

take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the value of outstanding fund shares.

9. Applicants submit that the recovery of Credits as described in the application and amended application does not pose such a threat of dilution. In effecting such recoveries, Principal Life will redeem accumulation units from the sub-accounts in which premiums have been invested on the basis of the net asset value determined at the time the withdrawal to recover the Credit is made. Under these circumstances, in Applicants' view, the recovery of the Credits does not involve dilution. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recovery of the Credits. Applicants argue that because neither of the harms that Rule 22c-1 was meant to address are found in the recovery of Credits, Rule 22c-1 and Section 22(c) should not be construed as applicable thereto. However, Applicants submit that to avoid any uncertainty in this regard, they request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recover Credits under the Contracts and Future Contracts as described in the application and amended application.

10. Applicants submit that their request for an order that applies to Future Accounts and Future Contracts that are substantially similar in all material respects to the Contracts and underwritten or distributed by Prncor or Affiliated Broker-Dealers is appropriate in the public interest. Applicants assert that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that investors will not receive any benefit or additional protection if Applicants are required repeatedly to seek exemptive relief presenting no issue under the Act that has not already been addressed. Having Applicants file additional applications would impair Applicants' ability to effectively take advantage of business opportunities as they arise. Applicants undertake that Future Contracts funded by the Account or Future Accounts which seek to rely on the order issued pursuant to the application will be substantially similar in all material respects to the Contracts.

**Conclusion:** Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit, for the reasons stated above, that their exemptive request meets the standards set out in Section 6(c) of the Act and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-50953; File No. SR-Amex-2004-104]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Regulation SHO

December 30, 2004.

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> notice is hereby given that on December 13, 2004, 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 and II below, which items have been prepared by the Exchange. On December 22, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Amex has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal

effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend Rules 7, 27, 108, 111, 118, 205, 208, 590, 783, 784 and 957 and eliminate obsolete Rules 792, 794 and 795 to conform its rules to the requirements of Regulation SHO<sup>6</sup> under the Act. The text of the proposed rule change is available for viewing at the places specified in item IV below.

#### 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 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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Commission has adopted Regulation SHO under the Act, thereby establishing new requirements relating to short sales.<sup>7</sup> Among other things, Regulation SHO (i) requires broker-dealers to mark sales of all equity securities as "long," "short" or "short exempt," specifying the standards for each, (ii) provides for the establishment of a pilot program under which short sales in specific securities will take

sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 22, 2004, the date that the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> See Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (the "Adopting Release"), and accompanying orders: Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004) (the "Pilot Order"), and Securities Exchange Act Release No. 50747 (November 29, 2004), 69 FR 70480 (December 6, 2004) (the "Second Pilot Order"). The Adopting Release, the Pilot Order and the Second Pilot Order are hereinafter collectively referred to as "Regulation SHO."

<sup>7</sup> See the Adopting Release.

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

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

<sup>3</sup> See Amendment No. 1 to the proposed rule change (December 22, 2004). Amendment No. 1 replaced the Exchange's original filing in its entirety.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6). For the purposes of determining the effective date and calculating the

place without application of the “tick” test or any other price test, (iii) requires short sellers in all equity securities to locate securities to borrow before selling, and (iv) imposes additional delivery requirements on broker-dealers for securities in which a substantial number of failures to deliver have occurred.<sup>8</sup> The Commission has requested each SRO to review its rules and submit rule filings where necessary to conform its rules to the requirements of Regulation SHO. In order to accomplish this objective, the Exchange proposes to amend the following rules. The Exchange believes that these proposed rule changes are non-controversial and, in a number of instances, simply consist of incorporating by reference Regulation SHO or certain of its provisions or adding appropriate provisions to address the new “short exempt” order marking requirement. The operative date of the proposed rule change will be January 3, 2005, which is the operative date of the applicable provisions of Regulation SHO.

#### Rule 7. Short Sales

Rule 7 is the Exchange’s primary rule that applies an Exchange-based “tick” test to short sales effected on the Exchange. The Exchange proposes to amend Rule 7 to incorporate by reference all appropriate exceptions and exemptions provided by the Commission, including those under Regulation SHO and any Commission orders issued pursuant thereto, such as the exemption for Exchange-listed securities designated as part of the Regulation SHO pilot program.<sup>9</sup> Commentary .01 to Rule 7 currently reproduces the complete text of the Commission’s short sale regulation, Rule 10a-1,<sup>10</sup> for the convenience of members and member organizations. Rather than add the new text of Regulation SHO to this already lengthy Commentary, the Exchange proposes simply to reference Rule 10a-1 and Regulation SHO (including any Commission orders issued pursuant to Regulation SHO) in Commentary .01 and take this opportunity to condense the Rule by deleting the text of Rule 10a-1. The Exchange believes this is appropriate, given the opportunities that exist today for members to access the text of the Commission’s rules electronically if necessary. Including the text of the Commission’s regulation in the Exchange’s Commentary is unusual, and it has the additional disadvantage of

requiring the Exchange to submit a rule filing each time there is a change in the Commission’s rule.

#### Rule 27. Allocations Committee

Paragraph (f) of Rule 27 specifies situations under which the Exchange’s Allocation Committee shall be convened to reallocate securities from one specialist to another. Paragraphs (g) and (h) of the Rule outline the procedures for the reallocation. Rule 203(b)(3) of Regulation SHO imposes a buy-in requirement with respect to certain “threshold securities” that have extended delivery failures, and there is also a pre-borrowing requirement for additional short sales of a “threshold security” if the buy-in is not completed within the time period specified in Regulation SHO.<sup>11</sup> These provisions of Regulation SHO do not provide for a specialist/market maker exception.<sup>12</sup> Consequently, the Exchange proposes to modify paragraphs (f) and (h) of Rule 27 to provide for a reallocation in the event that a specialist in a stock, ETF or other security becomes subject to a pre-borrowing requirement on short sales with respect to one of its specialty securities or, in the case of an options specialist, with respect to the underlying security, and for the restoration of the security to the original specialist if that specialist is no longer subject to a pre-borrowing requirement.

#### Rule 108. Priority and Parity at Openings

#### Rule 111. Commentary .04. Restrictions on Registered Traders

#### Rule 118. Trading in Nasdaq National Market Securities

#### Rule 205. Manner of Executing Odd-Lot Orders

#### Rule 208. Bunching of Odd-Lot Orders

#### Rule 590. Part 1 General Rule Violations

#### Rule 957. Accounts, Orders and Records of Registered Traders, Specialists and Associated Persons

The foregoing rules all require very minor and obvious changes to conform to Regulation SHO. Several of these changes involve the addition of provisions related to “short exempt” orders. In the case of Rule 118, a provision involving odd-lot orders in Nasdaq National Market securities that allows such orders to be marked “short” is being revised because it would directly conflict with the provision of Regulation SHO requiring orders that are exempt from the “tick” test to be

marked “short exempt.”<sup>13</sup> In the case of Rule 957, a reference to Rule 200 of Regulation SHO will be substituted for a reference to Rule 3b-3 under the Act (which is being eliminated).

#### Rule 783. Normal Buy-Ins

#### Rule 784. Mandatory Closing of Fails

Rule 783 provides the procedures for normal buy-ins of securities traded on the Exchange, and Rule 784 provides the procedures for the mandatory closing of fails for Exchange-traded securities. The time periods and certain other provisions in these two Rules (such as the ability of a Floor Official to defer the execution of a normal buy-in under Rule 783 and the ability of the Exchange to temporarily suspend the mandatory closing in Rule 784 under unusual circumstances) are incompatible with the buy-in requirements for “threshold securities” under Regulation SHO. Consequently, the Exchange proposes to incorporate by reference the provisions of Regulation SHO into these two Rules where appropriate, making it explicit that Regulation SHO governs in the event of a conflict.

#### Rule 792. Securities Transferring Out of Town

#### Rule 794. “Buy-Ins” on Securities Located Out of Town

#### Rule 795. “Buy-Ins” Where Securities in Transfer

Rules 792, 794 and 795 all contain buy-in provisions that, as with Rules 783 and 784, may be in conflict with the buy-in provisions of Regulation SHO under certain circumstances. However, rather than modify each of these rules through incorporation by reference of the provisions of Regulation SHO, as proposed above for Rules 783 and 784, the Exchange has determined that these three rules are obsolete and no longer in use, and we instead propose that these rules be eliminated in their entirety.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

<sup>8</sup> *Id.*

<sup>9</sup> See the Pilot Order and the Second Pilot Order.

<sup>10</sup> See 17 CFR 240.10a-1.

<sup>11</sup> See the Adopting Release.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. 78f(b).

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

### *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 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*

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, as amended, has been filed by the Exchange pursuant to section 19(b)(3)(A) of the Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup> The Exchange requests that the Commission waive the 5-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii)<sup>18</sup> because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time frame as the Commission may designate. The Exchange believes that good cause exists to grant such waivers because of the importance of short sale regulation to the protection of investors. The Exchange will implement the proposed rule change immediately so that they will be in effect on the operative date of the applicable provisions of Regulation SHO.

The Commission believes that waiving the 5-day notice and 30-day pre-operative delay is consistent with the protection of investors and the public interest. The Commission notes that proposed rule change being made herein simply conforms the Exchange's rules to the requirements of Regulation SHO under the Act. No new rules, policies or procedures are being proposed other than as required by Regulation SHO. The Commission believes that accelerating the operative date of the proposed rule change does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. For these reasons, the Commission designates the proposed

rule change as effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change pursuant to section 19(b)(3)(A) of the Act, 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. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-104 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-104 and should be submitted on or before January 28, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-20 Filed 1-6-05; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50952; File No. SR-CHX-2004-42]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Short Sales of Securities**

December 30, 2004.

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> notice is hereby given that on December 21, 2004, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule change as described in items I and II below, which Items have been prepared by the CHX. 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 CHX proposes to amend its rules to eliminate and modify provisions relating to short sales of securities, where those provisions are inconsistent with, or different from, the requirements of Regulation SHO.<sup>3</sup> The text of the proposed rule change is available for viewing at the places specified in item IV below.

<sup>19</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>3</sup> See Release No. 34-50103, File No. S7-23-03, 69 FR 48008 (August 6, 2004) (the "Adopting Release"), and accompanying orders: Release No. 34-50104 (July 28, 2004), 69 FR 48032 (August 6, 2004) and Release No. 34-50747 (November 29, 2004), 69 FR 70480 (December 6, 2004).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).