

been subject to a tender offer by Tortilla Acquisition Inc., an indirect wholly owned subsidiary of BHP Limited ("BHP") that resulted in the Securities being held of record by less than one hundred (100) persons resident in the United States. BHP currently holds over 90% of the outstanding Class B Shares, and the Issuer expects that upon completion of a statutory acquisition procedure under Canadian law, BHP will acquire the remaining Class A Shares not tendered in the tender offer. BHP will be the sole holder of the Class A Shares. BHP currently holds nearly 90% of the Class B Shares as a result of the tender offer, so that the public float of the Class B Shares has been significantly reduced. The Issuer also has determined that it presently does not intend to engage in future capital raising activities in the United States.

The Issuer's application relates solely to the Securities' withdrawal from listing and registration on the Amex and shall not affect its obligation to be registered under Section 12(g) the Act.³ The Issuer states that the Issuer's Class B Shares will continue to be listed on the Toronto Stock Exchange. The Issuer represents that shareholders who are United States residents would still have access to an active trading market and would be able to obtain information about the Issuer though access to filings made under Canadian securities laws.

Any interested person may, on or before August 23, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,
Secretary.

[FR Doc. 01-19830 Filed 8-7-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting: Notice of Application To Withdraw From Listing and Registration on the Boston Stock Exchange (Nevada Gold & Casinos, Inc., Common Stock, \$.12 Par Value) File No. 1-5517

August 1, 2001.

Nevada Gold & Casinos, Inc., a Nevada corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934¹ ("Act") and Rule 12d2-2(c) thereunder,² to withdraw it from Common Stock, \$.12 par value ("Security") from listing and registration on the Boston Stock Exchange ("BSE").

The Issuer stated in its application that the Security has been quoted on the OTC Bulletin Board since 1994. In making the decision to withdraw the Security from listing and registration on the BSE, the Issuer considered the liquidity provided by the BSE and the cost associated with maintaining such listing. The Issuer believes that market makers will continue to quote the Security on the OTC Bulletin Board so that holders of the Security are provided with accessible and liquid markets. The Issuer's application relates solely to the Security's withdrawal from listing and registration on the BSE and shall not affect its obligation to be registered under Section 12(g) of the Act.³

Any interested person may, on or before August 23, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,
Secretary.

[FR Doc. 01-19829 Filed 8-7-01; 8:45 am]

BILLING CODE 8010-01-M

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(c).

³ 15 U.S.C. 78l(g).

⁴ 17 CFR 200.30-3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44647; File No. SR-Amex-00-60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC To Require the Use of Handheld Computers by Floor Brokers and Registered Options Traders and To Update the Exchange's Audit Trail Rules

August 2, 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 December 11, 2000, 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. On May 15, 2001, Amex submitted No. 1 to the proposal.³ On July 27, 2001, Amex submitted Amendment No. 2.⁴ 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 Exchange proposes to amend Amex Rules 153, 180, and 220: (i) To require the use of handheld computers by floor brokers and Registered Options Traders ("ROTs"); (ii) to require the immediate systemization, upon receipt on the floor, of orders that are eligible for input into Amex's electronic order processing facilities ("CMS-eligible orders") and that are not already systematized; and (iii) to update the Exchange's rules regarding records of orders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2001 ("Amendment No. 1"). In Amendment No. 1, Amex revised the proposal to clarify that its new Hand Held Terminal Policy would apply to both wired as well as wireless terminals, and to make technical corrections to the proposed rule text.

⁴ See letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 26, 2001 ("Amendment No. 2"). In Amendment No. 2, Amex resubmitted its statement of the purpose of, and the statutory basis for, the proposed rule change. However, Amex did not make any revisions to the proposed rule text.

³ 15 U.S.C. 78l(g).

⁴ 17 CFR 200.30-3(a)(1).

The text of the proposed rule change is set forth below. New text is in italics; deleted text is in brackets:

Record of Orders

Rule 153. (a) Every member or member organization shall maintain a record of every order *and every modification and cancellation of such order* transmitted [by him] to the Floor of the Exchange, which record shall include the name, amount and price of the security and the time when such order, *modification or cancellation* was so transmitted.

(b) Every member *or member organization* shall maintain a record of every order *and every modification and cancellation of such order* [originating on the Floor of the Exchange given to such member for execution, and of every order originating off the Floor, transmitted by any person other than a member or a member organization or a member, officer or employee therein, to such member on the Floor,] *received by such member or member organization on the Floor of the Exchange.* [which] Such record shall include the name, amount and price of the security and the time when such order *modification or cancellation* was received. [so given or transmitted.] *With respect to orders that are eligible for input into the Exchange's electronic order processing facilities, members and member organization shall comply with their record keeping obligations under this Rule by inputting immediately upon receipt eligible orders, modifications and cancellations that are not already systematized into the Exchange's electronic order processing facilities and retaining the record of such orders provided to them by the Exchange for this purpose.*

(c) *Rescinded.* [Every member shall maintain a record of every order received, either orally or in writing, and carried by him to the floor of the Exchange, which record shall include the name and amount of the security, the terms of the order, and the time when such order was so received; provided, however, that the Exchange may, upon application, for cause shown, grant exemptions from the provisions of this paragraph.]

(d) Every member *or member organization* shall preserve for at least *three years* [twelve months] a record of every commitment or obligation to trade issued from the Floor *and cancellation thereof*, which record shall include the name, amount, and price of the security, the destination market center, and the time when such commitment was issued *or cancelled*.

(e) Every member *or member organization* shall maintain for at least

three years a record of every order *and every modification and cancellation of such order* entered [by such member or member organization] into the After-Hours Trading Facility (as Rule 1300 (After-Hours Trading: Applicability and Definitions) defines that term), which record shall include the name and amount of the security, the terms of the order, the time when it was so entered, and the time at which a report of execution was received. *Every specialist shall maintain for at least three years reports of all executions and modifications and cancellations of orders placed with the specialist through the After-Hours Trading Facility.*

(f) [Whenever a cancellation is entered with respect to an order, commitment or obligation covered by paragraph (a), (b), (c), (d) or (e) of this rule, or a] *Every member of member organizations shall maintain a record for at least three years of every report of the execution of [such] an order, commitment or obligation covered by paragraph (a), (b), (d) or (e) of this rule* [is received, there shall be preserved for at least 12 months,] in addition to the record required by such paragraphs, [a record of the cancellation of the order, commitment or obligation or of the receipt of such report] which shall include the time of [the entry of such cancellation or of] the receipt of such report.

(g) Before any order, commitment or obligation covered by paragraph (a), (c), [(c),] (d) or (e) of this rule is executed, there shall be placed upon the order slip or other record the name or designation of the account for which such order, commitment or obligation is to be executed; no change in such account name or designation shall be made unless the change has been authorized by any member or officer in the member organization or authorized representative thereof who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.

(h) All records required to be maintained under this rule shall include such information and shall be preserved for such period as required by the Securities Exchange Act of 1934 and the rules thereunder relating to the requirements for the retention of orders.

(i) *The term "order" as used in this Rule 153 includes any modification to or cancellation of such order.*

* * * * *

Must Keep Record of Orders

Rule 180. *Rescinded.* [Every specialist shall keep a legible record of all orders placed with him in the securities in which he is registered as a specialist and of all executions, modifications and cancellations of such orders. Such records shall include such information and shall be preserved for such period as required by the Securities Exchange Act of 1934 and the rules thereunder relating to the requirements for the retention of orders. The specialist shall retain for a period of at least three years reports of all executions and modifications and cancellations of orders placed with him through the "After-Hours Trading Facility" (as Rule 1300 (After-Hours Trading: Applicability and Definitions) defines that term).]

* * * * *

Communications to and on the Floor

Rule 220. No change.

* * * Commentary

.01 through .03. No change.

.04 *Hand Held Terminal ("HHT")*

[Wireless Communications Infrastructure] Policy. [The Exchange has filed with, and received SEC approval for, the development of a wireless communications Infrastructure (the "Infrastructure") and associated Exchanged policy designed to implement the Infrastructure ("Wireless Communications Policy"). (SR-Amex 97-40, approved May 21, 1998, Exchange Act Release No. 34-40019.) Violations of the Wireless Communications Policy may result in disciplinary action by the Exchange pursuant to Article V of the Exchange Constitution or Exchange Rules 345 or 590 as appropriate.⁵

The Exchange for many years has had rules and policies governing communications to and *between locations on* [from] the Trading Floor. [In 1987, the Exchange filed its current communications policies with the SEC.¹] These policies[, embodied in Rule 220,] give the Exchange broad authority to review telephonic and other electronic communications *both between the Floor and other locations and between points on the Floor.* [In 1996, the Exchange amended Rule 220

⁵ In its present form, Commentary .04 to Amex Rule 220 has only a single paragraph. The additional paragraphs that appear below constitute the Exchange's existing Wireless Communications Policy, which is being amended and added to Amex's rulebook. The proposed edits are shown below as if the Wireless Communications Policy were already a part of Amex's rulebook.

[¹ See Exchange Act Release No. 34-33735, dated March 8, 1994, approving SR-Amex-87-33.]

to allow it to regulate communications between points on the Floor and adopted a policy regarding wireless communications (the "Wireless Communications Policy"). At the same time, the Exchange adopted related amendments to Exchange Rule 60.² In 1997, the Exchange amended its Wireless Communications Policy.³

[Design and Implementation of Infrastructure]

There have been significant developments in data transmission technology since the Exchange formalized its communications policies. *In light of these changes, the Exchange promulgated its Hand Held Terminal Policy and* [in 1987. The Exchange's staff, assisted by the Committee on Trading Technology Policy, has studied the questions raised by the new communications technologies. As a result of this ongoing review, the Exchange determined to build] built a [wireless] data communications infrastructure (the "Infrastructure"). *The Exchange undertook these regulatory and systems initiatives in order to:* (i) Facilitate the execution of orders on the Exchange, (ii) facilitate the execution by Amex members of hedging and other permitted transactions in other markets, (iii) facilitate risk management, trade comparison and transaction reporting, (iv) facilitate the transmission of options analytics to Amex members, (v) provide appropriate oversight of [wireless] data communications, (vi) ensure the safety and efficient operation of the Exchange's trading systems, (vii) provide fair access for all members and the Exchange to the finite supply of available radio frequencies *and system capacity*, and (vii) promote a fair, orderly and efficient market for securities on the Exchange.

[The Exchange has contracted with Symbol Technologies, Inc. ("Symbol"), an experienced vendor of wireless equipment, to design (in accordance with specifications provided by the Exchange), build, test and service the Infrastructure. The Infrastructure consists of two systems: (1) the Base Station System which will consist of the base stations and antennas that establish communications with the hand held terminals "HHTs") on the Floor, and (2) the Wireless Network Management System which will allow the staff of the Exchange to monitor radio frequency ("RF") capacity usage. The two systems

will be connected by a wired network (the "LAN").]

[The Exchange will require] All members using *proprietary HHT* [wireless] technology on the Floor *must* [that have not already done so to] conform their proprietary technologies at their cost to the requirements of the Infrastructure *and the Exchange's other systems*. For example, members are [will be] required to use the Exchange's antennas, base stations and *Exchange specified* [Symbol's] radio cards for their *wireless* HHTs. Members also are [will be] required to conform to physical interface standards specified by the Exchange.

The Exchange will require members to conform their proprietary technologies at their cost the requirements of any enhancements to, or replacements of, the Infrastructure or any other Exchange system should this be deemed necessary by the Exchange. The Exchange may also require members to link their *HHT* [wireless] system hosts to the Exchange's trade comparison, reporting or other systems, or implement entirely new technologies should this be more efficient or cost effective for the operations of the Exchange. The members will be responsible for bearing all costs associated with any such changes.

To further advance the policy objectives underlying the Hand Held Terminal Policy and the Infrastructure, the Exchange will require all members acting as brokers and all Registered Options Traders ("ROT's") to use HHTs in conducting business on the Exchange Floor. (Specialists acting as broker in their specialty securities will not be required to use HHTs). The Exchange currently is developing a standard application that will reside on an HHT that it will issue to brokers for their use. Once this Exchange provided HHT system is operational, all brokers will be required to use it at all times. The Exchange, moreover, will require all ROTs to use HHTs to conduct their business. Since the Exchange does not currently plan to develop an HHT application for ROTs, ROTs must either develop or secure HHTs for their own use at such time as may be specified by the Exchange with the following minimum capabilities:

- *ROT's must be able to receive execution report on their HHTs during a trading session with respect to trades executed against their accounts automatically (e.g. Auto-Ex and Book trades).*
- *ROT's must be able to report their trades within time limits prescribed by the Exchange to their clearing agents*

during a trading session by means of their HHTs.

- *HHTs used by ROTs must be able to make a record of text transmissions to or from other persons. This record must include the date and time of the transmission, the person initiating the transmission, all persons receiving the transmission, and the text of the message.*

- *ROT's must be able to capture the following audit trail data on their HHTs with respect to all trades they execute on the Amex: (1) time of trade (the clocking mechanism must be seconds), (2) executing broker badge number, (3) contra broker badge number, (4) open or closing transaction, (5) clearing member, (6) contra clearing member. ROTs must be able to report this audit trail information to their clearing agents during a trading session within time limits prescribed by the Exchange.*

- *HHTs used by ROTs must be able to make a record of the following information with respect to orders or quotes initiated by ROTs for securities or futures traded in other markets: (1) date, (2) the time the order or quote is sent to the other market (the clocking mechanism must be in tenths of a second measurement), (3) the identity of the person initiating the order or quote, (4) security symbol, (5) buy, sell, sell short, short exempt, (6) order type (e.g., market, limit), (7) order or quote size, (8) order or quote price, (9) execution quantity, (10) execution price, (11) market where the order or quote is routed (e.g., NYSE, Nasdaq, CBOE, and Instinet).*

- *All clocking must be done electronically. All clocking mechanisms must be synchronized at least once per business day to the National Time Service or as specified by the Exchange from time to time.*

- *All records required to be made must be maintained for at least three years and available to the staff of the Exchange upon request in no more than three business days.*

[The Amex intends to develop its own HHT applications for its members that are unable or unwilling either to develop their own or acquire them from another source. The Exchange, however, has not yet determined when it will proceed with such an initiative. The Exchange also intends to develop HHT applications for its Trading Floor personnel.]

The Exchange will not require any member that develops a proprietary [wireless] data communications system to make its technology available to other members. The Exchange believes that the enforced sharing of proprietary

^[2] See Exchange Act Release No. 34-37728, dated September 26, 1996, approving SR-Amex-96-10.]

^[3] See Exchange Act Release No. 34-40019, dated May 21, 1998.]

technology among competitors would be a disincentive to innovation.

Capacity, Fault Tolerance, Security and Radio Frequency

[The Infrastructure will be able to support the simultaneous operation of 600 HHTs on the Trading Floor.⁴ The specifications of the system, moreover, provide for a message capacity which is substantially greater than anticipated usage as currently estimated. There will be no single point of failure within the Infrastructure. All units, bases, antennas, routers, etc. will be redundant to provide seamless recovery if a component fails. The failure and recovery will be transparent to users without any interruption of service and there will be no requirement for a "log-out/log-in" process. The redundant component will automatically take over the processing as soon as a component fails. In the event of failure, messages in transit will be recovered transparently.]

[Whenever an HHT is turned on, the unit will transmit its own identity code to the Wireless Network Management System. This will limit the possibility of unauthorized access to the Infrastructure. In addition, the Exchange will require members to assign passwords to their HHT users. This will provide another means of restricting unauthorized access to the Infrastructure. The Infrastructure also will have firewalls to protect the integrity of the Exchange's other systems.]

The Exchange will use the 2.4 GHz "unlicensed" radio frequency for the Infrastructure and will require members currently using 902 MHz radios to replace these units with Symbol's 2.4 GHz radio cards to conform with the requirements of the Infrastructure. Currently, the Exchange intends to permit persons that have approved wireless capabilities to use up to 1/30 of the available capacity of the 2.4 GHz frequency. [As of September 1997, the Exchange has approved 12 separate wireless applications from 10 unaffiliated firms covering a total of 217 HHTs.] Each unaffiliated applicant that has been approved to use wireless technology currently may use up to 1/30 of the available capacity of the 2.4 GHz frequency. Persons and firms that are affiliated are required to aggregate their frequency usage to determine if they are using a disproportionate

amount of RF capacity. Thus, for example, if Firm A and Firm B are under common ownership, they currently only will be permitted to use 1/30 of the available RF capacity. (The term "affiliate" means, with respect to any person, any other person who or which controls, is controlled by or is under common control with such person.) In the event that more than 30 separate persons or firms (including the Exchange's Trading Floor personnel) use wireless technology, the Exchange will develop alternative methods for the equitable allocation of RF capacity.

Persons approved to use wireless technology do not acquire any property rights with respect to their use of the 2.4 GHz frequency or any other frequency that the Exchange may approve for wireless communications on the Floor. The Exchange's staff will be able to monitor the level of [wireless] message traffic through the Wireless Network Management System and will have the following information available on a real-time basis: status of each HHT, users that are currently logged on, the "traffic" (i.e., radio frequency use) that each HHT is generating, the traffic that each firm is generating, total radio frequency load, and warning messages in case unauthorized access is attempted. If the Exchange determines that a firm has exceeded the amount of message traffic that it is permitted to use, it will require that firm to reduce its message traffic immediately. In addition, if the Exchange determines that wireless or other HHT message traffic throughout the Exchange is threatening the integrity of the Infrastructure or any of its other systems, the Exchange may require certain or all users to reduce their message traffic immediately. HHT [Wireless] users that do not comply with a request to reduce their message traffic are subject to disciplinary action and may have their ability to communicate with their HHTs [send wireless communications] immediately terminated by the Exchange.

[The Exchange intends to monitor total radio frequency load on an ongoing basis to determine whether steps should be taken to reduce traffic on the 2.4 GHz wavelength to ensure the efficient operation of the system. Among other measures, the Exchange might permit users of wireless data transmission technology to use other frequencies or technologies for certain classes of data transmission. (E.g., the Exchange might permit wireless technology users to transmit options analytics on the 902 MHz radio frequency.) The Exchange may conclude that other radio frequencies are preferable to the 2.4 GHz

frequency, or it might decide to implement a multiple frequency approach should this appear advantageous in terms of increasing message capacity, avoiding interference, etc.]

Exchange Review and Approval of Member Wireless Technology Applications

As noted above, the Exchange will permit proprietary HHTs [wireless technology] in order to foster innovation and efficiency. However, since the use of nonstandardized, proprietary equipment and applications conceivably could threaten the Exchange's Infrastructure and/or other trading systems, the Exchange will review all proposals for new HHT [wireless] technology prior to introduction to the Floor to ensure that the proposed technology is compatible with the Infrastructure, poses no threat to the Exchange's other systems, and satisfies applicable regulatory and other requirements.

Potential users of a proprietary HHT [wireless data transmission] technology will have to complete a detailed questionnaire and provide the Exchange with the specifications for their system. [In addition, the Exchange intends to consult with the Committee on Trading Technology Policy in connection with its review of proposals to use new wireless data transmission technology.] The Exchange's staff may approve a proposal in whole or in part, conditionally approve it, or deny an application. Since members are permitted to employ proprietary technology with different applications, the conditions on an approval may vary from user to user. In addition, the Exchange may have to modify the conditions on an approval after it has been granted in view of the Exchange's experience with HHT [wireless] technology generally or experience with a particular member's [wireless] system. Members will be required to adhere to all conditions of approval, and violations of the terms of approval will be treated as violation of the [Revised] *Hand Held Terminal* [Wireless Communications] Policy. Following approval of a member's application to use [a] HHT [wireless data transmission] technology, the Exchange may inspect the system after installation and subsequently to ensure compliance with the application, approval terms, and other requirements.

Without limiting the scope of the Exchange's review or the factors it may consider in determining whether to approve a proposed HHT application [wireless system], the Exchange will not

⁴ [The Exchange has 661 regular members (approximately 200 of which are specialists), 203 options principal members and 10 limited trading permit holders. Since specialists are stationed in one place, they will not require HHTs, and a capacity of 600 HHTs on any given day should be sufficient.]

approve any proposed *HHT application* [wireless data transmission technology] if it poses any danger to the efficient operation of the Exchange's existing trading systems or the Infrastructure or if it would interfere with the frequency or capacities assigned to other members or to the Exchange. For example, the Exchange *generally will not permit internet access from an HHT as this may consume excessive message capacity. Likewise, the Exchange generally will not permit the transmission of images (as opposed to data) through the Infrastructure as image transmission may consume[s] a disproportionate amount of system capacity* [radio frequency resources]. Similarly, the Exchange will not approve any *HHT application* [wireless data communications device] unless it will comply with the Exchange's rules, federal securities laws, government regulations pertaining to wireless communications, and other applicable requirements. Any *HHT* [wireless communications] system must be able to produce and maintain records required by the Exchange's rules and policies, federal securities laws and SEC regulations. (See, for example, Exchange Rules 111 Commentary .04, 114 Commentary .09, 153, 180, 181, 950(c) Commentary .03, and the Exchange's audit trail policies. The rules of the SEC also impose similar record keeping requirements on registered brokers and dealers. See Securities Exchange Act ("SEA") rules 17a-3(a)(6) and (7), and 17a-4(b)(1).)

[For example,] The Exchange will require persons that have developed HHTs that may be used to initiate orders or enter quotes for financial instruments traded in other markets (e.g., the NYSE, Nasdaq or Instinet) to maintain a log of such orders or quotes. This record would, at the minimum, include the following information: (1) Date, (2) the time the order or quote is sent to the other market (the clocking mechanism must be in tenths of a second measurement), (3) the identity of the person initiating the order or quote, (4) security symbol, (5) buy, sell, sell short, short exempt, (6) order type (e.g., market, limit), (7) order or quote size, (8) order or quote price, (9) execution quantity, (10) execution price, (11) market where the order or quote is routed (e.g., NYSE, Nasdaq, CBOE, and Instinet). The record would be maintained for three years in a readily accessible place. This record of orders and quotes would have to be maintained for both executed and unexecuted orders and quotes. The Exchange also may require persons that have

developed HHTs to maintain a record of any transmissions to or from their hand held terminals.

The Exchange will permit members to encrypt options analytics and position information only. No other messages may be encrypted without the permission of the Exchange. In addition, members that choose to encrypt options analytics and/or position information must maintain the key to the code for a three-year period and provide the key to the Exchange on request.

[Exchange Fees]

[The Exchange will impose a fee or fees upon users of wireless technology in order to recover all or part of the cost of building and/or operating the Infrastructure or for other purposes. Thus, the Exchange will introduce a fee for each HHT used on the Floor. The specifics of this fee have not yet been determined, but it will not exceed \$250 per month per HHT. (When the Exchange deploys its own HHTs for members, there will be a separate fee for those that use the Exchange-deployed HHTs.)]

[Liability and Indemnification]

[Pursuant to Article IV, Section 1(e) of the Exchange Constitution, "The Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment by such member or member organization of the facilities afforded by the Exchange to members for the conduct of their business. . . ." The Exchange, accordingly, shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment by such member or member organization of the Infrastructure. In addition, the Exchange has approved new Commentary .03 to Rule 60 and will extend the current protection that the Exchange has from liability to members and member firms with respect to their use of the Infrastructure to the vendor and its subcontractors developing the Infrastructure for the Exchange, and will require that members and member firms indemnify the Exchange and the vendor and its subcontractors with regard to any third-party claims relating to member and member firm use of the Infrastructure.]

Sanctions for Violations of the [Revised] Hand Held Terminal [Wireless Communications] Policy

Violations of any aspect of the foregoing *Hand Held Terminal* [Revised Wireless Communications] Policy may result in disciplinary action pursuant to Article V of the Exchange Constitution

or Exchange Rules 345 or 590 as appropriate.

* * * * *

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

Mandatory Use of HHTs by Brokers and Registered Options Traders

In the mid-1990s, ROTs began to make extensive use of proprietary handheld computer terminals ("HHTs") that were linked to their home offices by wireless data transmission technologies. Recently, some members have begun using wired, as opposed to wireless, HHTs. Amex believes that HHTs have enhanced the ability to ROTs to conduct their business. The rapid proliferation of these devices, however, raised concerns with broadcast interference, systems disruption, antenna location, exhaustion of system capacity, and appropriate regulatory oversight of data communications. As a result of these considerations and in light of similar developments on other exchanges, Amex determined to build a Data Communications Infrastructure and adopt a Handheld Terminal Policy to regulate the use of these devices.⁶

Amex permitted members to employ custom-designed HHTs, subject to Exchange review and approval of any new handheld technology or application. Amex also required members to use its Data Communications Infrastructure (*i.e.*, Amex antennas, base stations, network, *etc.*) to transmit communications to and from HHTs and to conform their proprietary technologies at their cost to

⁶ See Securities Exchange Act Release No. 37728 (September 26, 1996), 61 FR 51476 (October 2, 1996) (approving Amex's original Wireless Communications Policy); Securities Exchange Act Release No. 40019 (May 21, 1998), 63 FR 29272 (May 28, 1998) (amending Amex's Wireless Communications Policy).

the requirements of the Infrastructure.⁷ As a result of the Exchange's initiatives, members (almost all of whom functioned as ROTs) were able to develop or acquire HHTs that provided them with the capabilities that best suited their particular business needs. Amex believes that its approach to implementing the widespread use of HHTs on the Trading Floor has been successful. Currently, more than 400 members are approved to use HHTs.

Amex began the introduction of its Booth Automated Routing System ("BARS") in late 2000 and anticipates that BARS will be fully deployed by the end of 2001. In conjunction with the implementation of BARS, Amex in the first week of August 2001 introduced a wireless retail application system for brokers ("BRS/HHT") that the Exchange expects will be fully deployed by the end of the second quarter of 2002.⁸ As a member firm is added to BARS, Amex would provide that firm with the appropriate number of BARS/HHTs to efficiently utilize the new system.

According to Amex, BARS would allow member firms to manage their order flow more efficiently by giving member firms a choice of either sending orders and instructions electronically to their booths for further action or using existing order routing systems to send orders directly to the specialist post. BARS/HHT would provide wireless communications between member firm booth personnel and floor brokers using HHTs via an interface to BARS.

Amex believes that the introduction of HHTs devices on the floor: (1) Has significantly improved the ability of ROTs to make markets,⁹ and (2) with the

introduction of BARS/HHT, promises to significantly enhance the ability of brokers to represent equity and option order.¹⁰ Amex believes that this benefits investors and enhances the Exchange's competitive position relative to other markets. The widespread introduction of HHTs among the broker and ROT populations on the Floor also permits significant enhancements to the Exchange's audit trail and self-regulatory capabilities by instituting comprehensive electronic tracking and "time stamping" of orders and executions.¹¹ The Exchange, accordingly, is proposing to require brokers to use the new BARS/HHT system when it becomes fully operational.¹² Amex, similarly, is proposing to require all ROTs to use HHTs with the following minimum capabilities at such times as may be determined by the Exchange:¹³

transactions from HHTs allows market makers to better manage their risk and, consequently, allows them to make tighter and deeper markets than they would be able to make without the ability to initiate trades from HHTs.

¹⁰ With respect to the benefits that brokers will derive from BARS/HHT, Amex believes that this system speeds the routing of orders from off the floor to the point of trade by automating order processing. BARS/HHT also gives members more control over the execution of their orders by allowing them to determine whether the order should be routed to a floor broker or sent to the specialist book. BARS/HHT also automates the reporting of executions to customers and trade comparison, thus expediting and reducing errors in these processes.

¹¹ All orders pass through the Amex Order file ("AOF"), the host system of order processing, prior to a BARS booth terminal routing an order to an HHT. AOF includes a repository of all Amex orders, execution information, processing of orders, reports, cancels, and administrative messages. All orders are assigned a unique turnaround number that is referenced on any subsequent cancellations, executions, or administrative messages. Any message affecting an order is logged and time stamped in AOF. The Exchange's order processing systems have been designed so that the clocking mechanisms do not deviate by more than three seconds from the Naval Observatory atomic clock in Washington, DC.

¹² Specialists, when acting as brokers in the securities in which they are registered, will not have to use HHTs because they already have the other systems provided to them by the Exchange for the purpose of fulfilling their responsibilities as specialist. These systems (e.g., Amex Option Display Book and Point of Sale Book) provide audit trail functionality for orders given to specialists for execution.

¹³ Since the inception of its HHT Policy, Amex has allowed members to develop their own HHT applications subject to review by the Exchange to ensure compliance with its rules and compatibility with its systems. This Policy has allowed members to develop those systems that best suited their business needs. Over time, almost all Amex ROTs have acquired HHTs. There is no need, accordingly, for the Exchange to develop HHT applications for ROTs, since a variety currently are available to members. In contrast, only one member firm has developed an HHT application for its activities as a broker. Since Amex believes that automating pre-trade order handling would provide better and

• HHTs used by ROTs must be able to receive execution reports during a trading session with respect to trades executed against their accounts automatically (e.g., Auto-Ex and Book trades).

• ROTs must be able to report their trades to their clearing agents within time limits prescribed by the Exchange by means of their HHTs.¹⁴

• HHTs used by ROTs must be able to make a record of text transmissions to or from other persons. This record must include the date and time of the transmission, the person initiating the transmission, all persons receiving the transmission, and the text of the message.

• ROTs must be able to capture the following audit trail data on their HHTs with respect to all trades they execute on the Exchange: (1) Time of trade (the clocking mechanism must be in seconds), (2) executing broker badge number, (3) contra broker badge number, (4) open or closing transaction, (5) clearing member, and (6) contra clearing member. ROTs must be able to report his audit trail information to their clearing agents during a trading session within time limits prescribed by the Exchange.

• HHTs used by ROTs must be able to make a record of the following information with respect to orders or quotes initiated by ROTs for securities or futures traded in other markets: (1) Date; (2) the time the order or quote is sent to the other market (the clocking mechanism must be in tenths of a second measurement); (3) the identity of the person initiating the order or quote; (4) security symbol; (5) buy, sell, sell short, or short exempt; (6) order type (e.g., market, limit); (7) order or quote size; (8) order to quote price; (9) quote is routed (for example, the NYSE, Nasdaq, CBOE, and Instinet).¹⁵

faster service to its customers, Amex developed the BARS and BARS/HHT systems referenced in this filing. These systems are not being provided free of charge, and users are subject to an Exchange fee. See Securities Exchange Act Release No. 44286 (May 9, 2001), 65 FR 27187 (May 16, 2001) (SR-Amex-2001-22.) Amex believes that this provides for a fair allocation of expenses among the various Exchange members.

¹⁴ Trade reporting in this context refers to the reporting of trades to clearing agents for comparison and clearance rather than the reporting of trades for dissemination of last sale information. Trade reporting for purposes of comparison and clearance is subject to Amex Rules 590, Part 2(d)(3); 719(c); 720(a); 960; and 962.

¹⁵ The requirement that HHTs used by ROTs must be able to produce an audit trail with respect to orders and quotes initiated on the Exchange and sent to other markets (outgoing orders) is intended to facilitate surveillance of intermarket trading violations such as front running. Amex states that this requirement has been present in the exchange's HHT Policy since its adoption.

⁷ There has been no resistance within Amex's membership to the requirement that members conform their technologies at their cost to the requirements of the Data Communications Infrastructure. This requirement has been part of the Exchange's Policy on HHTs since its inception. As a result, it has been subject to notice in the **Federal Register** and public comment on two prior occasions without any adverse comment. See *supra* note 6.

⁸ Telephone conversation between William Floyd-Jones, Assistant General Counsel, Legal and Regulatory Policy, Amex, and Michael Gaw, Special Counsel, Division of Market Regulation, Commission, on August 2, 2001.

⁹ Amex states that the benefits derived by ROTs from their HHTs have varied from firm to firm based upon the functionality of the HHTs used by the firm. Among the more common applications has been receiving options analytics (i.e., data used to price options), reporting trades to the home office and clearing firms, and initiating hedging transactions in other markets. Options analytics allow market makers to better value options, which permits them to make tighter and deeper markets in a growing number of options. Reporting executions electronically to the home office or clearing firm facilitates the comparison of trades and centralized risk management. Amex also believes that the ability to initiate hedging

- All clocking must be done electronically. All clocking mechanisms must be synchronized at least once per business day to the National Time Service or as specified by the Exchange from time to time.

- All required records must be maintained for at least three years and available to the staff of the Exchange upon request in no more than three business days.

The Exchange proposes to amend its HHT Policy to accomplish the foregoing objectives. In addition, Amex proposes to incorporate the text of the HHT Policy into the Exchange's Rules as Commentary .04 to Amex Rule 220 to make it more accessible to members and member organizations.¹⁶ The HHT policy also would be revised: (1) To eliminate language that discussed the implementation of the Infrastructure, (2) to remove other features of the policy that are no longer used, and (3) to remove text that is found elsewhere in the Exchange's rules or is inappropriate in a rule.

Audit Trail Enhancements

Amex is proposing a number of changes to its rules regarding records of orders (Amex Rules 153 and 180) to enhance the Exchange's audit trail and self-regulatory capabilities.

- Paragraph (a) of Amex Rule 153 would be amended to explicitly require members and member organizations located off the floor to maintain a record of order modifications and cancellations.

- Paragraph (b) of Amex Rule 153 would be amended to require all members and member organizations to maintain a record of all orders, modifications, and cancellations received by them on the floor. Members and member organizations would be required to systematize any order, modification, or cancellation that is CMS-eligible immediately upon receipt on the floor, if it were not already systematized.¹⁷ Amex would provide members and member organizations with a paper record of all of their systematized orders that they would retain to satisfy their recordkeeping obligations.

- Paragraph (c) of Amex Rule 153 would be rescinded. Amex believes that this rule is archaic since it concerns orders "carried" to the Exchange floor, and the substance of the rule would be

covered by Paragraph (b) of Amex Rule 153.

- Paragraph (d) of Amex Rule 153 concerns records of ITS commitments. It would be amended to extend recordkeeping obligations to member organizations and the cancellation of ITS commitments. The rule also would be amended to extend the obligation to maintain these records to three years.

- Paragraph (e) of Amex Rule 153 concerns records of orders in the Exchange's After Hours Trading ("AHT") Facility. The proposed changes would consolidate AHT facility recordkeeping obligations in one place and would conform this provision to the other paragraphs of Amex Rule 153.

- Paragraph (f) of Amex Rule 153 concerns cancellations and reports. Recordkeeping responsibilities with respect to order cancellations would be transferred to the other sections of Amex Rule 153. Paragraph (f) also would be modified to require members and member organizations to keep records of reports for three years instead of 12 months.

- Amex Rule 180 concerns the recordkeeping obligations of specialists. This rule would be deleted as the revisions to Amex Rule 153 would include recordkeeping by specialists as well as other members.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁸ in general and further the objectives of Section 6(b)(5)¹⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperative and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. Amex believes that the proposed rule change is also consistent with the National Market System goals of Section 11A(a)(C) of the Act²⁰ in that they will enhance (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; (3) the availability to brokers, dealers, and

investors of information with respect to quotations for and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity, consistent with the provisions of clauses (1) and (4) above, for investors orders to be executed without the participation of a dealer.

Amex believes that the proposed rule change will further the National Market System objective of Section 11A of, "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets," by automating pre-trade order processing on the Exchange. This will strengthen the Exchange's competitive position relative to other markets and benefit investors. Amex believes that the use of Exchange-standard HHT technology for order processing also will allow the Exchange to significantly enhance its order audit trail for both equities and options by allowing the Exchange to electronically track and time stamp all orders, modifications, and cancellations sent to the Exchange.

BARS/HHT has a "Market Look" functionality that will allow brokers to electronically transmit information developed as a result of a market probe to the person that requested the information. Amex believes that this capability will "enhance the availability to brokers, dealers, and investors of information with respect to quotations for * * * securities." BARS/HHT also has a functionality that allows brokers to electronically report executions to customers. Amex believes that this capability will "enhance the availability to brokers, dealers, and investors of information with respect to * * * transactions in securities." Amex further believes that BARS/HHT will increase the automation of pre-trade order processing on the Exchange. This will speed and make order processing on the Exchange more efficient and thereby "enhance the practicality of brokers executing investors' orders in the best market," when the best market is provided by the Exchange.

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

Amex believes that the proposed rule change would impose no burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

¹⁶ Commentary .04 to Amex rule 220 currently references the HHT Policy but does not reprint it.

¹⁷ Currently, percentage and combination order (e.g. spread orders) are not CMS-eligible. Amex intends to develop systems that would make these orders CMS-eligible.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78k-1(a)(1)(C).

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, 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-00-60 and should be submitted by August 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-19854 Filed 8-7-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44629; File No. SR-CBOE-2001-36]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Amendment No. 1 To Exempt Certain Spread Transactions From the Marketing Fee and To Amend the Definition of Deep-in-the-Money Options To Include a Spread Traded at Maximum Value

July 31, 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 June 21, 2001, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items the CBOE has prepared. The CBOE filed Amendment No. 1 to the proposed rule change on July 18, 2001.³ The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

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

The CBOE proposes to exempt certain spread transactions from its marketing fee. The text of the proposed rule change is available at the CBOE and at the commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

³ See letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 17, 2001. The CBOE originally submitted the filing pursuant to Section 19(b)(3)(A) of the Act. The CBOE has submitted the amended filing pursuant to Section 19(b)(2) of the Act.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In August 2000, the CBOE imposed a \$0.40 per contract marketing fee to collect funds to be used by the appropriate Designated Primary Market Maker ("DPM") to attract order flow to the CBOE.⁴ Initially, this fee was applicable to all market-maker-to-market-maker options transactions. Thereafter, the CBOE determined that the imposition of the marketing fee made it unprofitable for market makers to do banking-type transactions (*i.e.*, reversals and conversions) on the CBOE. Therefore, the CBOE waived the fee for call/put combination transactions used in reversals and conversions.⁵

In May 2001, the CBOE waived imposition of the marketing fee for spread transactions involving a total of at least 400 contracts of "deep in the money" options, as well as "buy write" and "synthetic" transactions involving at least 200 contracts of "deep in the money" options bought or sold in a 1-to-1 ratio versus stock.⁶ The terms of that filing provided that the waivers contained therein were to become effective on May 1, 2001. The CBOE now proposes to change the effective date of the waivers described in SR-CBOE-2001-18 from May 1, 2001 to July 1, 2001. The effect of this change would be to impose retroactively the marketing fee on the transactions described in SR-CBOE-2001-18 for the months of May and June.⁷ These transactions would become exempt from the marketing fee as of July 1, 2001.

Furthermore, the CBOE proposes to exempt from the marketing fee "deep in the money" put versus stock spread orders of 200 or more contracts. In the CBOE's view, these transactions, like reversals, conversions, and spread transactions, contribute to market liquidity but they too must be done at a smaller profit margin than other types of trades. The CBOE believes that

⁴ See Securities Exchange Act Release No. 43112 (August 3, 2000), 65 FR 490040 (August 10, 2000) (approving SR-CBOE-2000-28).

⁵ See Securities Exchange Act Release No. 4495 (March 23, 2001), 66 FR 17459 (March 30, 2001) (approving SR-CBOE-2001-09).

⁶ See Securities Exchange Act Release No. 44355 (May 25, 2001), 66 FR 30251 (June 5, 2001).

⁷ While this filing retroactively imposes the marketing fee upon the transactions described in SR-CBOE-2001-18, the CBOE notes that it previously collected these fees for the transactions that occurred during May and June 2001. With respect to the transactions described in SR-2001-18, the CBOE states that it will not be necessary to collect any additional monies for the months of May and June 2001.

²¹ 17 CFR 200.30-3(a)(12).