

2001.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Commentary .02 to Amex Rule 126(g) "Precedence of Bids and Offers" to reduce the number of shares that may be crossed on an agency basis from 25,000 shares to 5,000 shares. Amex Rule 126 delineates 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) applies only to agency crosses ("clean crosses") to buy and sell orders of 25,000 shares or more (that is, both orders of 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 "On Order Transactions" and another member may trade with either the bid or offer side of the cross to provide price 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 trading with any part of the cross transaction.

III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange. The Commission finds that the proposal is consistent with the requirements of Section 6(b) of the Act⁴ in general, and particularly furthers the objectives of Section 6(b)(5) of the Act,⁵ in that it is designed to promote just and equitable principles of trade and further the protection of investors and the public interest. The Commission believes that reducing the number of shares that may be crossed on an agency basis from 25,000 shares to 5,000 shares is reasonable, and that such a reduction may help to facilitate the transition from

pricing equities in fractions to pricing in decimals. Additionally, the Commission believes such a reduction may enhance competition among markets in the execution of agency crosses, resulting in better efficiency and prices for investors.

IV. Conclusion

For the above reasons, the Commission find that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 6(b)(5)⁶ in particular.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change SR-Amex-01-02 be, and hereby is, approved.⁸

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44122; File No. SR-Amex-01-01]

Self-Regulatory Organizations; the American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Relating to Amendments to Commentary .01 to Amex Rule 126(g) "Precedence of Bids and Offers"

March 28, 2001.

I. Introduction

On January 18, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change that would amend Commentary .01 to Amex Rule 126(g) "Precedence of Bids and Offers" to reduce from 25,000 shares to 5,000 shares the minimum size block cross that will be permitted to establish size precedence. On January 23, 2001, the Amex amended the proposal at the Commission's request to implement the proposed rule change on

a one-year pilot program basis.³ Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on February 21, 2001.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

In 1989, the Commission approved Commentary .01 to Amex Rule 126(g) "Precedence of Bids and Offers," which provides that orders to cross 25,000 shares or more will be permitted to establish precedence over other bids and offers.⁵ Procedures under Amex Rule 126(g), Commentary .01 permits 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, to obtain precedence, orders to cross 25,000 shares or more must have been presented at the specialists' 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 "Taking or Supplying Stock to Fill Customer's Order."

The Exchange proposes to reduce from 25,000 shares to 5,000 shares the minimum size block cross that will be permitted to establish size precedence. According to the Amex, the block cross procedures under Amex Rule 126(g) have facilitated executions of large 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. The Amex believes 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. Additionally, the Exchange believes that, with the expansion of decimal pricing in equities, and with a minimum price variation of one penny, it will be less expensive for members to break up

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43950 (February 12, 2001), 66 FR 11074.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

³ 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.

⁴ Securities Exchange Act Release No. 43954 (February 12, 2001), 66 FR 11073.

⁵ See Securities Exchange Act Release No. 26550 (February 15, 1989), 54 FR 7655 (February 22, 1989) (SR-Amex-88-30).

proposed block crosses on the Amex floor, which may result in such crosses being routed to markets in which size precedence is not addressed in the manner required by Amex rules.

III. Discussion

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).⁶ Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that a reduction from 25,000 shares to 5,000 shares in the minimum size block cross that will be permitted to establish size precedence is reasonable, in view of the reduction in the minimum price variation resulting from the transition from fractional to decimal pricing. The Commission notes that the provision that the broker handling the cross must bid and offer for the customer side of the proposed transaction under Amex Rule 152 ensures that the customer does not lose an opportunity for price improvement.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change, as amended, is consistent with the provisions of the Act, in general, and with Section 6(b)(5)⁸ in particular.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-AMEX-01-01), as amended, be and hereby is approved on a pilot basis through March 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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⁶ 15 U.S.C. 78f(b). 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).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44101; File No. SR-BSE-00-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Minimum Equity Requirements for Derivative-Based Products

March 26, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 3, 2001, the Boston Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item 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 seeks to amend the Interpretations and Policies of Section 6, Limitations on Exchange Liability, of Chapter XXIV, Portfolio Depositary Receipts, of the Rules of the Board of Governors to reduce from \$1,000,000 to \$200,000 the minimum equity requirement for firms trading derivative-based products if the firm arranges to clear its trades through another forum and obtains Exchange approval to do so. Below is the text of the proposed rule change. New text is in *italic*.

* * * * *

Chapter XXIV

Portfolio Depositary Receipts

Limitation on Exchange Liability

Sec. 6

* * * Interpretation and Policies

* * * 03 *For derivative based trading products, the minimum equity requirement, in certain limited circumstances, will be reduced from \$1,000,000 to \$200,000. The limited circumstances under which the equity requirement will be reduced must be based on clearing arrangements with another forum, through which a BSE member firm will settle their derivative product trades executed on the floor of the Exchange through a separate, non BSECC-member, clearing center. All*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

such arrangements must be fully disclosed to, and approved by, the Exchange, prior to the reduction of the equity requirement. The Early Warning Alert provisions set forth in Chapter XXII, Sections 2(f)(ii) and (iii), and the caretaker provision set forth in Chapter XXII, Section 2(f)(iv) shall apply.

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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

The purpose of this proposed rule change is to add Paragraph .03 to the Interpretations and Policies of Chapter XXIV, Portfolio Depositary Receipts, Section 6, Limitation on Exchange Liability, of the Rules of the Board of Governors to reduce from \$1,000,000 to \$200,000 the minimum equity requirement for firms trading derivative based products if the firm arranges to clear its derivative based products trades through another forum, ("XBSE") and obtains Exchange approval to do so. The rationale for this is that the risk to the Exchange is substantially reduced if a member firm arranges pre-approved procedures for derivative-based products to settle through another, non-Boston Stock Exchange Clearing Corporation clearing institution. This policy would only apply in the limited product area of Portfolio Depositary Receipts, as is made clear in Section 1 of the relevant Chapter (XXIV), entitled "Applicability," which states that "[t]his Chapter is applicable only to Portfolio Depositary Receipts."

2. Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,³ in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing,

³ 15 U.S.C. 78f(b)(5).