

The Exchange is proposing to exclude orders transmitted solely through the Exchange's electronic order routing system because the Exchange believes that the audit trail capabilities of this system prevent trading improprieties by independent Floor brokers. The Exchange also is proposing to exclude "upstairs" (*i.e.*, off the Floor) members and member organizations from the requirement to keep records of compensation arrangements. Independent brokers do not generally have the independent supervisory structures and the formalized internal supervisory oversight that upstairs organizations have since many independent brokers act as sole proprietors with limited customer and product base.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder,<sup>8</sup> the proposed rule change has become effective upon filing as its effects a change that: (1) Does not significantly affect the protection of investors or the

public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days from the date of filing, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days before the filing date.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-59 and should be submitted by October 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44889; File No. SR-Amex-2001-83]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rule 220 Relating to Floor Broker Acceptance of Orders at the Specialist's Post**

October 1, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 1, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 220 to allow floor brokers to accept orders over telephones at or near the specialist's post.<sup>3</sup>

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

#### **Section 6. Floor Wires**

##### **Rule 220 Communications to and on the Floor**

No member shall establish or maintain any telephonic or electronic communication between the Floor and any other location, or between locations on the Floor, without the prior written approval of the Exchange.

##### **Commentary**

.01 With the approval of the Exchange, a member or member organization may establish and maintain a telephone line which permits a non-

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

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

<sup>3</sup> The Exchange previously filed notice of these amendments on September 6, 2001. However, that notice did not become immediately operative. See SR-Amex-2001-73, Release No. 34-44810 (September 18, 2001), 66 FR 49053 (September 25, 2001). In this Notice (SR-Amex-2001-83), the Exchange makes identical amendments and requests that they be immediately operative on October 1, 2001. Telephone conversation with Claire McGrath, Vice-President and Deputy General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, SEC (October 1, 2001).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

member located off the Floor to communicate with such member or member organization on the Floor. *Except as provided in Commentary .03 below*, [T]he Exchange will not approve the use of a portable telephone or other portable communication device on the Floor which would permit direct voice communication between members and non-members.

.02 No change.

.03 *With the approval of the Exchange, floor brokers may use wireless telephone devices to receive off-floor orders from any source (i.e., members, broker-dealers, non-broker-dealers, or public customers) at the specialist's post where the security is traded. The following requirements and conditions shall apply to the floor broker's use of telephone services at the specialist's post:*

(1) *Only those quotations that have been publicly disseminated pursuant to SEC Rule 11Ac1-1 may be provided over telephones at or near the specialist's post.*

(2) *Floor Brokers may only receive orders over the telephone lines at the specialist post or the wireless telephone device during outgoing telephone calls initiated by the floor brokers.*

(3) *Only those floor brokers properly qualified in accordance with applicable rules and regulations may accept orders from public customers pursuant to this Commentary.*

.04 [.03] No change.

.05 [.04] No change.

## 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed and 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 Exchange 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

Exchange rules and policies currently prohibit floor brokers from taking orders from off-floor at the specialist's post and require off-floor orders to be received at the floor broker's booth. The Exchange believes that this prohibition, at times,

impacts the fast and efficient routing and execution of orders at the Exchange. Therefore, the Exchange is now proposing to amend Exchange Rule 220 regarding communications to and on the floor to allow floor brokers to use telephones at or near the specialist's post or Exchange-provided wireless telephone devices to receive off-floor orders from any source (i.e., members, broker-dealers, non-broker-dealers or public customers). However, such orders would only be permitted to be received during outgoing conversations initiated by the floor broker. The Exchange notes that the wireless telephone devices currently in use by the Exchange would need to be reconfigured to allow outgoing phone calls to be made. Members and their employees would continue to be prohibited from using personal wireless voice communication devices on the trading floor.

In addition, the following requirements and conditions would apply to the floor brokers' use of telephone services at or near the specialist's post: (i) Only those quotations that have been publicly disseminated pursuant to SEC Rule 11Ac1-1 may be provided over telephones at or near the specialist's post; (ii) floor brokers may only receive orders over the telephones during outgoing telephone calls that they have initiated; and (iii) only those floor brokers properly qualified in accordance with applicable rules and regulations may accept orders from public customers.<sup>4</sup> The Exchange's policy regarding the use of time clocks at the specialist post would also be amended to allow floor brokers receiving orders over the telephone at or near a specialist post to use the time clock to stamp such order.

The Exchange intends to police compliance with the conditions applicable to use of telephones by floor brokers for the receipt of orders at the specialist's post through oversight and review of complaints from members at the trading posts as well as observations of floor officials and Exchange personnel.

The Exchange believes that the use of the telephones by floor brokers to receive off-floor orders would provide more efficient order routing and execution, increase the speed of execution, and satisfy member and non-

member customers in an increasingly competitive environment.

#### (2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of section 6(b)(5)<sup>6</sup> 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that the proposed rule change is consistent with section 6(c)(3)(B) of the Act.<sup>7</sup> Under this section, it is the Exchange's responsibility to prescribe standards for training, experience and competence for persons associated with Exchange members and member organizations. The Exchange believes that this proposed rule change will establish an additional mechanism for the administration of the education program, which will enable registered persons to satisfy their continuing education obligations.

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

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

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

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

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4<sup>9</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission

<sup>4</sup> For example, floor brokers accepting orders from public customers are required to be qualified pursuant to Exchange Rule 341. Any floor broker accepting an order from a public customer is required to be Series 7 qualified and registered with the Exchange by a member organization approved to conduct non-member customer business.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission notes that under rule 19b-4(f)(6)(iii), the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule become operative on October 1, 2001 due to the emergency situation caused by the attack on and destruction of the World Trade Center on September 11, 2001 and the resulting limitations on the Exchange's trading floor systems including its wired telephone lines.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal immediately operative on October 1, 2001. Accelerating the operative date and waiving the pre-filing requirement will aid the Exchange in overcoming the damage caused to its telephone lines by the destruction of the World Trade Center on September 11, 2001. For this reason, the Commission finds good cause to designate that the proposal become operative on October 1, 2001.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than that 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-83 and should be submitted by October 26, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44862; File No. SR-CBOE-2001-33]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating To Step-Up From the Designated Primary Market Maker's Autoquote Price

September 27, 2001.

On June 14, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> On August 16, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change would clarify, for purposes of automatic step-up, that the term "Exchange's best bid or offer" would refer to the Designated Primary Market Maker's ("DPM") Autoquote price or the price from the DPM's proprietary automated quotation updating system.

The proposed rule change was published for comment in the **Federal Register** on August 23, 2001.<sup>4</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange<sup>5</sup> and, in particular, the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> because, by limiting the Exchange's best bid or offer for purposes of the step-up feature of the Exchange's Retail Automatic Execution System to the Autoquote price as established by the DPM or the DPM's proprietary automated quotation updating system, the proposal should ensure that the step-up feature uses a quote that more accurately reflects the prevailing market. Therefore, the Commission finds the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-2001-33) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44885; File No. SR-CBOE-2001-51]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Modifying Payment of Exchange Dues From Quarterly to Monthly

September 28, 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 20, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter to Debby Flynn, Assistant Director, Division of Market Regulation, Commission, from Steve Youhn, Attorney, CBOE, dated August 15, 2001 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 44718 (August 17, 2001), 66 FR 44391.