

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43954; File No. SR-AMEX 01-01]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to Amendments to Rule 126(g) and Precedence Based on Size

February 12, 2001.

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 January 18, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On February 5, 2001, the Amex amended the proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Amex proposes to amend Amex Rule 126(g), Commentary .01, to reduce from 25,000 to 5,000 shares the minimum size block cross that will be permitted to establish size precedence. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

#### Rule 126 Precedence of Bids and Offers

##### Commentary .01

Order to cross 5,000 [25,000], shares or more, where one or both sides of such cross is for the account of a member or member organization, will be permitted to establish precedence based on size so long as the orders are represented at the post when a sale removing all bids and offers from the Floor takes place. Once the precedence of such orders of 5,000 [25,000] shares or more has been established, the broker handling the

cross must then bid and offer the security in accordance with Rule 152.

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#### 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 Exchange 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

In 1989, the Commission approved on a permanent basis Amex Rule 126(g), Commentary .01, which provides that orders to cross 25,000 shares or more will be permitted to establish precedence over other bids and offers.<sup>4</sup> Procedures under Rule 126(g), Commentary .01 permit size precedence for crosses of 25,000 shares or more to be established when no other order has price or time priority. When an order has time priority, a sale removing all bids and offers from the floor must occur before parity is established, and the order to cross can be accorded precedence based on size. Thus, in order to obtain precedence, orders to cross 25,000 shares or more must have been presented at the specialist's post when the sale removing all bids and offers from the floor had taken place. Once size precedence has been established, the broker handling the cross must then bid and offer the security in accordance with Amex Rule 152.<sup>5</sup>

The Exchange is proposing to reduce from 25,000 to 5,000 shares the minimum size block cross that will be permitted to establish size precedence. The block cross procedures under Amex Rule 126(g) have facilitated executions of large size orders on the Amex as one transaction at a single price, without such orders losing shares to other orders in the trading crowd or on the specialist's book due to Exchange parity rules. In addition, by facilitating the

execution of large blocks on the Amex, the proposed rule change will reduce member firms' incentive to route such orders to regional exchanges or the third market in order to avoid losing an excessive number of shares to other orders under existing Amex parity rules. The Exchange notes that, with the start-up of decimal pricing in equities, with a minimum price variation of one cent, it will be less expensive for members to break up proposed block crosses on the Amex Floor, which may result in such crosses being routed to markets in which size precedence is not taken into account in the manner required by Amex rules.

The Exchange believes it is appropriate to permit block size orders of 5,000 shares to establish size precedence. The proposal will bring Amex rules more in line with the New York Stock Exchange ("NYSE") size precedence rules (e.g., NYSE Rule 72), but Amex rules will continue to be more conservative than NYSE rules in that size precedence will be accorded only to crosses, and only when such orders involve 5,000 shares or more. In addition, confining the Exchange's size precedence threshold to 5,000 shares will continue to limit the effects of the rule primarily to active, liquid issues.

###### 2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is 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.

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

The Exchange believes 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**

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

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

<sup>3</sup> See January 23, 2001 letter from Michael Cavalier, Associate General Counsel, Legal and Regulatory, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1"). At the Commission's request, the Amex filed Amendment No. 1, which asks that the proposal be implemented on a one-year pilot program basis.

<sup>4</sup> See Securities Exchange Act Release No. 26550 (February 15, 1989), 54 FR 7655 (February 22, 1989) (SR-Amex-88-30).

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

**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.

The Amex has requested accelerated approval of the proposed rule change. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

#### 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 20549-0609. 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 Exchange. All submissions should refer to file number SR-Amex-01-01 and should be submitted by March 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43950; File No. SR-Amex-01-02]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Amend Amex Rule 126(g), Commentary .02 Regarding Agency Cross Transactions

February 12, 2001.

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 February 5, 2001, 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 the Exchange. 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 Amex Rule 126(g), Commentary .02, to reduce the number of shares that may be crossed on an agency basis under the rule from 25,000 shares to 5,000 shares. The text of the proposed rule change is in *italics*. Proposed deletions are in brackets.

#### Rule 126 Precedence of Bids and Offers

Commentary .02

When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of *5,000* [25,000] shares or more and are for the accounts of persons who are not members or member organizations, the member may "cross" those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 151, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of

the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. No member may break up the proposed cross transaction, in whole or in part, at the cross price. A transaction effected at the cross price in reliance on this Commentary .02 shall be printed as "stopped stock".

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#### 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 Exchange has prepared summaries, set forth in section 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

Amex Rule 126, "Precedence of Bids and Offers," sets out rules governing priority and precedence of bids and offers on the Exchange Floor, and generally provides that bids and offers are entitled to precedence based on time, with members bidding at the highest price (offering at the lowest price) entitled to be on parity and divide executions at their price after a previous sale removes all bids and offers from the Floor. Commentary .02 to Amex Rule 126(g)<sup>3</sup> applies only to agency crosses (referred to herein as "clean crosses") to buy and sell orders of 25,000 shares or more (that is, both orders for accounts of non-members). This commentary provides that a member may cross those orders at a price at or within the prevailing quotation, with such orders entitled to priority at the cross price over previously entered bids and offers. When crossing these orders, the member must follow the crossing procedures of Amex Rule 151 and another member may trade with either the bid or offer side of the cross to provide improvement to all or part of the bid or offer. In addition, the member must trade with all other market interest having time priority at that price before

<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. 34089 (May 19, 1994), 59 FR 27301 (May 26, 1994) (SR-Amex-92-41) (approval order).

<sup>8</sup> 17 CFR 200.30-3(a)(12).