rule change.

<sup>4</sup> See Securities Exchange Act Release No. 45864 (May 2, 2002), 67 FR 30985.

<sup>5</sup> See letter from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE"), to Jonathan Katz, Secretary, Commission, dated May 28, 2002 ("ISE Letter").

<sup>6</sup> See letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 24, 2002 ("Amendment No. 2").

<sup>7</sup> See letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Deborah Flynn, Division, Commission, dated September 13, 2002 ("Amex Initial Response").

<sup>8</sup> See letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Deborah Flynn, Division, Commission, dated December 27, 2002 ("Amex Supplemental Response").

<sup>9</sup> These facilities cannot be used for listed equities and Exchange-Traded Funds as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.

<sup>10</sup> The Commission approved the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan") in July 2000. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

<sup>18</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.