

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51621; File No. SR-Amex-2005-037)

April 27, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to When Floor Official Approval for a Transaction in a High-Priced Security Is Necessary

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 April 4, 2005, 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 April 20, 2005, Amex submitted Amendment No. 1 to the proposal.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

Amex seeks to amend its Rule 154, Commentary .08 to require Floor Official approval for a transaction in a stock at a price of \$20 or more a share only when the trade is to be made at the greater of 1% or two dollars away from the last previous sale. The Exchange also proposes a conforming amendment to its Rule 119, governing indications, openings, and reopenings.

The text of the proposed rule change is available on Amex’s Web site (www.amex.com), at the Amex’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Amex made minor, non-substantive changes to the text of the proposal and a conforming amendment to Amex Rule 119.

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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 154, Commentary .08 places limitations on the amount a stock may trade away from its previous sale. Depending upon the price of the stock, Commentary .08 allows a stock to trade up to 50 cents, one dollar, or two dollars away from its previous sale. For high-priced stocks trading at more than \$20 per share, Commentary .08 currently limits members from effecting trades at more than two dollars away from the previous sale.⁴ Specialists who wish to effect trades outside the foregoing limit must obtain the prior approval of a Floor Official.

High-priced stocks⁵ frequently may trade more than two dollars away from the last sale in the ordinary course, and Floor Officials will approve these trades since they do not involve a

⁴ Rule 154, Commentary .08 currently allows for stocks trading at \$10 or more (but less than \$20) per share to execute at no more than one dollar away from the last previous sale (which allows for a minimum of just over 5% and a maximum of just under 10% away from the last previous sale). Stocks trading at less than \$10 per share may execute at no more than 50 cents away from the last previous sale (which allows for a minimum just over 5% and, theoretically, a maximum of just under 5000% away from the last previous sale).

⁵ Examples of such high priced securities include NVR, Inc. (ticker symbol: NVR), whose last sale on March 22, 2005 was \$795.50 and Seaboard Corporation (ticker symbol: SEB), whose last sale on March 22, 2005 was \$1,124.00

significant price change in percentage terms. The need to obtain prior Floor Official approval for a proposed transaction, however, delays order processing in circumstances where an independent review of the transaction is not otherwise necessary. Therefore, the Exchange proposes to amend its Rule 154, Commentary .08 to provide that, for stocks that trade at more than \$20 per share, the next trade may be up to the greater of two dollars or 1% away from the previous sale, thus eliminating the need for Floor Official approval in those situations. The Exchange believes that permitting trades to be effected at the greater of 1% or two dollars away from the last previous sale is a moderate adjustment, conservative in percentage terms relative to other price moves allowed under Rule 154, Commentary .08 and appropriate in maintaining adequate trade-to-trade price continuity.

The Exchange further believes that allowing such flexibility in price movement would improve efficiency of order processing on the floor by exempting those who trade in high-priced stocks from obtaining approval in every instance they trade through the two-dollar limit in the normal course of business.

Corresponding to the proposed amendment of Amex Rule 154, the Exchange proposes a conforming change to its Rule 119, which governs indications, openings, and reopenings. That rule defines a “significant order imbalance” as one which would result in a reopening at a price change constituting two or more dollars away from the last sale in a stock selling at \$20 or more per share, one point or more away from the last sale in a stock selling at \$10 or more (but less than \$20) per share, and one-half point or more away from the last sale in a stock selling at less than \$10. Amex proposes to amend Rule 119(3)(a)(iii) to provide that a significant order imbalance is one which results in a reopening at a price change constituting the greater of 1% or

two dollars from the last previous sale for stocks that trade at \$20 or more. Accordingly, the proposed amendment to Rule 119 would limit the frequency of significant order imbalances.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

The proposed rule change would impose no 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 solicited or received by the Exchange on this proposal.

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 self-regulatory organization 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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-037 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2005-037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without

change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-037 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).