

(d) The Sale is a one-time transaction for cash; and

(e) The Plan does not pay any commissions, costs or other expenses in connection with the Sale.

Summary of Facts and Representations

1. Holt, Fleck & Romine, the sponsor of the Plan, is a law firm located in Noblesville, Indiana. The Plan is a profit sharing pension plan, which, as of May 30, 2001, had 15 participants. The Applicant, Steven Holt, the sponsor of the Plan, proposes to purchase the Parcels from the Plan. The Plan's assets have an aggregate fair market value of \$921,549.

2. In September 1992, the Applicant purchased the Parcels from Hamilton General Corporation, an unrelated third party, for \$145,000. At the time of the acquisition, the Parcels represented 53% of Plan assets. The Parcels have an estimated fair market value of \$165,000 and constitute approximately 18% of the total value of Plan assets.

3. The Applicant represent that the Sale is in the interests of the Plan, and its participants and beneficiaries. The Applicant is seeking to purchase the Parcels from the Plan for cash, thus allowing the Plan to be in a more liquid financial status. There will be no commissions, costs or other expenses incurred by the Plan in connection with the Sale.

4. The Parcels consist of:

A 5,412 square foot parcel of improved real property located at 107 South 8th Street, Noblesville, Indiana (107 South); and

A 4,356 square foot parcel of improved real property located at 123 South 8th Street, Noblesville, Indiana (123 South). The Parcels have generated a minimal rate of return during the Plan's holding of the Parcels.⁴

5. The Parcels were appraised on July 16, 2001, by Therese Lattanzio and Stephen L. Cobb (the Appraisers) for Real Property Evaluations, Inc. located in Indianapolis, Indiana. Both Appraisers are Indiana state Certified General Appraisers. The Appraisers are independent of the Applicant.

The Appraisers determined that the best use and highest value of the Parcels was associated with valuing the Parcels in accordance with the so-called direct sales comparison method. In this

⁴ The Department expresses no opinion herein as to whether the acquisition and the holding of the Parcels by the Plan violated section 404(a) of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan.

method, sales of similar use land in the market area are compared to the subject to arrive at an indication of value. In arriving at final value conclusions, factors such as rights conveyed, financing terms, sale conditions, market conditions, location, and physical characteristics are taken into consideration. Therefore, based on the valuation procedure, the fair market value of the Parcels was determined as follows: (i) 107 South = \$110,000; and (ii) 123 South = \$55,000. Accordingly, the total fair market value of the Parcels is \$165,000 as of July 16, 2001 (\$110,000 + \$55,000 = \$165,000). The Plan will receive an amount equal to the greater of: (i) \$165,000; or (ii) The fair market value of the Parcels at the time of the Sale.

6. In summary, the Applicant represent that the subject transaction satisfies the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:

(a) The Sale will be a one-time transaction for cash;

(b) The Plan will not pay any commissions, costs or other expenses in connection with the Sale; and

(c) The Plan will receive an amount equal to the greater of:

(i) \$165,000; or (ii) The fair market value of the Parcels at the time of the Sale.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**

For Further Information Contact: Khalif Ford of the Department, telephone (202) 693-8540 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a

prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of March, 2002.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
Department of Labor.*

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45536; File No. SR-Amex-2002-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the eQPriorty Pilot Program for Six Months

March 11, 2002.

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 March 4, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. Amex has designed the proposed rule change as "non-controversial" under Rule 19b-4(f)(6),³ thus rendering it immediately effective. 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

Amex proposes to extend for an additional six months Commentary .03 to Amex Rule 126 to continue a pilot program for processing electronically transmitted orders for the common stock of business corporations admitted to dealings on the Exchange ("eQPrioritysm"). The text of the proposed rule change is available at the Office of the Secretary of the Exchange and from the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 12, 2000, the Commission approved Amex's eQPriority initiative on a six-month pilot basis.⁴ The pilot program was extended for six months in March 2001⁵ and again in August 2001.⁶ Amex now seeks to extend the pilot for an additional six-month period.

eQPriority is intended to encourage persons to route marketable electronic orders to the Exchange by assuring them that orders sent to the specialist

electronically will be filled either: (i) At the Amex Published Quote ("APQ") up to the displayed size at the time the order is announced, or (ii) at an improved price. Amex believes that the program provides orders for stocks sent to the floor electronically with the optimal combination of speed, certainty of execution, and price improvement opportunities. eQPriority applies only to orders for common stock admitted to dealings; it is not available for orders for options, Exchange Traded Funds, or other Amex-listed securities. It also does not apply to openings and reopenings and to block trades executed at a "clean-up" price pursuant to Amex Rule 155. The eQPriority pilot is scheduled to expire on March 12, 2002.

eQPriority works in the following manner. Once the specialist announces the electronic order, members may not withdraw or modify bids and offers incorporated into the APQ on the opposite side of the market from the incoming order *except* to provide price improvement. When an eQPriority order is executed in part at an improved price, the remainder of the order is executed at the APQ up to the number of shares then available (*i.e.*, the size of the APQ at the time the order was announced, less any shares that provided price improvement). The eQPriority order does not have to match with any other trading interest on the same side of the market. In the event that an eQPriority order is larger than the APQ at the time the order is announced, the order is filled up to the size of the APQ according to the eQPriority procedures, and the unexecuted balance is filled according to the Exchange's customary auction market processes.

The purpose of eQPriority is to provide incoming electronic orders with an execution at the displayed offer (or lower) in the case of an electronic buy order, or at the displayed bid (or higher) in the case of an electronic sell order. eQPriority is not intended to allow an incoming electronic order to obtain priority over orders that already have established priority in the market. Thus, an eQPriority order does not have priority over bids and offers that were announced prior to the time that the eQPriority order is represented. This arises only in situations where the market is quoted at the minimum fractional variation and is best illustrated by an example. Assume the market is quoted 20.00 to 20.01, 5,000 × 5,000, and the bid represents a limit order on the book. Further assume that the specialist announces an eQPriority order to buy 1,000 and that a broker in the crowd is willing to sell 1,000 at 20. In this example, the limit order to buy

on the book had established a bid of 20 prior to the representation of the eQPriority order. The booked limit order, consequently, would buy the 1,000 shares sold by the broker at 20, and the eQPriority order would be filled at 20.01.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with section 6(b) of the Act⁷ in general and furthers the objectives of section 6(b)(5)⁸ 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. Amex also believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

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

Amex has stated that the proposed rule change would 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

Amex has stated that, because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

Amex has requested that the Commission waive the 30-day pre-operative period under Rule 19b-4(f)(6)(iii). The Commission finds that waiving the pre-operative period is consistent with the protection of investors and the public interest. The

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 43284 (September 12, 2000), 65 FR 57410 (September 22, 2000).

⁵ See Securities Exchange Act Release No. 44049 (March 7, 2001), 66 FR 14947 (March 14, 2001).

⁶ See Securities Exchange Act Release No. 44702 (August 15, 2001), 66 FR 43925 (August 21, 2001).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

Commission believes that the existing eQPriority pilot provides beneficial services to investors. Acceleration of the operative date will allow the pilot program to continue without interruption and ensure that the benefits of the program do not lapse.

Accordingly, the Commission waives the 30-day pre-operative period, and the proposed rule change may become operative immediately.¹¹

Rule 19b-4(f)(6) also requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days before doing so (or such shorter time as designated by the Commission). Amex also has requested that the Commission waive this five-day pre-filing requirement. For the same reasons that it is waiving the 30-day pre-operative period, the Commission also waives the five-day pre-filing period.

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 Exchange. All submissions should refer to File No. SR-Amex-2002-14 and should be submitted by April 8, 2002.

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45537; File No. SR-BSE-2002-02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. to Delete References to Fractional Pricing From BSE Rules

March 12, 2002.

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 February 15, 2002, the Boston Stock Exchange, Inc. ("BSE" 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 March 1, 2002, the BSE amended the proposed rule change.³ 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 Exchange proposes to amend its Rules to delete all references to fractional pricing increments in accordance with the decimals conversion in the equity marketplace. The text of the proposed rule change is available at the BSE 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

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See February 28, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE to Alton Harvey, Chief, Office of Market Watch, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the BSE asked that the proposed rule change be considered pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the following Rules to eliminate all references to fractional pricing increments in relation to equity securities: Chapter II, Section 41; Chapter XXIV, Section 5, Interpretations and Policies, Paragraph .10; Chapter XXIV-B, Section 5, Interpretations and Policies, Paragraph .01(e), and Paragraph .05; and Chapter XXXI, Section 3.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act,⁴ in that it is designed to foster cooperation and coordination with persons engaged in regulating securities transactions, 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 does not believe that the proposed rule change will impose 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

No written comments were either solicited or received.

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 BSE consents, the Commission will:

A. By order approve such proposed rule change, or

⁴ 15 U.S.C. 78f(b)(5).