

consecutive trading days; (ii) if the Trust has fewer than 50,000 receipts issued and outstanding; (iii) if the market value of all receipts issued and outstanding is less than \$1,000,000; or, (iv) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

In addition, the component securities represented by the securities in the portfolio underlying HOLDERS must meet the following minimum criteria: (1) Each component security must be registered under Section 12 of the Exchange Act; (2) the minimum public float of each component security included in the portfolio must be at least \$150 million; (3) each component security must either be listed on a national securities exchange or be traded through the facilities of Nasdaq and be a reported national market system security; (4) the average daily trading volume for each component security must be at least 100,000 shares during the preceding sixty-day trading period; and (5) the average daily dollar value of the shares traded during the preceding sixty-day trading period must be at least \$1 million. And lastly, no component security may initially represent more than 20% of the overall value of the receipt.<sup>8</sup>

The Exchange believes codifying the above listing criteria for HOLDERS listed pursuant to Rule 19b-4(e) will ensure that no security included in the basket and HOLDERS will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various HOLDERS baskets to meet investors' needs. Additionally, the listing criteria will further serve to ensure sufficient liquidity for those investors seeking to purchase and deposit in basket securities with the trustee to create HOLDERS.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general and furthers the objectives of Section 6(b)(5)<sup>10</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

<sup>8</sup> See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</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.

## 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:

(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, as amended, 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. 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-AMEX-00-10 and should be submitted by July 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42888; File No. SR-Amex-00-05]

## Self-Regulatory Organizations; American Stock Exchange LLC.; Order Approving Proposed Rule Change to Rescind Rules 5 and 6, the Exchange's Off-Board Trading Rules, and to Make Conforming Changes to Rules 25, 317, 900 and 959

June 1, 2000.

## I. Introduction

On February 1, 2000, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to rescind Rules 5 and 6, the Exchange's off-board trading rules, and to make conforming changes to Rules 25, 317, 900 and 959. The proposed rule change was published for comment in the **Federal Register** on March 3, 2000.<sup>3</sup> Proposed rule changes filed by the Chicago Stock Exchange and the Philadelphia Stock Exchange to rescind their off-board trading rules were published on the same date as the Amex proposing release.<sup>4</sup> Shortly thereafter, the Boston Stock Exchange and the Pacific Exchange filed similar proposed rule changes.<sup>5</sup> The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading

<sup>11</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> Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618.

<sup>4</sup> Securities Exchange Act Release No. 42459 (February 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File NO. SR-Phlx-00-12).

<sup>5</sup> Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR-BSE-00-02); Securities Exchange Act Release NO. 42660 (April 10, 2000), 65 FR 21052 (April 19, 2000) (File No. SR-PCX-00-11).

rules filed by the exchanges noted above.<sup>6</sup>

## II. Description of the Proposal

Exchange Rules 5 and 6 restrict a member's ability to effect transactions in Exchange-listed securities (Rule 5) and bonds (Rule 6) off a national securities exchange. In the proposing release, the Exchange explained that these rules were originally intended to "centralize buying and selling interest in listed securities to ensure the execution of orders at the best possible prices. Over time, however, these off-board trading restrictions came to be viewed by many as anticompetitive." The Exchange also noted that Chairman Levitt had recently called for the elimination of off-board trading rules.

The Exchange proposed to eliminate Exchange Rule 5 because the rule is "largely irrelevant" to the trading of Amex-listed equity securities, given the applicability of Commission Rule 19c-3<sup>7</sup> and the fact that most Amex-listed stocks were listed for trading after April 26, 1979. The Exchange also noted that Exchange Rule 5 only applies to Amex members, and that non-member firms do in fact trade Amex-listed equities off an exchange. With respect to Exchange Rule 6, the Exchange stated that the rule was of "little practical consequence" due to the exceptions in the rule that permit "the great bulk of listed bond transactions to occur over-the counter." Therefore, in light of the "limited practical impact of the Exchange's off-board trading rules and the changing view on their propriety," the Exchange proposed to eliminate its off-board trading restrictions for Amex-listed equities and bonds.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act<sup>9</sup> which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading restrictions will help further the national market system objective in Section 11(A)(a)(1)(C)(i) to assure the economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.<sup>10</sup>

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restricting can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Exchange Rules 5 and 6 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.<sup>11</sup> The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Exchange Rules 5 and 6 may have in enhancing the interaction of investor

orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."<sup>12</sup> The same rationale and motivation support the Commission's action today.

## IV. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Amex-00-05) is approved.

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. 34-42887; File No. SR-BSE-00-02]

### Self-Regulatory Organizations; Boston Stock Exchange Inc.; Order Approving Proposed Rule Change to Rescind Chapter II, Section 23, the Exchange's Off-Board Trading Rule

June 1, 2000.

## I. Introduction

On March 9, 2000, the Boston Stock Exchange, Inc. ("BSE" 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a

<sup>6</sup> The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000 the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release 34-42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

<sup>7</sup> Commission Rule 19c-3 prohibits a national securities exchange from imposing off-board trading restrictions to equity securities listed after April 26, 1979. 17 CFR 240.19c(3).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78k-1.

<sup>10</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> Section 11A(a)(1)(C)(v) of the Act.

<sup>12</sup> NYSE Approval Order at 30179.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

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

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

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