

consensuses of the Financial Accounting Standards Board's Emerging Issues Task Force, rules and regulations of the Commission and Interpretations by its staff, and other authoritative accounting guidance, acquisitions by registrants of their own equity securities during the period covered by this Order will not affect the availability of pooling-of-interests accounting and, accordingly, a registrant's financial statements will not be misleading or inaccurate solely because the registrant has engaged in such purchases and has accounted for its business combination transactions as a pooling of interests.<sup>5</sup>

This Order shall be effective beginning on October 1, 2001 through October 12, 2001.

By the Commission.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 44871]

### Order Regarding Government Securities Reconciliations

September 28, 2001.

Section 36 of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. In light of the events of September 11, 2001, the Commission has determined to provide broker-dealers with further relief under Exchange Act Rules 15c3-1 and 15c3-3 to facilitate the orderly reconciliation of transactions in government securities. Accordingly,

It is ordered, pursuant to Section 36 of the Exchange Act, that,

Broker-dealers need not consider the days September 24, 2001 through

October 5, 2001, inclusive, as business or calendar days for purposes of taking deductions, when computing net capital under Rule 15c3-1 or for purposes of determining the amount of cash and/or qualified securities required to be maintained in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" in accordance with the formula set forth in Exhibit A to Rule 15c3-3, arising from aged fail transactions in government securities and unresolved reconciliation differences with accounts or clearing corporations or depositories involving government securities.

By the Commission.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44861; File No. SR-Amex-2001-59]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Proposed Rule 324

September 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 7, 2001, the American Stock Exchange LLC ("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 Amex. 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 Amex proposes to adopt Exchange Rule 324 to require each member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor to maintain a detailed, written record of each type of compensation arrangement that it enters into with other members as well as customers.

The text of the proposed rule change is available at the Office of the

Secretary, the Amex and at the Commission.

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

###### 1. Purpose

The Exchange is implementing examination procedures similar to those previously adopted by the NYSE to review Floor broker activity to determine if a broker is sharing in the profits generated in customer accounts. In connection with these new examination procedures, the Amex is proposing to adopt a rule, similar to NYSE Rule 440I, that would require each member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor, to maintain a detailed, written record of each type of compensation arrangement that it enters into with other members as well as all other customers. The Exchange's financial examiners will use these records in conducting reviews to determine if there were possible violations of Section 11(a) of the Act<sup>3</sup> or Exchange rules.

The proposed rule would apply to members and member organizations primarily engaged as agents in executing transactions on the Floor of the Exchange. It would specify a type of record, *i.e.*, a record of compensation arrangements, in addition to records to be maintained under Exchange Act Rules 17a-3 and 17a-4.<sup>4</sup> The proposed rule would exclude the following compensation arrangements from the requirement to maintain a written record:

(1) Arrangements involving gross compensation of less than \$5,000 per year, and

(2) Arrangements involving order transmitted solely through the Exchange's electronic order routing system.

<sup>5</sup> Our authority under Section 36 extends to any provision of the Exchange Act or any rule or regulation thereunder. Regulation S-X was promulgated, in part, under the authority of the Exchange Act. We acknowledge that our action, by necessity, also will affect filings under the other provisions of the securities laws that require filings to be in compliance with Regulation S-X.

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

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

<sup>3</sup> 15 U.S.C. 78k(a).

<sup>4</sup> 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

The Exchange is proposing to exclude orders transmitted solely through the Exchange's electronic order routing system because the Exchange believes that the audit trail capabilities of this system prevent trading improprieties by independent Floor brokers. The Exchange also is proposing to exclude "upstairs" (*i.e.*, off the Floor) members and member organizations from the requirement to keep records of compensation arrangements. Independent brokers do not generally have the independent supervisory structures and the formalized internal supervisory oversight that upstairs organizations have since many independent brokers act as sole proprietors with limited customer and product base.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is 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, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

The Exchange does not believe that the proposed rule change will result in 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

Pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder,<sup>8</sup> the proposed rule change has become effective upon filing as its effects a change that: (1) Does not significantly affect the protection of investors or the

public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days from the date of filing, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days before the filing date.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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 Amex. All submissions should refer to File No. SR-Amex-2001-59 and should be submitted by October 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44889; File No. SR-Amex-2001-83]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rule 220 Relating to Floor Broker Acceptance of Orders at the Specialist's Post**

October 1, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 1, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "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 Exchange Rule 220 to allow floor brokers to accept orders over telephones at or near the specialist's post.<sup>3</sup>

The text of the proposed rule change appears below. New text is in *italics*; deletions are in *brackets*.

#### **Section 6. Floor Wires**

##### **Rule 220 Communications to and on the Floor**

No member shall establish or maintain any telephonic or electronic communication between the Floor and any other location, or between locations on the Floor, without the prior written approval of the Exchange.

##### **Commentary**

.01 With the approval of the Exchange, a member or member organization may establish and maintain a telephone line which permits a non-

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

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

<sup>3</sup> The Exchange previously filed notice of these amendments on September 6, 2001. However, that notice did not become immediately operative. See SR-Amex-2001-73, Release No. 34-44810 (September 18, 2001), 66 FR 49053 (September 25, 2001). In this Notice (SR-Amex-2001-83), the Exchange makes identical amendments and requests that they be immediately operative on October 1, 2001. Telephone conversation with Claire McGrath, Vice-President and Deputy General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, SEC (October 1, 2001).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).