and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–29746 Filed 11–20–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43554; File No. SR–Amex–00–22]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC Amending Article V, Section 1 of the Exchange Constitution and Exchange Rule 345

November 14, 2000.

I. Introduction

On April 13, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to 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 to grant the Exchange's Enforcement Department the right to appeal a decision of a Disciplinary Panel and to grant the Amex Adjudicatory Council (''AAC'') and the Amex Board of Governors the authority to increase a penalty imposed by a Disciplinary Panel.

The proposed rule change was published for comment in the **Federal Register** on August 2, 2000.[3] The Commission received one comment on the proposal.[4] This order approves the proposal.

II. Description of Proposal

The Amex is proposing to amend its Constitution and Rules to allow Exchange staff to appeal decisions of the AAC, and to allow the AAC to increase penalties imposed by a Disciplinary Panel. Further, the Exchange seeking to expand the scope of the Board of Governor's authority to review proposed decisions of the AAC so that the Board may also sustain, increase, or eliminate any penalty imposed, or impose a lesser penalty.

a. Article V, Section 1(c) and Rule 345

Currently, under Article V, Section 1(c) of the Exchange Constitution and Rule 345, only Exchange members may appeal a determination and/or penalty imposed by a Disciplinary Panel to the AAC.[5] The Exchange's Enforcement Department does not have the right to appeal a Disciplinary Panel's determination under the Constitution or Rule 345. Because only members have the right to appeal a decision to the AAC, currently the AAC may only affirm the determination and penalty imposed, modify or reverse the determination, decrease or eleminate the penalty imposed, impose any lesser penalty permitted, or remand the matter to the Disciplinary Panel for further consideration. The AAC may not impose a greater penalty on appeal.

The Exchange proposes to grant the Enforcement Department the right of appeal, and to give the AAC the authority to increase a penalty imposed by the Disciplinary Panel if it deems it appropriate. The Exchange contends that this authority would give the reviewing body the full range of alternatives that it needs to deal effectively with appeals.

b. Constitution Article V, Section 1(d) and Rule 345(g)

Pursuant to Exchange Constitution Article V, Section 1(d) and Rule 345(g), as the next level of review, any four members of the Board of Governors may call a proposed decision of the AAC in a contested disciplinary matter for review by the entire Board. In reviewing a decision by the AAC, the Board may affirm, modify or reverse the decision of the AAC or remand the matter for further consideration. The Exchange has proposed to expand the scope of the Board's authority to review proposed decisions of the AAC so that the Board may also sustain, increase or eliminate any penalty imposed, or imposed a lesser penalty.[6]

III. Summary of Comments

The Commission received one comment letter on the proposed rule change.[7] In their letter, the commenters expressed their opinion that the proposed rule change violates the general principles of peer review and double jeopardy. The commenters argued that the peer review provided by the current Amex review process ''prevents the imposition penalties by higher authorities that may act in certain circumstances for the political needs of the institution rather than for the justified position of an individual.'' The commenters believed that the purpose of the AAC is to ''ensure that sterile rules that exist in the virtual world of the Enforcement Department are applied in a real world environment with the benefit of the experience of real world participants,'' and that the proposed rule change hampers this purpose.

The comments also stated that the proposed rule change would violate citizens' rights against double jeopardy. The commenters asserted that it is contrary to democratic principles to allow a separate entity to increase a penalty determined to be fair by a peer group embodied to determine the final outcome of a proceeding.

The Amex responded to the commenters by noting that guarantees regarding peer review and double jeopardy apply to governmental proceedings, not proceedings brought by a self-regulatory organization (''SRO'').[8] The Amex noted that Section 6(b)(7) of the Act requires the rules of an exchange to ''provide a fair procedure for the disciplining of members and persons associated with members.''[9]

In response to the commenters' opinion that the proposed rule change would undermine the peer review provided for under the current disciplinary structure, the Exchange noted that the AAC (which the commenters regarded as their ''peer group'') is composed of six Board members (three Floor Governors, all of whom are members, and three Public

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[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release No. 43065 (July 21, 2000), 65 FR 47528.

[4] *See* Letter from George Reichhelm, General Partner, and Andrew Schwarz, General Partner, AGS Specialist Partners, to Secretary, Commission, dated August 9, 2000.

[5] Additionally, any member of the AAC has the authority to request a review of an Exchange Disciplinary Panel decision, *sua sponte.*

[6] Pursuant to New York Stock Exchange (''NYSE'') Rule 476(f), NYSE enforcement personnel have the authority to appeal adverse determinations by disciplinary panels and the review boards have the authority to increase penalties imposed by disciplinary panels. Further, National Association of Securities Dealers, Inc. (''NASD'') Rule 9311 provides for similar authority.

[7] *See* note 4, *supra.*

[8] *See* Jones v. SEC, 115 F.3d 1173, 1183 (4th Cir. 1997); *see also*, Hudson v. United States, 522 U.S. 93 (1997).

[9] 15 U.S.C. 78f(b)(7).

Governors). Therefore, the Exchange explained, when the Board exercises its discretionary right to review a decision of the AAC, all of the members of the AAC who participated in the initial decision will also participate in the Board's consideration of the matter, thus providing member representation. Further, the Exchange pointed out that one-third of the Board's governors are Exchange members. Therefore, the Exchange believes that at both the AAC level of review and at the Board level of review, member participation is more than adequate to satisfy any peer review requirement that might be implicit in Section 6(b)(7) of the Act.[10]

With regard to the commenters' opinion that the proposed rule change would expose members to double jeopardy because a separate entity could increase a penalty determined to be fair by a peer group, the Exchange noted that the proposed rule does not provide that a member or member organization may be charged twice for the same conduct.

IV. Discussion

For the reasons discussed below, the Commission finds that the proposed changes to the Amex Constitution and Rules governing the procedures for review of disciplinary decisions are consistent with the Act in that they will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange consistent with the requirement of Section 6(b)(1) of the Act; [11] they will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange consistent with Section 6(b)(6) of the Act; [12] and they will provide a fair procedure for the disciplining of members and persons associated with members consistent with Section 6(b)(7) of the Act.[13]

The Commission finds that it is fair and appropriate to grant the division or department of the Exchange which brought the charges (''Enforcement Department'') the same right to appeal decisions of the Disciplinary Panel to the AAC as is granted to members. The Commission believes that allowing the Enforcement Department to appeal these decisions will provide an additional check on the disciplinary process to ensure that all parties are treated fairly. While the Commission recognizes the importance of Exchange rules designed to protect members accused of violating Exchange rules from unfair treatment, it is also important to have procedures in place that allow the Enforcement Department to seek review of decisions that it believes are improper or unfair. The Commission does not believe that the rights and protections granted to members under the Rules will be impinged upon by virtue of the fact the Enforcement Department also has the right of appeal. All final disciplinary actions of SROs can be appealed to the Commission. In addition, the Commission has the ability to review on its own motion any final disciplinary action of an SRO.

Further, the Commission believes that it is appropriate to grant the AAC the authority to increase penalties imposed by the Disciplinary Panel upon appeal.[14] The Enforcement Department's right to appeal is limited under the current rule because the AAC may not impose a penalty harsher than that originally imposed by the Disciplinary Panel. The Commission believes that as part of the Enforcement Division's right to appeal, it should be permitted to request an increased penalty if it believes that the penalty imposed by the Disciplinary Panel is inadequate.[15]

Finally, the Commission believes that it is also appropriate to allow the Board of Governors additional discretion to review penalties imposed as proposed by the Exchange. Currently, the Board may only affirm, modify or reverse the decision of the AAC, or remand the matter for further consideration. The Commission believes that by granting the Board the authority to sustain, increase or eliminate any penalty imposed, or impose a lesser penalty, the disciplinary process will be more streamlined. This change will permit the Board to review not only decisions of the AAC regarding whether it is appropriate to sanction a member, but also whether the sanction ultimately imposed is appropriate. For example, if the Board fees AAC's decision to impose a penalty is correct, but disagrees with the penalty imposed, instead of remanding the matter to the AAC for additional consideration with instructions, the Board may impose a penalty that it believes is just. The Commission finds that it is appropriate for the Board to have the authority to make these decisions.

V. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–AMEX–00–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[10] 15 U.S.C. 78f(b)(7).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(6).

[13] 15 U.S.C. 78f(b)(7).

[14] Currently, the AAC is only permitted to affirm the determination and penalty imposed, modify or reverse the determination, decrease or eliminate the penalty imposed, impose any lesser penalty permitted, or remand the matter to the Disciplinary Panel for further consideration. *See* Exchange Rule 345.

[15] The Commission notes that both parties in a civil proceeding have the right to appeal the decision of the court.

[16] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3(f) of the Act. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43559; File No. SR–Amex–00–43]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Amending Its Rules To Require Companies To Publicly Disclose Receipt of a Delisting Notice

November 14, 2000.

I. Introduction

On August 16, 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 proposed rule change to amend its rules to require companies to publicly disclose receipt of a written delisting notice from the Exchange. On September 26, 2000, the Amex submitted Amendment No. 1 to the proposal to make certain technical modifications.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Ryan, Senior Vice President, Chief of Staff, and Senior Legal Officer, Amex, to Alton Harvey, Office Chief, Division of Market Regulation, Commission, dated September 20, 2000.