

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 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.

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, 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-2002-12 and should be submitted by May 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45794; File No. SR-Amex-00-60]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Use of Handheld Terminals by Floor Brokers and Registered Options Traders and to the Exchange's Audit Trail Rules

April 22, 2002.

I. Introduction

On December 11, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal relating to the use of handheld terminals ("HHTs") by the Exchange's floor brokers and registered options traders ("ROTs") and to the Exchange's audit trail rules. On May 15, 2001, Amex submitted Amendment No. 1 to the proposal,³ and on July 27, 2001, Amex submitted Amendment No. 2 to the proposal.⁴ The Commission published the proposed rule change, as amended, in the **Federal Register** on August 8, 2001.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Mandatory Use of HHTs by Brokers and ROTs and Codification of Handheld Terminal Policy

In the mid-1990s, the Exchange's ROTs began to make extensive use of proprietary HHTs that were linked to their home offices by wireless data

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2001 ("Amendment No. 1"). In Amendment No. 1, Amex revised the proposal to clarify that its new Hand Held Terminal Policy would apply to both wired as well as wireless terminals, and to make technical corrections to the proposed rule text.

⁴ See letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 26, 2001 ("Amendment No. 2"). In Amendment No. 2, Amex revised and resubmitted its statement of the purpose of, and the statutory basis for, the proposed rule change. However, Amex did not make any revisions to the proposed rule text.

⁵ See Securities Exchange Act Release No. 44647 (August 8, 2001), 66 FR 41632.

transmission technologies. Amex has stated that the rapid proliferation of these devices raised concerns with broadcast interference, systems disruption, antenna location, exhaustion of system capacity, and appropriate regulatory oversight of data communications. As a result of these considerations and in light of similar developments on other exchanges, Amex built a Wireless Data Communications Infrastructure ("Infrastructure") and adopted a Wireless Communications Policy to regulate the use of these devices.⁶

Since the inception of the Wireless Communications Policy, Amex has allowed members to develop their own HHT applications, subject to review by the Exchange to ensure compliance with its rules and compatibility with its systems. Amex also required members to use the Infrastructure (*i.e.*, Amex antennas, base stations, network, *etc.*) to transmit communications to and from HHTs and to conform their proprietary technologies, at their cost, to the requirements of the Infrastructure.

Amex introduced a Booth Automated Routing System ("BARS") in late 2000. BARS is an order routing system with no order execution capabilities. Brokers can program different algorithms for each Amex security into BARS to cause certain orders to be routed to the specialist for execution or "booking," and others to be routed to the broker's booth on the Amex floor. Booth clerks also can enter orders into BARS that are telephoned to the floor (*i.e.*, orders that are not systematized when they arrive on the Exchange). In August 2001, Amex enhanced the functionality of BARS by introducing a wireless retail application system ("BARS/HHT") that provides communications between member firm booth personnel and floor brokers with HHTs using the Infrastructure. As of April 1, 2002, all Amex floor brokers had BARS terminals in their booths. Currently, there are approximately 50 floor brokers representing 12 firms with assigned HHTs. This is approximately 40 percent of the total number of HHTs that Amex ultimately will assign. As a member firm is added to BARS, Amex would provide that firm with the appropriate number of HHTs to utilize the new system.⁷ Amex has proposed to require

⁶ See Securities Exchange Act Release Nos. 37728 (September 26, 1996), 61 FR 51476 (October 2, 1996) (approving Amex's original Wireless Communications Policy); and 40019 (May 21, 1998), 63 FR 29272 (May 28, 1998) (amending Amex's Wireless Communications Policy).

⁷ Users of these systems are subject to an Exchange fee. See *Securities Exchange Act Release*

Continued

¹⁷ 17 CFR 200.30-3(a)(12).

brokers to use the BARS/HHT system when it becomes fully operational. In addition, Amex has proposed to require all ROTs to use HHTs with the following minimum capabilities at such times as may be determined by Amex:

- HHTs used by ROTs must be able to receive execution reports during a trading session with respect to trades executed against their accounts automatically (*e.g.*, Auto-Ex and Book trades).

- ROTs must be able to report their trades to their clearing agents for comparison and clearance within time limits prescribed by the Exchange by means of their HHTs.

- HHTs used by ROTs must be able to make a record of text transmissions to or from other persons. This record must include the date and time of the transmission, the name of the person initiating the transmission, all persons receiving the transmission, and the text of the message.

- ROTs must be able to capture the following audit trail data on their HHTs with respect to all trades they execute on the Exchange: (1) Time of trade (the clocking mechanism must be in seconds), (2) executing broker badge number, (3) contra broker badge number, (4) open or closing transaction, (5) clearing member, and (6) contra clearing member. ROTs must be able to report this audit trail information to their clearing agents during a trading session within time limits prescribed by the Exchange.

- HHTs used by ROTs must be able to make a record of the following information with respect to orders or quotes initiated by ROTs for securities or futures traded in other markets: (1) Date; (2) the time the order or quote is sent to the other market (the clocking mechanism must be in tenths of a second); (3) the identity of the person initiating the order or quote; (4) security symbol; (5) buy, sell, sell short, or short exempt; (6) order type (*e.g.*, market, limit); (7) order or quote size; (8) order or quote price; (9) execution quantity; (10) execution price; and (11) market where the order or quote is routed (*e.g.*, New York Stock Exchange, Nasdaq, CBOE, or Instinet).⁸

- All clocking must be done electronically. All clocking mechanisms must be synchronized at least once per business day to the National Time

Service or as specified by the Exchange from time to time.⁹

- All required records must be maintained for at least three years and available to the staff of the Exchange upon request in no more than three business days.

The Wireless Communications Policy does not currently appear in the Exchange's rules. The Exchange proposes to codify the Policy in Amex Rule 220, Commentary .04, and—in light of the fact that many members have begun using wired, as opposed to wireless, HHTs—to rename it the “Hand Held Terminal Policy” (“HHT Policy”). In addition, Amex proposes to revise the HHT Policy: (1) To eliminate language that discussed the implementation of the Infrastructure, (2) to remove other features of the HHT Policy that are no longer used, and (3) to remove text that is found elsewhere in the Exchange's rules or that Amex believes is inappropriate in a rule. The requirements for ROTs' usage of HHTs, noted above, also would be incorporated into the HHT Policy.

B. Audit Trail Enhancements

The Exchange has proposed the following changes to Amex Rules 153 and 180 regarding records of orders:

- Paragraph (a) of Amex Rule 153 would be amended to explicitly require members and member organizations located off the floor to maintain a record of order modifications and cancellations.

- Paragraph (b) of Amex Rule 153 would be amended to require all members and member organizations to maintain a record of all orders, modifications, and cancellations received by them on the floor. Members and member organizations would be required to systematize any order, modification, or cancellation that CMS-eligible immediately upon receipt on the floor, if it were not already systematized.¹⁰ Amex would provide

⁹ Every Exchange order passes through the Amex Order File (“AOF”), the host system of order processing, prior to a BARS booth terminal routing the order to an HHT. Any message affecting an order is logged and time stamped in AOF. All orders are assigned a unique turnaround number that is referenced on any subsequent cancellations, executions, or administrative messages. AOF includes a repository of all orders, execution information, processing of orders, reports, cancels, and administrative messages. Amex has represented that its order processing systems have been designed so that the clocking mechanisms do not deviate by more than three seconds from the Naval Observatory atomic clock in Washington, DC.

¹⁰ The Common Message Switch (“CMS”) is the means by which member firms may send electronic orders to both Amex and the NYSE. Currently, percentage and combination orders (*e.g.*, spread orders) are not CMS-eligible. Amex has stated that

members and member organizations with a paper record of all of their systematized orders that they would retain to satisfy their recordkeeping obligations.

- Paragraph (c) of Amex Rule 153 would be rescinded because it concerns orders “carried” to the Exchange floor, and the substance of the rule would be covered by Paragraph (b) of Amex Rule 153.

- Paragraph (d) of Amex Rule 153, concerning records of ITS commitments, would be amended to extend the rule's recordkeeping obligations to member organizations, to clarify that these recordkeeping obligations apply to order cancellations, and to extend the recordkeeping obligations from 12 months to three years.

- Paragraph (e) of Amex Rule 153, concerning records of orders in the Exchange's After Hours Trading (“AHT”) Facility, would be amended to consolidate AHT facility recordkeeping obligations in one place and would conform this provision to the other paragraphs of Amex Rule 153.

- Paragraph (f) of Amex Rule 153 concerns cancellations and reports. Recordkeeping responsibilities with respect to order cancellations would be transferred to the other sections of Amex Rule 153. Paragraph (f) also would be modified to require members and member organizations to keep records of reports for three years instead of 12 months.

- Amex Rule 180, concerning the recordkeeping obligations of specialists, would be deleted, as the revisions to Amex Rule 153 would include recordkeeping by specialists as well as other members.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act¹² which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the

it intends to develop systems that would make these orders CMS-eligible.

¹¹ In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

No. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (R-Amex-2001-22—).

⁸ Amex has stated that the rationale for requiring ROT HHTs to be able to produce an audit trail with respect to orders and quotes initiated on Amex but sent to another market is to facilitate surveillance of intermarket trading violations such as front running.

public interest. The Commission also finds that the proposed rule change is also consistent with the National Market System goals set forth in section 11A(a)(1)(C) of the Act¹³ in that it will enhance economically efficient execution of securities transactions.

The Commission believes that requiring Amex brokers and ROTs to employ BARS/HHT in the manner described above should improve efficiency, minimize risk, and help create more liquid markets on the Exchange. BARS allows member firms to manage their order flow more efficiently by giving them a choice of sending orders electronically to their booths for further action or sending orders directly to the specialist post. BARS/HHT furthers the automation of the order delivery process by allowing floor brokers to communicate with their booths via HHTs. The Commission believes that BARS/HHT will improve the ability of brokers to represent equity and option orders and of ROTs to make markets.

The Commission also believes that the proposed amendments to Amex Rules 153 and 180 are consistent with the Act because they will clarify members' responsibilities under the Exchange's audit trail rules. Furthermore, these amendments will require the systematization of any order that has not already been systematized, which should make order processing more efficient and increase the ability of the Exchange and its members to construct an audit trail.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-Amex-00-60) and Amendment Nos. 1 and 2 thereto are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45783; File No. SR-Amex-2002-11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Options Trading Fees

April 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on February 28, 2002, 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. On April 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 revise a recently adopted options trading fee, as described herein.⁴ The text of the proposed rule change is available at the Office of the Secretary, 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. 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 Exchange recently (1) increased transaction, comparison and brokerage fees for all specialist and registered options trader transactions in both equity and index options;⁵ and (2) eliminated the cap on the number options contracts subject to the transaction, comparison and floor brokerage fees on a given day.⁶ This fee increase went into effect on December 1, 2001.⁷

The Exchange also determined, at the time, that accommodation trades (also known as "Cabinet Trades")⁸ and trades occurring as part of certain types of strategies would continue to be eligible for the cap on that portion of the transaction, option clearance and floor brokerage fees that represented the increase in fees. Thus, for contracts executed in excess of 3,000 on a given day, the transaction fee increase of \$0.09, the options comparison fee increase of \$0.01 and the floor brokerage fee increase of \$0.02 were to be reimbursed. Transaction, options comparison and floor brokerage fees were to continue to be charged for only the first 3,000 contracts executed as an accommodation trade or pursuant to one of the following strategies: (1) Reversals

⁵ The options fees were increased as follows: (1) The Options Transaction Fee per contract side was increased from \$0.17 to \$0.26 for equity options and from \$0.12 to \$0.21 for index options; (2) the options comparison fee was increased from \$0.04 to \$0.05 per contract side; and (3) the floor brokerage fee per contract side was increased from \$0.03 to \$0.05.

⁶ See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) (notice of filing and immediate effectiveness of File No. SR-Amex-2001-101).

⁷ See Securities Exchange Act Release No. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) (order approving File No. SR-Amex-2001-102). The Exchange represents that it intended to eliminate the fee cap as of October 1, 2001. However, due to a delay in the reprogramming of the changes for the Exchange's Finance Division, the fee cap elimination did not go into effect until December 1, 2001.

⁸ See Exchange Rule 959 for a description of an accommodation trade.

¹³ 15 U.S.C. 78k-1(a)(1)(C).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Clair P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex amended the proposal to incorporate the Exchange's reasons for not charging specialists and registered options traders the recent increase in transaction, comparison and floor brokerage fees for accommodation trades or trades executed pursuant to reversals and conversions, dividend spreads, and box spreads. Amex also provided an explanation of the December 1, 2001 implementation date for the elimination of the fee cap.

⁴ Under File No. SR-Amex-2002-12, the Exchange seeks to impose the revised options trading fees, as described in this current proposal, as of December 1, 2001. See Securities Exchange Act Release No. 45784 (April 18, 2002).