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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54584; File No. SR-Amex-2006-57]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Relating to Stop Orders for Exchange Traded Funds and Trust Issued Receipts

October 6, 2006.

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 August 18, 2006, 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 Amex. 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 the rules applicable to stop orders for exchange traded funds and trust issued receipts. The text of the proposed rule change is available on the Amex's Web site at (<http://www.amex.com>), the Amex Office of the Secretary, and at the Commission's Public Reference Room. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

#### General and Floor Rules

##### Rule 154. Orders Left with Specialist

No member or member organization shall place with a specialist, acting as broker, any order to effect on the Exchange any transaction except at the market or at a limited price.

\* \* \* Commentary

.01 No Change.

.02 No Change.

.03 No Change.

.04 (a) A specialist shall accept both stop orders and stop limit orders in securities in which he is so registered.

(b) When a specialist elects a stop order on his book by selling stock to the

existing bid or buying stock at the existing offer for his own account, he must first obtain a Floor Official's approval (*except in the case of Exchange-Traded Fund Shares and Trust Issued Receipts if the transaction is 0.10 point or less away from the prior transaction*).[, and] A[a]ll stop orders so elected must be executed at the same price as his electing transaction.

(c) No Change.

.05—.15 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, 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

The Exchange proposes to amend Commentary .04(b) to Amex Rule 154 to provide that a specialist who elects a stop order on his book by selling stock to the existing bid or buying stock at the existing offer for his own account is not required to obtain floor official approval if the transaction is 0.10 point or less away from the prior transaction. This exception would only apply to transactions in Exchange-Traded Fund Shares and Trust Issued Receipts (collectively, "ETFs").

Currently, Exchange rules provide that when a specialist elects a stop order on the specialist's book by selling to the existing bid or buying from the existing offer, floor official approval must first be obtained. This current rule causes time delays and other impediments to an efficient and orderly marketplace and overly burdens floor officials when their time could be used more efficiently and effectively elsewhere. With the increasing use of technology and the increased competition in the marketplace, specifically auto-quoting and multiple market centers, timing in the market has become much faster and the ability to be fast has become much more important. The current Rule does not adequately account for these market structure changes thereby placing the specialist at a competitive disadvantage

because of the requirement to first obtain floor official approval. Floor officials are also over burdened and this proposal could help to alleviate some of their administrative burdens and permit the reallocation of their time to the oversight and administration of other rules.

In addition, the requirement to obtain floor official approval is absolute without taking into account how large or small the price variation of the stop order is from the last trading price. The New York Stock Exchange LLC (the "NYSE") has adopted a threshold so that a minimum price variation of 0.10 point or less from the last trading price does not require floor official approval;<sup>3</sup> therefore, in order to remain competitive, the Exchange proposes to match the NYSE threshold whereby floor official approval would not be required if the price variation from the last trading price is 0.10 point or less. Similar to the NYSE's rules, the proposed rule change retains the requirement that the specialist guarantees that stop orders be executed at the same price as the electing sale.

The Exchange believes that eliminating the requirement for such transactions could help foster a more efficient and orderly marketplace, alleviate the administrative burden for floor officials and enable the Exchange to more effectively compete, while maintaining the requirement of floor official approval for the specialist stop order elections that are most likely to warrant floor official scrutiny (*i.e.*, where the electing transaction is more than 0.10 point away from the previous sale). The Exchange acknowledges that the elimination of the floor official approval pursuant to this proposal may increase the frequency of specialists electing stop orders by selling to the existing bid or buying from the existing offer. Accordingly, the Exchange will continue to conduct its existing surveillances to monitor specialists' compliance with the specific requirements of Commentary .04 to Amex Rule 154 (*i.e.*, obtaining floor official approval when required and executing the stop order at the same price as the electing trade) as well as their agency obligations to the impacted stop orders. The Exchange seeks approval of this proposal to amend Commentary .04(b) to Amex Rule 154 to provide that floor official approval is not required for a stop order in ETFs if the transaction is 0.10 point or less from the last trading price.

<sup>3</sup> See NYSE Rule 123A.40.

<sup>26</sup> Replaced December 31, 2005.

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

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

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(5) of the Act,<sup>5</sup> in particular in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and 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.

### *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*

Written comments were neither solicited nor received.

## 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 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-2006-57 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-57. 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 Room. 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-2006-57 and should be submitted on or before November 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54585; File No. SR-NASD-2005-101]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto Relating to Expansion of OATS Reporting Requirements to OTC Equity Securities**

October 10, 2006.

## I. Introduction

On August 25, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the proposed rule change relating to expansion of the Order Audit Trail System ("OATS") reporting requirements to OTC equity securities. The proposed rule change was published for comment in the **Federal Register** on October 18, 2005.<sup>3</sup> The Commission received three comment letters on the proposal.<sup>4</sup> NASD filed Partial Amendment No. 1 to the proposed rule change on September 21, 2006 ("Amendment No. 1").<sup>5</sup> This order approves the proposed rule change, grants accelerated approval to Amendment No. 1, and solicits

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

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

<sup>3</sup> See Securities Exchange Act Release No. 52581 (October 11, 2006), 70 FR 60592 (the "Notice").

<sup>4</sup> Two comment letters were specific to this proposal. See letters to Jonathan G. Katz, Secretary, Commission, from John Polanin Jr., Chair, SIA Self-Regulation and Supervisory Practices Committee, dated December 2, 2005 ("SIA Letter") and from Phylis M. Esposito, Executive Vice President, Chief Strategy Officer, Ameritrade, Inc., dated November 8, 2005 ("Ameritrade Letter"). One comment letter expressed general opposition to OATS. See letter filed via the Commission's Web Comment Form, from Rich Bertematti, dated September 7, 2006 ("Bertematti Letter"). In addition, NASD received comment letters about the proposed rule change following publication in NASD's Notice to Members 04-80 (November 2004). NASD addressed those comment letters in the Notice.

<sup>5</sup> In Amendment No. 1, NASD proposes to (1) amend NASD Rule 6955(b)(2) to clarify that members will not be required to comply with OATS reporting obligations with respect to an OTC equity security until a symbol has been assigned to the security; (2) exclude direct participation programs ("DPPs") from the proposed definition of "OTC equity security;" (3) extend the implementation period; and (4) make technical changes necessary in light of the commencement of The NASDAQ Stock Market LLC ("Nasdaq") as a national securities exchange. NASD also responded to comment letters received.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>6</sup> 17 CFR 200.30-3(a)(12).