

Therefore, It Is Ordered, pursuant to Section 12(k)(2) of the Exchange Act, that,

In connection with a Rule 10b-18 purchase<sup>3</sup> or with a Rule 10b-18 bid that is made during the period covered by this Order by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, an issuer, or an affiliated purchaser of the issuer, shall not be deemed to have violated Section 9(a)(2) of the Exchange Act or Rule 10b-5 under the Exchange Act, solely by reason of the time or price at which its Rule 10b-18 bids or Rule 10b-18 purchases are made or the amount of such bids or purchases or the number of brokers or dealers used in connection with such bids or purchases if the issuer or affiliated purchaser of the issuer meets all of the conditions in Rule 10b-18, with the exception that:

(i) The timing condition in paragraph (b)(2) may be satisfied if the issuer makes Rule 10b-18 purchases without regard to whether any such Rule 10b-18 purchase constitutes the opening transaction in a reported or exchange traded security or whether any such purchase would occur during the one-half hour before the scheduled close of trading on the primary market for such security; and

(ii) The volume condition in paragraph (b)(4) may be satisfied if the issuer makes all Rule 10b-18 purchases other than block purchases of a reported or exchange traded security in an amount that, when added to the amount of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or an affiliated purchaser of the issuer on that day, does not exceed 100 percent of the trading volume (determined on the basis of the 4 calendar weeks preceding the week beginning on September 10, 2001) for the security; and

It Is Further Ordered, That,

Notwithstanding the pooling-of-interests provisions in Accounting Principles Board Opinion No. 16, Business Combinations, and the related interpretations of the American Institute of Certified Public Accountants, consensuses of the Financial

Accounting Standards Board's Emerging Issues Task Force, rules and regulations of the Commission and interpretations by its staff, and other authoritative accounting guidance, acquisitions by registrants of their own equity securities during the period covered by this Order will not affect the availability of pooling-of-interests accounting and, accordingly, a registrant's financial statements will not be misleading or inaccurate solely because the registrant has engaged in such purchases and has accounted for its business combination transactions as a pooling of interests; and

It Is Further Ordered, That,

Notwithstanding the profit recovery provisions of Section 16(b) of the Exchange Act and the rules adopted under it, any purchase during the period covered by this Order by a person subject to Section 16 shall be exempt from the operation of that section with respect to any sale by that person during the preceding six months, and accordingly shall not be matched with such sale. The purchase continues to be reportable on Form 4 under Section 16(a) of the Exchange Act. The Form 4 should use transaction code "J" and describe the transaction in a footnote, making specific reference to this Order; and

It Is Further Ordered, That,

Broker-dealers need not treat the 11th, 12th, 13th and 14th of September, 2001 as business or calendar days for purposes of calculating charges or taking actions under Rules 15c3-1 and 15c3-3 arising from failed transactions or imbalances in securities accounting systems, or for the purposes of FOCUS reporting; and

It Is Further Ordered, That,

Broker-dealers that are required to do a reserve computation (including PAIB) for the week ending September 14, 2001 under Rule 15c3-3 will not be required to do such a computation, provided they do not withdraw money from their reserve bank account without first doing a computation.

This Order shall be effective with respect to the five business days beginning on the date of the first reopening of trading on the U.S. equities and options markets after September 11, 2001.

By the Commission.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 01-23463 Filed 9-19-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44803; File No. SR-Amex-2001-78]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC; New York Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Cincinnati Stock Exchange, Inc.; Chicago Stock Exchange, Inc.; Pacific Exchange Inc.; Philadelphia Stock Exchange, Inc.; and National Association of Securities Dealers, Inc. Regarding the Temporary Use by the American Stock Exchange LLC of the Facilities of the New York Stock Exchange, Inc.

September 17, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, notice is hereby given that on September 16, 2001, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I.A. and II below. In addition to the Amex, the New York Stock Exchange ("NYSE") filed with the SEC the proposed rule change described in Item II below; and the Boston Stock Exchange ("BSE"), Cincinnati Stock Exchange, Inc. ("CSE"), Chicago Stock Exchange ("CHX"), NYSE, Pacific Exchange, Inc. ("PCX"), Philadelphia Stock Exchange ("Phlx"), and the National Association of Securities Dealers, Inc. on behalf of Nasdaq ("Nasdaq Intermarket" or "ITS/CAES") (collectively, "ITS Participants"), filed with the SEC the proposed rule changes as described in Items I.B. and II below.

The proposed rule change concerns temporary arrangements made for Amex's continued trading of Amex listed securities and exchange traded funds ("ETFs") due to the structural damage to its trading floor caused by the recent terrorist attacks. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission is also granting accelerated approval to the proposal.

### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

#### A. Amex

The Amex proposes to amend its rules to trade Amex listed equity securities and ETFs on and through facilities provided by the NYSE. The NYSE proposes to provide such facilities to

<sup>3</sup> Terms used in this order have the same meanings as those terms used in Exchange Act Rule 10b-18 unless stated otherwise. Issuers repurchasing their shares pursuant to this Order may qualify for the safe harbor notwithstanding the fact that they may have shareholders selling shares pursuant to a shelf registration, so long as any selling shareholder is not an affiliate of the issuer or, if affiliated, the selling activity does not rise to the level of a distribution under Regulation M. 17 CFR 242.100 *et seq.*

Amex, subject to certain acknowledgments of limitation of liability. The text of the proposed rule changes follows. New text is in italics.

*Temporary Rule 1—On an emergency basis, the American Stock Exchange temporarily modifies its rules, pursuant to the terms of Securities Exchange Act Release No. 44803 (September 17, 2001) (Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC, et. al. Regarding the Temporary Use of the New York Stock Exchange, Inc. Facilities), and Securities Exchange Act Release No. 44797 (September 16, 2001) (emergency order pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 taking temporary action to respond to market developments concerning the American Stock Exchange LLC).*

*(a) Pursuant to Rule 232(b) whenever an Exchange specialist, in arranging an opening transaction on the Exchange in any Eligible Listed Security, anticipates that the opening transaction on the Exchange will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change" set forth in Rule 232, he shall notify the other Participant markets of the situation by sending a "pre-opening notification" through the System. Market makers registered in that security in other Participant markets may access the Amex/NYSE facility when responding to a "pre-opening notification" in that security by placing an order with a member or member organization for routing through the common message switch to the Amex Order File ("AOF"). Members and member organizations shall not accept a principal order from such a market maker for entry through AOF on the same side of any market imbalance.*

*(b) An Exchange specialist in any Eligible Listed Security shall use best efforts to (i) avoid "Exchange trade-throughs" and "Locked Markets" as those terms are defined in Rule 236; and (ii) respond to "commitments to trade" during the time period chosen by the sender of the commitment as required by the Intermarket Trading System Plan and Exchange rules. No liability will arise solely as a result of a failure by an Exchange specialist to respond to a commitment to trade.*

\* \* \* \* \*

## **B. ITS Participants**

The BSE, CSE, CHX, NYSE, PCX, Phlx, and Nasdaq Intermarket propose to amend their Intermarket Trading System ("ITS") rules on a temporary basis, consistent with the terms of this order, to conform to Amex's proposed Temporary Rule 1(b).

## **II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

In their filings with the Commission, the individual ITS Participants included

statements concerning the purpose of, and basis for, the proposed rule changes. Some or all of the ITS Participants have prepared summaries set forth in Section A, B, and C below, of the most significant aspects of such statements.

### **A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

#### **1. Purpose**

On September 11, 2001, the United States equities and options markets determined not to open in light of the attacks that morning on the World Trade Center and the Pentagon. The United States equities and options markets have remained closed since that time. On Monday September 17, 2001, the markets plan to reopen for trading.

Some of the nation's securities exchanges may have incurred physical damage or disruption that require relocation of trading facilities and personnel to another suitable physical location. The Amex, in particular, has reported that it will be unable to occupy its trading floor at this time. Amex anticipates that its electronic order routing systems will function as they did prior to September 11, 2001. However, due to the severe damage to the infrastructure surrounding its own building, Amex proposes to relocate part of its operations to the floor of the NYSE. Amex's physical space at the NYSE will be limited; and the number of Amex member firm personnel will also be limited. As a result, specialists will have to perform their usual functions as well as the functions of floor brokers. In addition, the Amex will need to modify or suspend certain of its rules, as described below.

Specifically, the Amex proposes to amend its rules to trade Amex listed stocks and ETFs on the NYSE floor and through facilities of the NYSE ("Amex/NYSE facility") pursuant to Amex temporary rules. The Amex proposes that, beginning on September 17, 2001, and continuing until such time as the Amex is able to resume trading under its permanent rules, the Amex equity limit order book (known as Point of Sale or "POS") would be available for Amex specialists' use on hardware provided by the NYSE. Further, the Amex proposes that all limit orders currently residing on the Amex book would continue to be on the book for those stocks and ETFs traded on the Amex/NYSE facility. Amex proposes that member firms would be able to submit orders and cancellations through the Common Message Switch to the Amex

book, and executions would be reported as Amex trades on Tape B. The Amex represents that this emergency use of the Amex/NYSE facility is necessary because of the September 11th terrorist attack on the World Trade Center in New York City and the consequent limitation on the use of the Amex trading floor and facilities.

a. *Limitation of Liability.* By accepting this arrangement with the NYSE to conduct Amex operations on the floor of the NYSE, the Amex, its members, and their employees who are authorized to enter onto the NYSE floor to carry out trading as described herein, shall accept the same limitations on the liability of the NYSE for use of its facilities for the conduct of business that normally apply to any NYSE member, member organizations, or employee thereof in the conduct of his or its business on the NYSE.

b. *Intermarket Trading System.* As mentioned above, the relocation of the Amex has resulted in logistical and technical difficulties. The Amex represents that the Amex/NYSE facility will be operating in much more limited space and fewer specialists and clerks than is usual. For example, rather than the normal 134 screens, all Amex securities will be represented on 71 screens. As each specialist will be responsible for many more securities than normal, they will have limited capacity to respond to individual messages received through the ITS, including commitments and administrative messages such as "trade or move" messages and complaints regarding trade-throughs. In addition, for a number of securities with lower trading volume, the specialists will have limited access to National Best Bid and Offer ("NBBO") information. Also, although during the pre-opening, the Amex/NYSE facility will be able to send pre-opening indications and receive pre-opening responses at a single price, the Amex/NYSE facility will have a limited ability to view or to respond to pre-opening responses at multiple price points.

Therefore, Amex proposes a temporary rule under which each of the ITS Participants could individually elect to participate in the ITS linkage with the Amex/NYSE facility, with the following modifications. For 30 days or as long as the technical and logistical difficulties exist at the Amex/NYSE facility, whichever is sooner, the BSE, CSE, CHX, NYSE, PCX, Phlx, and Nasdaq Intermarket (*i.e.*, ITS/CAES) have each individually agreed to a reciprocal arrangement with Amex that for the temporary period of time specified in this order, notwithstanding

any provision of the ITS Plan: (i) Amex specialists will use their best efforts to respond to ITS messages, including ITS commitments; and (ii) specialists on the BSE, CSE, CHX, NYSE, PCX, and Phlx, and ITS/CAES market makers will in turn use their best efforts to respond to ITS messages, including ITS commitments, from Amex. Under this arrangement, the terms of the ITS Plan will continue to govern commitments that are executed between any of the parties to this arrangement. Further, this arrangement is a bilateral agreement between each of the parties mentioned above and the Amex. Should any exchange choose not to enter into this arrangement, that exchange will be unable to send or receive ITS messages, including ITS commitments, to or from Amex, and will not be subject to the terms of the ITS Plan with respect to Amex; and Amex will not be subject to the terms of the ITS Plan with respect to those exchanges. Finally, the ITS Plan will continue to govern commitments and all other transactions effected through ITS that do not involve Amex.

With regard to pre-opening trading, Amex proposes a temporary rule whereby Amex will take orders through AOF (previously known as PERS) from other exchanges. In the case of a market imbalance, the proposed rule would prohibit all market makers accessing the Amex/NYSE facility from entering proprietary orders in AOF that are on the same side of the market as the imbalance. The proposed rule would apply following the first pre-opening indication.

To the extent that Amex's current technical and logistical problems make compliance with Amex's permanent ITS rules impractical or impossible for trading on the Amex/NYSE facility, the Amex proposes to temporarily suspend any inconsistent portions of those rules that relate to ITS and, in particular, Amex Rules 230, 231, 232, 233, 234, 235, and 236. The Amex, however, has proposed a new temporary rule that would impose an obligation on specialists participating in the Amex/NYSE facility to use best efforts to avoid trade-throughs and locked and crossed markets. Amex has also represented that it will have an official on the floor that is available by telephone to address obvious errors and other ITS situations.

c. *Order Types.* The Amex represents that the Amex/NYSE facility will be unable to accommodate order types that rely on a printer capability at the specialists post. These include: Market on Close (MOC) under Amex Rule 131(e); Limit on Close under Amex Rule 131(e); Immediate or Cancel under Amex Rule 131(k); Fill or Kill under

Amex Rule 131(i); "Opening Only" Market Orders under Amex Rule 131(f); and market "all or none" orders under Amex Rule 131(c). Consequently, Amex proposes a temporary rule, notwithstanding any provision in the Amex's rules to the contrary, that contemplates that Amex will not be able to accommodate these order types.

In addition, the Amex believes that there will be some limitations on odd-lot orders in the Amex/NYSE facility. Specifically, market and marketable limit odd-lot orders are normally executed through the AOF and will continue to be executed on the Amex/NYSE facility. Non-marketable odd-lot limit orders, due to the constraints on network printers, will not be accepted. Consequently, the Exchange proposes to amend Amex Rule 205, and any other rule or portion thereof applicable to non-marketable odd-lot limit orders, on a temporary basis to preclude these order types.

d. *Floor Brokers.* The Exchange notes that Amex floor brokers will not have access to the Amex/NYSE facility. The Amex therefore proposes a temporary rule that would permit NYSE floor brokers to be deputized as Amex members for the purposes of delivering and representing orders in Amex stocks and ETFs to the Amex/NYSE facility. The Exchange proposes that these deputized Amex members would be subject to Amex rules and disciplinary jurisdiction. (The NYSE will obtain an acknowledgement from its floor brokers to this effect.) The Amex proposes to waive specific compliance with, and the deputized NYSE floor brokers would be deemed in compliance with, Amex Article I, Section 3(c), Amex Article IV, Section 1, and other Amex rules relating to exchange membership. Amex states that such deputization is consistent with prior Commission-approved practices respecting the use of another exchange facility to trade options. Deputization of NYSE floor brokers will provide an additional method for the submission and execution of orders.

Specifically, deputized NYSE floor brokers representing orders in securities traded on the Amex/NYSE facility would be subject to all provisions in Amex rules that would apply on an Amex member acting as a floor broker in the same securities, with one exception. Deputized NYSE floor brokers, as such, will be deemed to have satisfied, and the Amex will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as an Amex member, including all dues, fees, and charges imposed generally upon Amex members based on

their status as such. Amex believes that the overall regulatory framework of the NYSE adequately addresses the subject matter of these rules.

e. *Order Size Limitation.* The Exchange represents that, in connection with the operation of the Amex/NYSE facility, the Amex's systems would allow the routing of orders up to 99,900 shares for ETFs, and 30,000 shares for equity securities. Consequently, the Amex proposes to temporarily suspend its current policy prohibiting the breaking up of orders of more than 99,900 or 30,000 shares, as the case may be, to fit within these size parameters.

f. *Specialist Obligations.* The Amex represents that, due to limited physical space at the Amex/NYSE facility, Amex specialists will have to perform not only their usual functions, but also the functions of floor brokers. As a result, the Exchange proposes to suspend the application of several trading rules applicable to specialists. In addition, the Exchange proposes to suspend the Auto-Ex function for ETFs.

The Amex proposes to suspend application of its current rules that prohibit specialists from receiving orders from members and member organizations, including but not limited to Amex Rules 126(g), 154, 190, and 220. However, the portions of any current rules, including but not limited to Amex Rules 154, 190, and 220, that do not pertain to specialists' receipt of orders from members and member organizations, will remain operative. In addition, Amex proposes to suspend application of its current rules that prohibit specialists with off-floor facilities from receiving orders at these off-floor facilities for routing to the trading floor. Further, the Amex proposes a temporary rule that would suspend the provisions of Amex Rule 154, limiting the types of orders that a specialist may accept. Amex proposes a temporary rule that would, notwithstanding any provision to the contrary in Amex's current rules, allow specialists to accept "not held orders" and "price and time" discretionary orders of 50,000 shares or more.

The Exchange represents that, due to space constraints, trading by registered options traders ("ROTs") will not be accommodated on the NYSE floor. Consequently, the Exchange proposes a temporary rule to suspend various provisions of Amex Rule 958, which sets forth the obligations of ROTs, as these provisions relate to the trading of ETFs. The Amex proposes that a ROT entering orders in securities in which it is registered from off the floor will continue to be designated as a specialist on the Amex for all purposes under the

Act, so that the ROT may continue to receive favorable margin and other treatment.

g. *Trading Hours.* Finally, the Amex notes that there will be no after-hours trading or trading of non-convertible corporate debt on the Amex/NYSE facility. Therefore, the Exchange proposes a temporary rule would suspend Amex Rules 1300 through 1306, and any other rules or portion thereof relating to after-hours trading and the trading of non-convertible corporate debt.

## 2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The NYSE, CSE, CHX, BSE, PCX, Phlx, and Nasdaq Intermarket believe that their proposed rule changes identified in this order are consistent with Section 6(b) of the Act.

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

The Amex believes that the proposed rule changes will impose no burden on competition. The NYSE, CSE, CHX, BSE, PCX, Phlx, and Nasdaq Intermarket believe that their proposed rule changes identified in this order will not impose any burden on completion.

### *C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule changes.

## III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Amex and the other ITS Participants have requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change so that Amex may restore operations and reopen for trading despite its inability to use its own building and trading floor due to the physical damage to the infrastructure surrounding its premises.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning for the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes 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 ITS Participants. All submissions should refer to the File No. SR-Amex-2001-78 and should be submitted by October 11, 2001.

## V. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The United States securities markets are the world's strongest and most vibrant. The Commission believes that the terrorist attacks of September 11, 2001, will have little lasting market impact. To that end, the Commission seeks to serve investors and the markets through all available means to facilitate the reopening of fair and orderly markets.

Some of the nation's securities exchanges may have incurred physical damage or disruption that require relocation of trading facilities and personnel to another suitable physical location. The Amex, in particular, has reported that it will be unable to occupy its trading floor at this time. The Amex anticipates that its electronic order routing systems will function as they did prior to September 11, 2001, with the exception of the ETF Auto-Ex system. Due to the severe damage to the infrastructure surrounding its own building, however, Amex will relocate part of its operations to the floor of the NYSE. Amex's physical space and its personnel at this location will be limited.

In light of the technical and logistical limitations of the Amex/NYSE facility, the Commission finds that the Amex's proposal to trade Amex equity securities

and ETFs on the Amex/NYSE facility is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act in that the arrangement between the Amex and NYSE is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Most important, the proposed temporary rules will allow Amex specialists and member firms to resume trading on September 17, 2001, despite the damage to Amex's permanent trading facilities—thereby potentially serving as an important source of liquidity for investors. The Commission notes that the Amex represents that it will be responsible for, and will conduct surveillance of, trading on the Amex/NYSE facility, including the deputized NYSE floor brokers, as described above. The Commission also expects that the Amex will aggressively work to implement solutions to the issues identified in this order, especially as they relate to ITS, in order to resume trading under Amex's permanent rules as soon as practicable.

While specialists may have to perform the functions of floor brokers in addition to their usual functions under Amex's temporary rules, the Commission notes that their activities will be limited by the terms of Securities Exchange Act Release No. 44797 (September 16, 2001) (emergency order pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 taking temporary action to respond to market developments concerning the American Stock Exchange LLC). Further, Amex Rule 190, entitled "Specialist's Transactions with Public Customers" will continue to apply. This Rule prohibits specialists from directly or indirectly effecting any business transactions with a company or any officer, director or 10% stockholder of a company in which stock the specialist is registered. The rule further prohibits specialists from accepting any orders for the purchase or sale of any stock in which the specialist is registered directly from: (1) The company issuing the stock; (2) any officer, director or 10% stockholder of that company; (3) from any pension or profit-sharing fund; or (4) any bank, trust company,

insurance company, investment company or similar institution.

The Commission also finds that Amex's proposed temporary rules regarding ITS access are a reasonable accommodation to address the physical constraints of the Amex/NYSE facility. Amex specialists, as well as specialists on BSE, CSE, CHX, PCX, NYSE, Phlx, and ITS/CAES market makers, will use their best efforts to avoid trade-throughs and locked markets, and to respond to commitments to trade during the time period chosen by the sender of the commitment as currently required by the ITS Plan. The Commission notes that, under Exchange Act Rule 11Aa3-2(d), a "reasonable justification or excuse" exists for Amex not to enforce compliance with the ITS Plan by its members and persons associated with its members for this temporary period, consistent with the terms of this order. Likewise, a "reasonable justification or excuse" exists under the Rule for the parties to the bilateral agreement (BSE, CSE, CHX, PCX, NYSE, Phlx, and Nasdaq Intermarket) not to enforce compliance with the ITS Plan by their members and persons associated with their members with respect to Amex for this temporary period, consistent with the terms of this order. Should any exchange choose not to enter into this arrangement, that exchange will be unable to send or receive ITS messages, including ITS commitments, to or from the Amex, and will not be subject to the terms of the ITS Plan with respect to the Amex; also, Amex will not be subject to the terms of the ITS Plan with respect to those exchanges. These arrangements may continue for 30 days or when the technical and logistical difficulties no longer exist at the Amex/NYSE facility, whichever is sooner. Finally, the ITS Plan will continue to govern commitments and all other transactions effected through ITS that do not involve Amex.

The Commission finds good cause for granting Amex and the other ITS Participants' request to approve the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposal is in the public interest and for the protection of investors in order to maintain and restore fair and orderly securities markets, and in time for Amex to resume trading on September 17, 2001.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-Amex-2001-78) is approved on an accelerated basis.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-23466 Filed 9-19-01; 8:45 am]

**BILLING CODE 8010-10-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44801; File No. SR-CBOE-2001-49]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Temporary Access of American Stock Exchange Members to Respond to Market Developments

September 17, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 14, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On September 16, 2001, the CBOE submitted an amendment to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change, as amended, on an accelerated basis.

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

In light of the emergency situation arising from the aftermath of the devastating terrorist attack on New York City on September 11, 2001, the CBOE proposes to adopt a temporary rule, which is intended by the Exchange to promote the maintenance of fair and orderly markets and the protection of investors. The temporary rule would allow the Exchange to permit a person or organization that is a member of the

American Stock Exchange LLC ("Amex") to conduct business on CBOE until emergency conditions cease, provided that the person or organization satisfies certain criteria, including that the person or organization is a member in good standing of the Amex.

The text of the proposed rule change is available at the Office of the Secretary 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 the 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 III below. The CBOE has prepared summaries set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to adopt temporary CBOE Rule 3.22 to allow the Exchange to permit a person or organization to conduct business on the Exchange until the emergency conditions referenced above cease, provided that the person or organization (i) is a member in good standing of the Amex, (ii) is not subject to a statutory disqualification under the Act, and (iii) is not subject to an investigation conducted by any self-regulatory organization ("SRO") under the Act that may involve the fitness for membership on the exchange of that person or organization.

Pursuant to CBOE Rule 3.29, the authority granted to the Exchange under the proposed rule to permit a person or organization to conduct business on the Exchange for a temporary period during the emergency condition may be exercised by the Exchange's Membership Committee and/or Membership Department. Any person or organization granted such temporary access to conduct business on the Exchange would be referred to under the proposed rule as a TPO.

Under the proposed rule, a TPO would only be permitted to act in those Exchange capacities that are authorized by the Exchange and that are comparable to capacities in which the TPO has been authorized to act on the Amex. As part of the Exchange's

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

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

<sup>3</sup> See letter from Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE to Elizabeth King, SEC, dated September 15, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE deleted its proposal to permit Amex specialists to act in capacities similar to CBOE designated primary market makers, including acting as floor brokers on the CBOE, and clarified language that was inadvertently omitted from Item B of Exhibit 1 of the filing.