

constituting the European Stock Basket has not opened for trading on any given business day, the previous closing value will be used in the calculation. The Basket value, for any day, will equal the sum of the products of the most recently available market prices, expressed in U.S. dollars and the applicable multipliers for the Basket securities. Lehman Brothers will undertake to implement certain surveillance and compliance procedures with respect to the dissemination of the Basket value, requiring that the Basket value be announced only through public dissemination and restricting the access of the Lehman Brothers trading desk to the Basket value determined by the calculation agent until after public dissemination of the value.<sup>11</sup>

### Exchange Rules Applicable to SUNS

The Exchange's equity trading rules will apply to the trading of SUNS linked to the European Stock Basket. Those rules include Rule 411, which requires members to use due diligence to learn the essential facts relative to every customer to every order or account accepted; and Rule 462 which requires that application of equity margin rules to the trading of indexed term notes. The Exchange will, prior to trading the proposed SUNS, distribute an Information Circular to the membership: (1) Highlighting the essential features of the SUNS product including, but not limited to, the less than 100% principal protection feature and the fact that the issuer has placed a cap on the amount to be paid on the SUNS at maturity;<sup>12</sup> and (2) providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions of the SUNS and highlighting their special risks and characteristics. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the security, such member or member organization should make a determination that the security is suitable for such customer and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommended transaction, including those highlighted, and is financially

able to bear the risks of the recommended transaction.

### 2. Statutory Basis

The Basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)<sup>13</sup> that an exchange have rules that are 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.

#### *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*

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

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

(A) by order approve the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. 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-98-25 and should be submitted by September 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40345; File No. SR-Amex-98-19]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to Solicitation of Options Transactions

August 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 18, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC") or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On July 7, 1998, the Amex filed Amendment No. 1 to the proposal.<sup>2</sup> On

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> See Letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 6, 1998 ("Amendment No. 1"). Amendment No. 1 revises proposed Commentary .04 to Amex Rule 950(d) to indicate that it may be considered conduct inconsistent with just and equitable principles of trade for any member or associated person who has knowledge of the material terms and conditions of orders being crossed to use that information to buy or sell the underlying security or related securities until either the terms of the order are disclosed to the trading crowd or the trade can no longer reasonably be considered imminent. In addition, Amendment No. 1 revises proposed Commentary .04 to replace a reference to an "original" order with a reference to an "originating" order and to

Continued

<sup>11</sup> *Id.*

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

August 18, 1998, the Amex filed Amendment No. 2 to the proposal.<sup>3</sup> 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**

Currently, Amex Rule 950(d), Commentary .03 allows a member representing an order in options (the "originating order") to solicit another member, member organization, or non-member broker-dealer outside the trading crowd to participate in the transaction on a proprietary basis provided that the conditions specified in Commentary .03 are satisfied. The Amex proposes to amend Amex Rule 950(d), Commentary .03 to (1) allow a member representing an originating order to solicit a customer (as well as another member, member organization, or non-member broker-dealer) to participate in the transaction; and (2) provide that a ROT, when establishing or increasing a position, may retain priority over an off-floor order (including that of a customer) that is subject to Commentary .03. In addition, the Amex proposes to adopt Commentary .04 to Amex Rule 950(d), which will state that it may be considered conduct inconsistent with just and equitable principles of trade for any member or associated person who has knowledge of all material terms and conditions of (1) an originating order and a solicited order; (2) an order being facilitated; or (3) orders being crossed,<sup>4</sup> the execution of which are imminent, to enter, based on that knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, an order to buy or sell the security underlying that class, or an order to buy or sell a related instrument until either (1) all the terms of the order and any changes in the terms and conditions of the order of which the member or associated person has knowledge are disclosed to the trading

crowd; or (2) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of Commentary .04, a "related instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.

The proposed rule change is attached as Exhibit A.

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

##### *(a) Purpose*

In 1989, the Amex adopted the "solicitation rule" (Amex Rule 950(d), Commentary .03) to govern the manner in which members may solicit other members and non-member broker-dealers to participate in options transactions. According to the Amex, members generally solicit participation in large size orders and/or orders with more complex terms and conditions, including orders involving both stock and options. Amex Rule 950(d), Commentary .03 permits the solicitation of on-floor and off-floor members and non-member broker-dealers outside of a trading crowd to participate as the contra side of an order only if the trading crowd is given (1) the same information about the options order as is given to the solicited party; and (2) a reasonable opportunity to accept the bid or offer before the solicited party participates in the transaction. The Amex recently has become aware of a growing practice among member firms to solicit not only other members and broker-dealers, but also customers to participate in these large options orders.

Amex Rule 950(d), Commentary .02 describes facilitation orders, in which a member or member organization executes a crossing transaction with an order for a public customer. According

to the Amex, the purpose of the facilitation rule is to provide procedures that allow a customer's order to be executed completely. The Amex notes that while the facilitation rule is similar in many ways to the solicitation rule, *i.e.*, it requires disclosure to the trading floor crowd and allows the crowd to supplant the facilitating member, it does not allow the trading floor crowd to supplant the customer. In addition, floor members may also facilitate customer orders using the Amex's crossing rule (Amex Rule 151, "'On Order' Transactions"). However, Amex Rule 151 does not protect a customer order from being supplanted by the trading crowd, nor would the current proposed change to the Amex's solicitation rule.

The Exchange policy regarding the use of non-public market information that applies to solicited orders currently does not apply to facilitation orders. Since the adoption of the solicitation rule, the Amex has prohibited the use of non-public information by the solicited party for its own benefit by trading in the underlying stock or in related options. Use of such non-public information by the solicited party or by the trading crowd (regardless of whether that party ultimately completes the options transaction) generally is considered conduct inconsistent with just and equitable principles of trade. The Amex also proposes to codify in Amex Rule 950(d), Commentary .04 the policy regarding the use of non-public information and to apply that newly codified policy to non-public information obtained by a member facilitating a customer order or information obtained by a member crossing customer orders.

The Amex proposes to amend the solicitation rule (Amex rule 950(d), Commentary .03) to apply the rule to the solicitation of customers and to indicate that a ROT, when establishing or increasing a position, may retain priority over an off-floor order that is subject to the solicitation rule. The Amex states that its rules are designed to promote the interaction of orders in options in an open-outcry auction. Such rules impose order exposure requirements on floor brokers seeking to cross buy orders and sell orders. Applying the solicitation rule to customers will preserve the right of members to solicit customer participation in orders in advance of submitting a proposed trade to the trading floor crowd, while at the same time assuring that orders that are the subject of a solicitation are exposed to the auction market in a meaningful way.

Moreover, the proposal seeks to reconcile the practice of soliciting

replace a reference to paragraph (b) with a reference to Commentary .04.

<sup>3</sup> See Letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated August 18, 1998 ("Amendment No. 2"). Amendment No. 2 adds Commentary .04 to Amex Rule 950(c). Commentary .04 states that a Registered Option Trader ("ROT"), in establishing or increasing a position, may retain priority over or have parity with an off-floor order that is subject to the solicitation rule set forth in Amex Rule 950(d), Commentary .03. Off-floor orders that are not subject to the solicitation rule will retain priority and parity as set forth in Amex Rules 111 and 950(c).

<sup>4</sup> See Amendment No. 1, *supra* note 2.

participation in orders from customers with the rules and practices of the auction market. The Amex believes that the proposal will help in giving fair and equal access to information regarding solicited transactions to participants in trading crowds. In addition, the Amex believes that providing trading crowds with an opportunity to participate in transactions from which they had been excluded will result in more competitive markets and executions for customers at the best available prices.

In addition, the Amex's proposal codifies the policy that it is inconsistent with just and equitable principles of trade for any member or associated person who has knowledge of all material terms and conditions of (1) an originating order and a solicited order; (2) an order being facilitated; or (3) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument prior to the time the order's terms and any changes in those terms are disclosed to the trading floor crowd or the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. The purpose of this policy is to prevent members and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely-related instrument in advance of persons represented in the trading crowd. Without this prohibition, such trading can threaten the integrity of the auction market or disadvantage other market participants. The Amex believes that applying the same prohibitions on the use of non-public information obtained when facilitating a customer order is necessary and appropriate to prevent similar misuse of such information.

#### (b) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5) of the Act, 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.

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

The Amex believes that the proposed rule change will impose no 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**

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 self-regulatory organization consents, the Commission will by order approve such proposed rule change, or 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-98-19 and should be submitted by September 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

<sup>5</sup> 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**  
Deputy Secretary.

#### Exhibit A

Additions are italicized; deletions are bracketed.

#### **Rule 950 Rules of General Applicability**

(a)-(c) No change.

#### **\* \* \* Commentary**

.01-.03 No change.

.04 *A Registered Options Trader, in establishing or increasing a position, may retain priority over or have parity with an off-floor order that is subject to the solicitation rule set forth in Rule 950(d), Commentary .03.*

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply:

#### **\* \* \* Commentary**

.01-.02 No change.

.03 A member or member organization representing an order in options ("originating order") may solicit another member, member organization, [or] non-member broker dealer or customer outside the trading crowd ("solicited party") to participate in the transaction on a proprietary basis provided the member or member organization, upon entering the trading crowd to execute the transaction announces to the trading crowd the same terms and conditions about the originating order as disclosed to the solicited party and bids at the price he is prepared to buy from the solicited party or offers at the price he is prepared to sell to the solicited party.

After all other market participants are given a reasonable opportunity to accept the bid or offer, the solicited party may accept all or any remaining part of such order or the member may cross all or any remaining part of the originating order with the solicited party at such bid or offer by announcing that the member is crossing the orders stating the quantity and price. Non-solicited market participants and floor brokers holding non-solicited discretionary orders in the trading crowd will have priority over the solicited party or the solicited order to trade with the original order at the best bid or offer price subject to the precedence rules set forth in Rule 155.

*A Registered Options Trader, when establishing or increasing a position, may retain priority over an off-floor order that is subject to this solicitation rule.*

All orders subject to solicitation pursuant to this Commentary, and all

tickets reflecting orders solicited pursuant to this Commentary, must be marked as specified by the Exchange.

.04 *With respect to Commentaries .02 and .03 above, it may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of an original order and a solicited order, including a facilitation order, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (i) all the terms of the order and any changes in the terms and conditions of the order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the solicited trade can no longer reasonably be considered imminent in view of the passage of time since the solicitation. For purposes of this paragraph (b), an order to buy or sell a "related instrument," means, in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.*

(e)-(o) No change.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40337; File No. SR-MSRB-98-9]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change Relating to Reports of Sales and Purchases, Pursuant to MSRB Rule G-14

August 19, 1998.

#### I. Introduction

On June 17, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change 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> to institute a service ("the Service") to provide daily reports from the Board's

Transaction Reporting Program ("the Program"). The daily reports will summarize information about customer and inter-dealer transactions in municipal securities reported to the Board under MSRB Rule G-14. The Board proposed to establish a fee for an annual subscription to the Service of \$15,000. The proposed rule change was published for comment in the **Federal Register** on July 13 1998.<sup>3</sup> No comments were received. This order approves the proposal.

#### II. Description of the Proposal

##### Background and Description of the Program

Since 1995, Rule G-14 has required brokers, dealers, and municipal securities dealers ("dealers") to report to the Board their inter-dealer transactions in municipal securities via the automated comparison system for municipal securities operated by National Securities Clearing Corporation ("NSCC"). The Board has used this information to create a database of transaction information that can be used for market surveillance purposes and for inspection and enforcement by agencies and organizations charged with enforcement of Board rules. The Board also uses the reported transaction information to create the Inter-Dealer Daily Report, which is used by market participants to help gauge the value of municipal securities. The Board currently has eight subscribers to the Inter-Dealer Daily Report. Most of these are information vendors that redistribute the information to their own subscribers and/or use the information in various securities valuation products that they market.<sup>4</sup>

In 1996, the Board filed with the Commission an amendment to Rule G-14 to require dealers to report their customer transactions in municipal securities to the Board in certain prescribed formats and a description of the changes to the Program necessary to add customer transaction information.<sup>5</sup> The Board would use the information to produce a daily public report (the "Combined Daily Report") summarizing prices and volumes of trading in the municipal securities market during the previous day. The Commission approved the amendment and changes, and customer trades have been reported

by dealers to the Board since March 1, 1998.<sup>6</sup> In March 1998, the Board filed with the Commission its intention to release samples of the Combined Daily Report for public comment and to make the Report available on an operational basis in the third quarter of 1998.<sup>7</sup>

The criteria for including municipal securities information on the proposed Combined Daily Report will be the same as that described in the Board's March 1998 filing to produce sample daily reports. These are essentially the same as the criteria for the current Inter-Dealer Daily Report. If a municipal security (identified by its CUSIP number) is reported, in compliance with Rule G-14, as having been traded four or more times on a given day, then the high, low, and average price and total par value of all the reported trades in that security will be on the Combined Daily Report the next morning. The average price will be calculated as the arithmetic mean of reported transaction prices of those trades between \$100,000 and \$1,000,000 in par value. This reporting band is meant to exclude odd lots and very large trades from the average price. In applying these criteria, inter-dealer and customer transactions will be considered together. This means that any combination of inter-dealer and customer transactions totaling four or more in one CUSIP will trigger the inclusion of price information in the Combined Daily Report.

The Board expects to make the Combined Daily Report Service available during the third quarter of 1998, and has stated that it will file with the Commission, in advance, an exact date for beginning operation. In addition to the Combined Daily Report Service, the Board also will use the data reported by dealers under Rule G-14 to create a surveillance database available to regulatory agencies and organizations responsible for enforcement of Board rules. The surveillance database will not be available to regulators until early 1999.

##### Description of the Combined Daily Report

Once all transaction information for a business day has been received, the Board's computerized Transaction Processing System ("TRS") generates the Combined Daily Report. As noted, both inter-dealer and customer trades are counted to determine whether an

<sup>3</sup> Exchange Act Release No. 40176 (July 7, 1998) 63 FR 37608 (July 13, 1998).

<sup>4</sup> The current subscribers are Bloomberg Financial Markets, Chapdelaine & Company, Dow Jones Telerate, Interactive Data Corp., J.J. Kenny Co., Inc., Muller Data Corp., Smith Barney, Inc., and TradeHistory, LLC.

<sup>5</sup> Exchange Act Release No. 37859 (Oct. 23, 1996) 61 FR 56072 (Oct. 30, 1996).

<sup>6</sup> Exchange Act Release No. 37998 (Nov. 29, 1996) 61 FR 64782 (Dec. 6, 1996) (approval of amendment to rule G-14); Exchange Act Release No. 39495 (Dec. 29, 1997) 63 FR 585 (Jan. 6, 1998) (Delay of effectiveness to March 1, 1998).

<sup>7</sup> Exchange Act Release No. 39835 (Apr. 7, 1998), 63 FR 18242 (Apr. 14, 1998).

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

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