

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** (68 FR 5058, January 31, 2003).

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Room 1C30, the William O. Douglas Room, Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Tuesday, February 4, 2003, at 10 a.m.

**CHANGE IN THE MEETING:** Time change.

The open meeting scheduled for Tuesday, February 4, 2003, at 10 a.m. has been changed to Tuesday, February 4, 2003, at noon.

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: January 31, 2003.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 03-2828 Filed 1-31-03; 4:43 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47281; File No. SR-Amex-2002-48]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to its Marketing Performance Standards for Exchange Specialists

January 29, 2003.

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 May 30, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 27, 2003, the Exchange filed an amendment to the proposed rule change.<sup>3</sup> 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 adopt Commentary .08 to Amex Rule 26 ("Performance Committee") to establish marketing performance standards for Exchange specialists. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Committee on Floor Member Performance ("Performance Committee") reviews specialist performance and may take remedial action, including terminating a specialist's registration or reallocating securities, when it identifies inadequate performance. The Exchange believes that the Performance Committee protects both the interests of investors, by taking remedial actions to correct poor performance, and the institutional interests of the Exchange, by ensuring that the Amex is as competitive as possible with other markets.<sup>4</sup>

Commission, dated January 14, 2003 ("Amendment No. 1"). Amendment No. 1 clarifies in the proposed rule text that contacts by exchange specialists to issuers or representatives of member organizations will be conducted either off the Exchange floor or, if on the Exchange floor, outside of normal auction market business hours.

<sup>4</sup> See *In the Matter of the Application of Pacific Stock Exchange's Options Floor Post X-17*, Admin. Proc. File No. 3-7285, Securities Exchange Act Release No. 31666 (December 29, 1992), 51 SEC Dkt. 261. The Commission determined that performance evaluation processes fulfill a combination of business and regulatory interests at exchanges and are not disciplinary in nature. The Commission states in the *Post X-17* case:

We believe that the reallocation of a market maker's (or a specialist's) security due to poor

The Exchange recently amended its rules to include "competition with other markets" and "administrative factors" among the standards by which the Performance Committee may evaluate specialist performance.<sup>5</sup> Pursuant to these standards, the Exchange is proposing to adopt objective requirements regarding specialist communications with listed companies and order flow providers.<sup>6</sup> The Exchange believes that the purpose of the proposed rule change is to enhance the specialist's communication function by requiring that the specialist maintain frequent and personal contact with the listed companies and member firm customers that he or she serves.

Under the proposal, specialists would be required to contact off the Floor or, if on the Trading Floor, outside of the Exchange's regular auction market business hours, listed companies and the sponsors or issuers of Exchange Traded Funds, structured products, Trust Issued Receipts, and other equity derivatives on a quarterly basis. These quarterly "issuer" contacts are expected to help foster an understanding of the specialist function, the operations of the

performance is neither an action responding to a violation of an exchange rule nor an action where a sanction is sought or intended. Instead, we believe that performance-based security reallocations are instituted by exchanges to improve market maker performance and to ensure quality of markets. Accordingly, in approving rules for performance-based reallocations, we historically have taken the position that the reallocation of a specialist's or a market maker's security due to inadequate performance does not constitute a disciplinary sanction.

We believe that an SRO's need to evaluate market maker and specialist performance arises from both business and regulatory interests in ensuring adequate market making performance by its market makers and specialists that are distinct from the SRO's enforcement interests in disciplining members who violate SRO or Commission Rules. An exchange has an obligation to ensure that its market makers or specialists are contributing to the maintenance of fair and orderly markets in its securities. In addition, an exchange has an interest in ensuring that the services provided by its members attract buyers and sellers to the exchange. To effectuate both purposes, an SRO needs to be able to evaluate the performance of its market makers or specialists and transfer securities from poor performing units to the better performing units. This type of action is very different from a disciplinary proceeding where a sanction is meted out to remedy a specific rule violation. (Footnotes omitted.)

See also *In re James Niehoff and Company*, Administrative Proceeding File No. 3-6757, (November 30, 1986), and the other authorities cited in the Commission's *Post X-17* decision.

<sup>5</sup> See Amex Rule 26(b), and Securities Exchange Act Release No. 45260 (January 9, 2002), 67 FR 2255 (January 16, 2002) (order approving SR-Amex-2001-19).

<sup>6</sup> The Exchange notes that specialist communications with issuers, and, in particular, the scope of permissible disclosure between specialists and issuers, are discussed in further detail in Section 910 of the *Amex Company Guide*. ?

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

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

<sup>3</sup> See letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation,

Exchange market, and the markets that are maintained in the issuers' stocks. Specialists also would be required to contact (quarterly) off the Floor or, if on the Trading Floor, outside of the Exchange's regular auction market business hours, major order flow providers to maintain open communications with these important customers of the Exchange. The purpose of these contacts with order flow providers is to discuss the service, operational and competitive requirements of the member firms. In addition, specialists would be required to maintain records of these contacts, which would be reviewed by Amex staff.

The Exchange notes that the purpose of requiring contacts to be made by specialists off the Floor or, if on the Floor, outside of regular auction market business hours, is to ensure that the contacts can occur without the distractions of a normal business day. The Performance Committee would be responsible for taking appropriate remedial action in the event that a specialist fails to meet the objective marketing standards.

A review by the Performance Committee can result in a variety of possible actions, ranging from recommendations for performance improvement, a determination not to permit a firm to seek new allocations, to a reallocation of one or more securities from a specialist. The Performance Committee is not precluded from reallocating securities based on a single quarter of deficient performance. Conversely, the Performance Committee is not required to take such actions. Rather, the Exchange believes that the purpose of these standards is to identify circumstances that warrant review by the Performance Committee. The nature of the appropriate remedial action is necessarily an issue that involves the professional judgment of the Performance Committee members and is dependent on such matters as the securities being traded, competition on other exchanges, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise, discretion and judgment of the Performance Committee.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and further the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that the Exchange's procedures are designed to promote just and equitable

principles of trade and protect investors and the public interest by encouraging good performance and competition among specialists.

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

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it will enhance and encourage competition within the Exchange, and, more significantly, among the Exchange and other exchanges and markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing (although this, too, is important), but rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public. The Exchange also believes the Commission has expressly recognized that the types of procedures set forth in the proposed rule change for reviewing the performance of specialists and taking remedial action where appropriate, are necessary to ensure quality markets.<sup>9</sup>

### *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

Within 35 days of the 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 Exchange.

All submissions should refer to File No. SR-Amex-2002-48 and should be submitted by February 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>10</sup>

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

[FR Doc. 03-2676 Filed 2-4-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47287; File No. SR-CBOE-2002-40]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on the CBOE Asian 25 Index and Options on the CBOE Euro 25 Index

January 30, 2003.

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 July 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On January 13, 2003, CBOE filed an amendment to the proposed rule change.<sup>3</sup> The Commission is publishing

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Securities Exchange Act Release No. 45260 (January 9, 2002), 67 FR 2255 (January 16, 2002) (order approving Amex-2001-19).