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.

The proposed rule change was published for comment in the **Federal Register** on October 5, 2000.[4] No comments were received. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has had a policy of requiring a company whose securities are listed on the Exchange (or trade on the Exchange pursuant to unlisted trading privileges) to publicly disclose receipt from the Exchange of a written delisting notice for failure to comply with the Exchange's continued listing guidelines. The purpose of the proposed rule change is to codify this policy in order to protect present and potential investors in the securities of a company in receipt of such notice.

In order to provide investors with the greatest protection possible, the Exchange believes that a company's public announcement of its pending delisting should disclose not only the fact of the company's having received a written notice from the Exchange, but also indicate on which of the Amex continued listing guidelines the determination to delist has been based. The Exchange believes that requiring companies to disclose to investors which specific listing guideline(s) a company has failed to meet will better enable investors to make informed decisions about whether to make or maintain investments in the securities of such company.

The Exchange has proposed that a company make public its announcement regarding its pending delisting as promptly as possible, but not more than seven calendar days following its receipt of the written delisting notice from the Exchange. The Amex believes that the proposed seven-day time frame is consistent with its current policy and that such time frame would provide the subject company with sufficient opportunity to prepare its public announcement and also ensure that investors receive the information in a timely manner. If a company should fail to disclose the receipt of a written delisting notice under the Exchange's proposal, trading of its securities would be halted until the announcement has been made, even if the company elects to appeal the underlying delisting determination as provided for under Section 1010 of the Exchange's Listing Standards, Policies and Requirements.

The Exchange has also proposed that, where a company has elected to appeal the Exchange's delisting determination but fails to make the required announcement before the Adjudicatory Council issues its decision with regard to the company's appeal, such decision by the Adjudicatory Council whether or not to delist the company's securities may also be based on the company's failure to make the required public announcement.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder governing national securities exchanges.[5] In particular, the Commission finds that the proposal is consistent with the provisions of Section 6(b)(5) of the Act[6] which requires, among other things, that an exchange have rules that are, in general, designed to protect investors and the public interest. The Commission finds that it is appropriate for the Amex to codify in its rules its current policy requiring a listed company (or a company whose securities trade on the Exchange pursuant to unlisted trading privileges) to promptly disclose to the public that it has received a written delisting notice from the Exchange, and to set forth in its public disclosure the continued listing guidelines cited by the Exchange in making its delisting determination. The proposed rule change will better enable the Exchange to ensure that investors in the securities traded on the Exchange have as much information as possible about the issuers of such securities.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–00–43) is hereby approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[4] Securities Exchange Act Release No. 43371 (Sept. 27, 2000), 65 FR 59476.

[5] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43537; File No. SR–CBOE–00–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Participation Rights in Crossing Transactions

November 9, 2000.

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 August 29, 2000, 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 Exchange. 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

The CBOE is proposing certain changes to provisions of its rule that governs the participation rights of firms crossing orders. The text of the proposed rule change is set forth below. Additions are italicized and deletions are bracketed.

* * * * *

Chicago Board Options Exchange, Inc., Rules, Chapter VII, Section D: Floor Brokers, ''Crossing'' Orders, Rule 6.74

(a)–(c) No change.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, when a Floor Broker holds an equity option order of the eligible order size or greater (''original order''), the Floor Broker is entitled to cross a certain percentage of the order with other [customer] orders [from the same firm from which the original order originated (''originating firm] that he is holding or in the case of a public customer order with a facilitation order of the originating firm *(i.e., the firm from which the original customer order originated).* The appropriate Floor Procedure Committee may determine, on a class by class basis the eligible size for an order that may be transacted pursuant to this paragraph (d), however, the eligible order size may not be less than 50 contracts. In accordance with his responsibilities for due diligence, a Floor Broker

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

[2] 17 CFR 240.19b–4.