

Hydro obtain the necessary permits and licenses to operate the Generating Assets and the Virginia Hydros, respectively. These services will be rendered at cost, in accordance with rules 90 and 91 under the Act. Further, Applicants request authority for AE Units 1 and 2, LLC ("AEU"), a public utility subsidiary of Allegheny, to merge with Genco in exchange for Genco assuming the former company's outstanding debt.³

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Reunion Industries, Inc., Common Stock, \$.01 Par Value) File No. 1-15739

June 5, 2000.

Reunion Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$.01 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

Following the completion of its merger with Chatwins Group, Inc., on March 16, 2000, the Company, whose Security has been listed on the PCX, additionally effected its listing and registration on the American Stock Exchange ("Amex"). Trading in the Security on the Amex began on March 23, 2000. The Company's board of directors subsequently determined that the Security's limited trading volume on the PCX, compared with that on the Amex, did not justify the cost of maintaining such listing. On March 27, 2000, therefore, the Company's board passed a resolution authorizing the withdrawal of the Security from listing and registration on the PCX.

The PCX, having determined that the Company complied with the rules of the PCX governing the withdrawal of the Security from listing and registration, has indicated by letter to the Company

that it shall not interpose any objection to the proposed withdrawal. The matter was considered and decided by the Equity Listings Committee of the PCX at a meeting held on May 2, 2000.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the PCX and shall have no effect upon the Security's continued listing and registration on the Amex under Section 12(b) of the Act.³

Any interested persons may, on or before June 26, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,
Secretary.

[FR Doc. 00-14719 Filed 6-9-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42894; File No. SR-Amex-99-36]

Self-Regulatory Organizations: Orders Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Facilitation, Solicitation, and Crossing Transactions

June 2, 2000.

I. Introduction

On September 2, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19-4 thereunder,² a proposed rule change to amend its rules by adopting

Commentary .02(d) and Commentary .04 to Amex Rule 950(d).³ The proposed rule change was published for comment in the **Federal Register** on October 15, 1999.⁴ On November 1, 1999, May 26, 2000, and May 31, 2000, the Amex filed Amendment Nos. 1, 2, and 3, respectively, to the proposal.⁵ No comments were received regarding the proposed rule change. This order approves the portion of the proposal, as amended, adopting Commentary .04 to Amex Rule 950(d); this order also approves the portion of the proposal adopting Commentary .02(d) to Amex Rule 950(d) on a pilot basis until August 31, 2000. Finally, this order accelerates approval of Amendment Nos. 1, 2 and 3, and solicits comments from interested persons on those amendments.

II. Description of the Proposal

A. Proposed New Commentary .02(d)

Commentary .02 to Amex Rule 950(d) generally sets forth the procedures by which a floor broker representing the order of a public customer of a member firm may cross that order with a contra side order from the firm's proprietary account. In these circumstances, the firm is said to be "facilitating" the customer order, and the transaction is called a "facilitation cross."

Under the current version of the rule, a floor broker seeking to execute a facilitation cross must first bring the transaction to the trading floor and request a market from the trading crowd. After receiving bids and offers from the crowd, the floor broker must propose a price at which to cross the order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under the current rule, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to take part of the order, however, the crowd has precedence and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to take the entire order, the floor broker will not be able to cross any part of the order.

³ The current proposal replaces an earlier proposed (file No. SR-Amex-98-19) that the Amex withdrew. See Securities Exchange Act Release No. 41864 No. 41864 (September 10, 1999), 64 FR 50843 (September 20, 1999).

⁴ See Securities Exchange Act Release No. 41985 (October 7, 1999), 64 FR 55998.

⁵ The modifications made by these amendments are incorporated in the description of the proposal in Section II below, and are further discussed in Section III below.

³ AEU's principal assets are to 44MW generation units in Springdale, Pennsylvania.

¹ 15 U.S.C. 78(b)(1).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78(b)(1).

⁴ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240 19b-4.

The proposed rule change would add new paragraph (d) to Commentary .02 to establish a 90-day pilot program that would apply to facilitation cross transactions in equity options.⁶ The proposal would entitle the floor broker, under certain conditions, to cross a specified percentage of the customer order on behalf of the member firm before market makers in the crowd can participate in the transaction. This provision would generally apply to orders of 400 contracts or more. However, the Exchange would be permitted to establish a smaller eligible order size, so long as that size is not smaller than 50 contracts.⁷

The percentage of the floor broker's guarantee would depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the broker's initial request for a market, or at an improved price.

First, the floor broker would be granted a right under the proposal to execute a facilitation cross even at a price that does not improve upon the best bid or offer provided by the crowd in response to his initial request for a market. The proposed rule change provides that where the trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established would need to be satisfied first. Once these public customer orders are satisfied, the floor broker would be entitled to facilitate 20% of the contracts remaining in the customer order.⁸

The proposed rule change further provides that if the floor broker proposes the facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker would be entitled to priority over the crowd to facilitate 40% of the contracts.⁹ However, if the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial

request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the floor broker would be entitled to priority to facilitate 20% of the contracts.¹⁰

The proposed rule change also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices¹¹ would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised. However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.¹²

The proposed rule change makes clear that if the facilitation transaction takes place at a price at which the specialist is not on parity with registered options traders in the crowd, the specialist would not be guaranteed any participation. The proposal also makes clear, however, that it is not intended to prohibit either a member firm or specialist from trading more than their percentage entitlements if the other members of the trading crowd do not choose to trade with the remaining portion of the facilitated order.¹³

B. Proposed New Commentary .04

Proposed new Commentary .04 to Amex 950(d) states that 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 (1) an originating order¹⁴ 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 until either (1) all of the terms of the originating order¹⁵ and any changes in the terms or 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 proposed Amex Rule 950(d), Commentary .04, an order to buy or sell 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 an economically equivalent index.

The Amex stated that it seeks to codify and expand its policy prohibiting either a member or a person associated with a member from using non-public information for the member's or associated person's benefit by trading in the underlying stock or any closely related instrument. Specifically, proposed Commentary .04 is designed to prevent members and associated persons from using undisclosed information about imminent solicited, facilitated, or crossed options transactions to trade the relevant option or any closely related instrument in advance of persons represented in the trading crowd. The Amex believes that trading on the basis of undisclosed information could threaten the integrity of the auction market or disadvantage other market participants.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly those of Section

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.

¹⁵ The proposal as originally filed refers to "all the terms of the order." Amendment No. 2 modifies this phrase to refer to "all the terms of the originating order," defining more clearly the disclosure requirement. See Section III.C below.

⁶ See Amendment No. 2.

⁷ Amendment No. 2 concerning proposed subsection (d)(2). The Exchange would be permitted to adjust the eligible order size on a class by class basis. Telephone conversation between Clarie McGrath, Vice President and Special Counsel, Derivative Securities, Amex, and Ira Brandriss, Attorney, Division of Market Regulation, the Commission, on May 26, 2000.

⁸ See Amendment No. 1, concerning proposed subsection(d)(1)(i).

⁹ See Amendment No. 2, which reduces the proposed percentage guarantee from 50% to 40%.

¹⁰ See Amendment No. 2.

¹¹ These practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. See Amendment No. 3. The Commission notes that the Amex has separately filed a proposal to codify its specialist allocation practices. See File No. SR-Amex-00-30, available for inspection in the Commission's Public Reference Room.

¹² See Amendment No. 3, concerning proposed subsection (d)(3).

¹³ See Amendment No. 2, concerning proposed subsection (d)(4).

¹⁴ Amex Rule 950(d), Commentary .03 states, in part, that a member or member organization representing an order in options ("originating order") may solicit another member, member organization, or non-member broker-dealer 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

6(b)(5)¹⁶ and Section 6(b)(8)¹⁷ of the Act, and the rules and regulations thereunder.¹⁸

A. Proposed New Commentary .02(d)

The Commission believes that proposed new Commentary .02(d) to Amex Rule 950(d) will enable the Amex to better compete with other options exchanges in attracting the order flow of broker-dealer firms seeking to facilitate customer orders, without adversely impacting the prices those orders receive.

The Commission finds that the Amex's proposal to grant participation rights, under certain conditions, to member firm seeking to execute facilitation crosses on the Exchange is reasonable. Currently, Amex market makers have priority rights for the full size of a customer order over the firm that brings a crossing transaction of the Amex floor, as long as the market makers are willing to trade at the proposed price.

While the proposal entitles the member firm to a specified percentage of a facilitation transaction when executed at the trading crowd's best bid or offer, it does not eliminate the crowd's ability to trade with a portion of the order proposed to be crossed, or even so substantially reduce that ability so as to raise serious concern that the proposal would reduce price competition by the crowd. Moreover, the Commission believes that the proposal may contribute to better prices for crossing transactions. Specifically, it provides an incentive for upstairs firms to improve on the prices quoted by the crowd by offering these firms a greater participation in the trade when they better the crowd's price. In addition, market makers will always have an opportunity to improve the market and compete for a greater portion of the trade.

In evaluating the proposed rule change, the Commission considered, among other matters, whether the Amex's proposal to guarantee that a member firm could cross up to 40% of

an order would reduce the incentive of crowds to compete for orders, and thus impair the price discovery mechanism of the Exchange's market.

It is recent approval of the application of the International Securities Exchange ("ISE") for registration as a national securities exchange, the Commission discussed the same concern with respect to the ISE's proposed "facilitation mechanism," a system designed to effect a type of facilitation guarantee in an electronic context. The Commission wrote:

It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that 40% is not clearly inconsistent with the statutory standards of competition and free and open markets.¹⁹ By the same token, the Commission believes that the Amex's proposed rule change,

which allocates no more than 40% of an order to the firm seeking to facilitate an order, is not inconsistent with the statutory standard. The Commission notes, moreover, that for those crossing transactions in which a specialist, pursuant to Amex trading floor practices, is entitled to an allocation in addition to the proposed allocation for the facilitating firm, the Amex has included a provision to limit the combined allocations awarded to the firm and the specialist an aggregate of no more than 40% of the order.

B. Proposed New Commentary .04

As described more fully above, proposed Commentary .04 restricts trading by a member or associated person who has knowledge of all of the material terms of a solicited order, an order being facilitated, or orders being crossed. The restriction does not apply however, if either (1) all of the terms of the originating 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.

According to the Amex, proposed Amex Rule 950(d), Commentary .04 is designed to prevent members and associated persons from using undisclosed information about imminent solicited, facilitated, or crossing transactions to trade the

relevant option or any closely related instrument in advance of persons represented in the trading crowd.

The Commission believes that it is reasonable for the Amex to prohibit, as inconsistent with just the equitable principles of trade, transactions by members or associated persons based on the knowledge of imminent undisclosed solicited, facilitated, or crossing transactions. The Commission believes that such trading could threaten the integrity of the auction market or disadvantage other market participants.²⁰ Accordingly, by restricting trading based on knowledge of an imminent undisclosed solicited, facilitated, or crossing transaction, the Commission believes that the proposal will help to maintain the integrity of the Amex's market. As noted above, a member or associated person who has knowledge of all of the material terms of a solicited order, an order being facilitated, or orders being crossed may trade after disclosing to the trading crowd the terms of the originating order and any changes in the terms and conditions of the order.²¹ The Commission believes that this disclosure requirement should provide the trading crowd with a fair and full opportunity to make informed trading decisions.²²

The Commission notes that proposed Commentary .04 does not relieve market participants of the general Amex requirement that their acts and practice be consistent with just and equitable principles of trade.²³ Thus, the Commission notes, as it has concluded previously,²⁴ that disclosing the terms of an order and any change in the terms and conditions of the order to the trading crowd prior to effecting a trade does not provide a safe harbor from possible violations of front-running prohibitions.²⁵

²⁰ See Securities Exchange Act Release No. 34959 (November 9, 1994), 59 FR 59446 (November 17, 1994) (order approving File No. SR-CBOE-94-15).

²¹ Under proposed Commentary .04, a member or associated person with knowledge of the terms and conditions of a solicited, facilitated, or crossing transaction also may trade based on knowledge of the order if the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received.

²² See Securities Exchange Act Release No. 36195 (August 25, 1995), 60 FR 45753 (September 1, 1995) (order approving File No. SR-CBOE-95-07) ("1995 CBOE Order").

²³ See Amex Constitution, Article V, Section h(4).

²⁴ See 1995 CBOE Order, *supra* note 22.

²⁵ See Securities Exchange Act Release No. 25233 (December 30, 1987), 53 FR 296 (January 6, 1998) (noting the filing and immediate effectiveness of frontrunning policies filed by the American Stock Exchange, New York Stock Exchange, Pacific Exchange, Philadelphia Stock Exchange, Chicago Board Options Exchange, and the National Association of Securities Dealers).

¹⁶ 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

¹⁷ 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

¹⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

The Commission notes that proposed Commentary .04 is substantially similar to current Chicago Board Options Exchange ("CBOE") Rule 6.9(e). The Commission believes that it is reasonable for the Amex to adopt a rule that is substantially similar to CBOE Rule 6.9(e) to provide similar protections for the Amex's marketplace. In addition, Commission believes that it is reasonable for the Amex to include solicited, facilitated, and crossing transactions in Amex Rule 950(d), Commentary .04 because solicited, facilitated, and crossing transactions could present opportunities for misuse of non-public information.

C. Accelerated Approval of Amendments

The Commission finds good cause, pursuant to Section 19(b)(2)(B) ²⁶ of the Act, for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Amendment No. 1 adds the provision, described above, that would provide an allocation to a member firm seeking to facilitate a customer order even when it only matches, but does not improve upon, the prices given by the crowd in response to the floor broker's initial request for a market. The Commission has already approved rules of the ISE, the CBOE, and the Pacific Exchange ("PCX") that establish participation guarantees for firms seeking to facilitate orders even when they only match the best prices offered by other market participants.²⁷ Thus, the addition of this provision to the Amex proposal raises no new regulatory issues. Further, it should benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the various exchanges, and will allow the Amex to compete without disadvantage for facilitation orders.

Amendment No. 2 reduces the allocation to the member firm seeking to facilitate a customer order from 50% to 40% when the firm improves the price given by the crowd in response to the floor broker's request for a market. It thus limits guaranteed participation to a percentage that the Commission has previously found consistent with the Act and raises no new regulatory issues.

Amendment No. 2 also includes the provisions described above concerning specialist allocations, and stipulates that the allocations guaranteed to the member firm and the specialist in the aggregate may not exceed 40% of the order. It thus strengthens the proposal by adding a necessary clarification of priority rights pursuant to current trading practices.

Amendment No. 2 also provides the Exchange the authority to reduce the size of orders to which the new guarantee applies from 400 to 50 contracts. The Commission has already approved ISE and CBOE rules permitting guarantees to firms facilitating crosses in order sizes as low as 50 contracts.²⁸ Thus, this modification of the Amex proposal raises no new regulatory issues. Further, it will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the ISE, the CBOE, and the Amex, and will allow the Amex to compete without disadvantage for facilitation orders.

Amendment No. 2 also seeks to establish proposed Commentary .02(d) to Rule 950(d) as a 90-day pilot program. The Commission finds no reason to delay approval of this modification.

With respect to proposed Commentary .04, Amendment No. 2 clarifies that the restriction on trading for a person who has knowledge of the terms of a solicited, facilitation, or crossing order no longer applies as long as he disclosed all the terms of the *originating* order.²⁹ This clarification brings the proposed rule change in conformity with the disclosure requirement of CBOE Rule 6.9(e) and raises no new regulatory issue.

Amendment No. 3 includes several modifications of the proposed new rule text that were made for technical purposes³⁰ or to clarify its meaning, and thus strengthen the proposal.

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)³¹ and 19(b)(2)³² of the Act to accelerate approval of Amendment Nos. 1, 2, and 3 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

²⁸ See relevant citations at *supra*, note 27.

²⁹ See *supra*, note 14.

³⁰ One modification refers to current trading floor practices on the Amex regarding specialist allocations, rather than to the Amex proposal that would codify these practices, which is still pending before the Commission. See *supra*, note 11.

³¹ 15 U.S.C. 78f(b)(5).

³² 15 U.S.C. 78s(b)(2).

arguments concerning Amendment Nos. 1, 2, and 3, including whether they are 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. 20549-0609. 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-99-36 and should be submitted by July 3, 2000.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the portion of the proposed rule change (SR-Amex-99-36), as amended, adopting Commentary .04 to Amex Rule 950(d) is approved, and the portion of the proposed rule change adopting Commentary .02(d) to Amex Rule 950(d) is approved on a pilot basis until August 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42895; File No. SR-AMEX-00-10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to the Listing and Trading of Trust Issued Receipts

June 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

³³ 17 CFR 200.30-3(a)(12).

²⁶ 15 U.S.C. 78s(b)(2)(B).

²⁷ See Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (approving ISE's registration as a national securities exchange); 42835 (May 26, 2000) (approving File No. SR-CBOE-99-10); and 42848 (May 26, 2000) (approving File No. SR-PCX-99-18).