

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** (67 FR 66433, October 31, 2002).

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**ANNOUNCEMENT OF CLOSED MEETING:** Additional Meeting.

The Securities and Exchange Commission will hold an additional meeting during the week of November 4, 2002: An additional Closed Meeting will be held on Tuesday, November 5, 2002 at 4 p.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible. The subject matter of the Closed Meeting to be held on Tuesday, November 5, 2002, will be an investigation.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(5), (6), (7), and (10) and 17 CFR 200.402(a)(5), (6), (7), and (10), permit consideration of the scheduled matter at the Closed Meeting.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: November 5, 2002.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 02-28486 Filed 11-5-02; 12:26 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46750; File No. SR-AMEX-2002-19]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, and 5 Thereto Relating to Performance Evaluation Procedures for Specialists Trading Securities Pursuant to Unlisted Trading Privileges

October 30, 2002.

#### I. Introduction and Description of the Proposal

On March 14, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") 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> a proposed rule change to adopt Amex Rule 29, Market Quality Committee, to codify the Exchange's performance evaluation procedures for specialists trading securities admitted to dealings on an unlisted trading privileges ("UTP") basis. On May 6, 2002, Amex filed Amendment No. 1 to the proposed rule change,<sup>3</sup> and, on May 28, 2002, Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on July 19, 2002.<sup>5</sup> The Commission received no comment letters on the proposal. On July 29, 2002, the Amex filed Amendment No. 3 to the proposed rule change,<sup>6</sup> on October 11, 2002, the Amex filed Amendment No. 4 to the

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

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

<sup>3</sup> See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (May 3, 2002) ("Amendment No. 1").

<sup>4</sup> See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission (May 24, 2002) ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release No. 46196 (July 12, 2002), 67 FR 47579.

<sup>6</sup> See letter from William Floyd-Jones, Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission (July 26, 2002) ("Amendment No. 3"). In Amendment No. 3, the Exchange made non-substantive, technical corrections and changed the composition of the Amex Market Quality Committee to match that of the Amex UTP Allocations Committee (See Securities Exchange Act Release No. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002) ("UTP Allocations Committee Pilot Approval")).

proposed rule change,<sup>7</sup> and, on October 15, 2002, the Amex filed Amendment No. 5 to the proposed rule change.<sup>8</sup> This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment Nos. 3, 4, and 5 to the proposal.

The Exchange is proposing a new program to evaluate and regulate UTP specialist performance. Under the proposal, as amended, a new committee, the Market Quality Committee, would administer the Exchange's program to evaluate and enhance UTP specialist performance. The Committee is proposed to consist of seven persons: the Chief Executive Officer of the Exchange, three members of the Exchange's senior management selected by the Chief Executive Officer, and three members selected by the Chief Executive Officer from among Exchange Officials, Senior Floor Officials and Floor Governors. The Committee would regularly evaluate UTP specialists to determine whether they have fulfilled standards relating to: (1) Quality of markets, (2) competition with other market centers, (3) administrative matters, and (4) willingness to promote the Exchange as a marketplace. The Committee also would review transfers

<sup>7</sup> See letter from William Floyd-Jones, Assistant General Counsel, Amex, to Kelly McCormick-Riley, Division, Commission (October 10, 2002) ("Amendment No. 4"). In Amendment No. 4, the Exchange made non-substantive, technical corrections, provided the Exchange's rationale for matching the composition of the Market Quality Committee with that of the UTP Allocations Committee, and clarified that the Chief Executive Officer of the Exchange will designate the members that serve on the Market Quality Committee. With respect to the rationale for matching the composition of the Market Quality Committee with that of the UTP Allocations Committee, the Amex noted that it believes that the two committees serve closely related functions and that it is desirable for them to have overlapping memberships. The Exchange also stated that it believes that the UTP Allocations Committee structure has worked well in practice and it wishes to ensure that persons serving on the UTP Allocations Committee are available to serve on the Market Quality Committee as well.

<sup>8</sup> See letter from William Floyd-Jones, Assistant General Counsel, Amex, to Kelly McCormick-Riley, Division, Commission (October 14, 2002) ("Amendment No. 5"). In Amendment No. 5, the Exchange specified that only Exchange Officials that do not spend a substantial portion of their time on the Floor may participate by telephone in meetings of the Market Quality Committee. These Exchange Officials that participate in meetings by telephone will be provided with all materials so that they can fully participate in Committee activities. See, e.g., Amex Rule 21, Appointment of Floor Officials. See also Securities Exchange Act Release No. 46061 (June 11, 2002), 67 FR 41547 (June 18, 2002) (permitting Amex Performance Committee members to attend meetings by telephone).

of specialist registrations in UTP securities to ensure that the Exchange's institutional interests are protected. As proposed, the Market Quality Committee could take certain actions against a UTP specialist if it finds that a UTP specialist's performance is inadequate.

## II. Discussion

The Commission finds that the proposed rule change, as amended, 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)<sup>9</sup> of the Act. Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5)<sup>10</sup> of the Act because it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest by encouraging good performance and competition among markets and specialists.

Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.<sup>11</sup> To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain procedures and policies for monitoring the performance of specialists. Furthermore, it is critical that these procedures and policies explicitly provide for the actions to be taken against specialists whose performance proves to be inadequate. The Commission believes that the proposed rules should provide the Amex with the ability to monitor specialists trading securities pursuant to UTP and take appropriate action in the event that such a specialist's performance proves to be inadequate.

Because the proposed rule change, as amended, institutes a new process for evaluating the performance of specialists that trade securities pursuant to UTP and because the Commission is approving amendments, which relate to the composition of the Market Quality Committee, on an accelerated basis, the Commission believes that the proposal should be approved on a pilot basis

<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See 17 CFR 240.11b-1.

through April 5, 2003.<sup>12</sup> The Commission expects the Amex to report to the Commission about its experience with the new performance evaluation process in any future proposal it files to extend the effectiveness of the proposed rule or approve it on a permanent basis.

Moreover, the Commission, pursuant to section 19(b)(2)<sup>13</sup> of the Act, finds good cause for approving Amendment Nos. 3, 4, and 5 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval to Amendment Nos. 3, 4, and 5, on a pilot basis, will enhance immediately the Amex's self-regulatory abilities for the benefit of investors generally. Enhancing such abilities in a timely fashion is critical because Amex UTP specialists currently are trading securities pursuant to UTP and the Amex should be enabled to regulate such activity effectively.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3, 4, and 5, including whether the amendments are 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-2002-19 and should be submitted by November 29, 2002.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-2002-19), as amended, is hereby approved on a pilot basis through April 5, 2003.

<sup>12</sup> The Commission notes that this is the date on which the UTP Allocations Committee Pilot will expire.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-28331 Filed 11-6-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46757; File No. SR-NASD-2002-155]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend a Pilot That Permits SuperSOES to Trade Through the Quotations of UTP Exchanges That Do Not Participate in the Nasdaq National Market Execution Service

October 31, 2002.

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 October 31, 2002, the National Association of Securities Dealers, Inc. ("NASD"), acting through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A)<sup>3</sup> of the Act, and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective on filing with the Commission.<sup>5</sup> 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

There is no new language. The pilot rule language is as follows:

4710. Participant Obligations in NNMS

(a)-(e) No Change.

(f) UTP Exchanges.

(i) A UTP Exchange may voluntarily participate in the NNMS System according to the approved rules for the

<sup>15</sup> 17 CFR 200.30-2(a)(12).

<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. 78s(b)(3)(A).

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

<sup>5</sup> Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).