

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50651; File No. SR-Amex-2004-89]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 341A Relating to Continuing Education for Registered Persons

November 10, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 3, 2004, 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 and II below, which Items have been prepared by the Exchange. The Amex has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 Amex proposes to amend Rule 341A to eliminate the "Grandfather" exemption to the regulatory element of the Continuing Education ("CE") Program. Below is the text of the proposed rule change. Proposed new language is in *italics*. Deletions are in [brackets].

Rule 341A. Continuing Education for Registered Persons

(a) Regulatory Element—No member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of Section (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. On each occasion, the

Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. A person's initial registration date, *also known as the "base date"*, shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the rule.

[(1) Persons Exempted From the Rule—Persons who have been continuously registered for more than ten years on July 1, 1998 shall be exempt from participation in the Regulatory Element programs for registered representatives, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subsection (a)(3) of this Rule. A person who has been continuously registered as a principal for more than ten years on July 1, 1998 shall be exempt from participation in the Regulatory Element programs for registered principals, provided such person has not been subject within the last 10 years to any disciplinary action as enumerated in paragraph (a)(3). In the event that a registered representative or principal, who was exempt from participation in Regulatory Element programs subsequently becomes the subject of a disciplinary action as enumerated in paragraph (a)(3), such person shall be required to satisfy the requirements of the Regulatory Element as if the date of such disciplinary action is such person's initial registration date.]

[(2)](1) Failure to Complete—Unless otherwise determined by the Exchange, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

[(3)](2) [Re-entry into Program] *Disciplinary Actions*—Unless otherwise determined by the Exchange, a registered person will be required to [re-enter] *re-take* the Regulatory Element of the program and satisfy all of its requirements in the event such person:

(i) Becomes subject to any statutory disqualification as defined in Section

3(a)(39) of the Securities Exchange Act of 1934,

(ii) Becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(iii) Is ordered as a sanction in a disciplinary action to [re-enter] *re-take* the *Regulatory Element* [continuing education program] by any securities governmental agency or securities self-regulatory organization.

[Re-entry] *The re-taking of the Regulatory Element* shall commence with [initial] participation within one hundred and twenty days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the disciplinary action becoming final, in the case of (ii) or (iii) above. The date the disciplinary action becomes final shall be treated as such person's [initial registration] *new base date*.

[(4)](3) In-Firm Delivery of the Regulatory Element—Members and member organizations will be permitted to administer the continuing education Regulatory Element program to their registered persons by instituting an in-firm program acceptable to the Exchange.

The following procedures are required:

- (A) through (F) No change.
- (b) No change.

Commentary

.01 to .02 No change.

.03 Any registered person who has terminated association with a registered broker or dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element of the continuing education program at such intervals that may apply (second registration anniversary and every three years thereafter) based on the initial registration, *also known as the "base date"*, anniversary date, rather than based on the date of reassociation in a registered capacity.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 341A specifies the CE requirements for registered persons subsequent to their initial qualification and registration with the Central Registration Depository ("CRD"). The CE requirements consist of a Regulatory Element and a Firm Element.⁵ The Regulatory Element is a computer-based education program administered by National Association of Securities Dealers, Inc. ("NASD") to help ensure that registered persons are kept up to date on regulatory, compliance and sales practice matters in the industry.⁶ Unless exempt, each registered person is required to complete the Regulatory Element initially within 120 days after the person's second anniversary date and, thereafter, within 120 days after every third registration anniversary date.⁷ There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors; the S106 Series 6 Program for Series 6 registered persons; and the S101 General Program for Series 7 and all other registrations.

Approximately 135,000 registered persons currently are exempt from the

Regulatory Element. These include registered persons who, when the CE Program was adopted in 1995, had been registered for at least ten years and who did not have a significant disciplinary action⁸ in their CRD record for the previous ten years ("grandfathered" persons). These also include those persons who had "graduated" from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when Amex Rule 341A was amended and the graduation provision eliminated, and did not have a significant disciplinary action in their CRD record for the previous ten years.⁹

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education ("Council")¹⁰ discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons presently do not have the benefit of this material.

In addition, the Council will introduce a new content module to the

Regulatory Element programs that will specifically address ethics and will require participants to recognize ethical issues in given situations. Participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidelines from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change would eliminate the current Regulatory Element exemptions. The other SRO members of the Council also support eliminating the exemptions and are pursuing amendments to their respective rules.

Amex will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following the proposed rule becoming operative. The effective date will be (1) not more than 30 days following the implementation of necessary changes to Web CRD administered by the NASD, or (2) April 4, 2005, whichever date is the latest to occur.

Following the effective date of the proposed rule change, implementation will be based on the application of the existing requirements of the Regulatory Element (Amex Rule 341A(a)) to all registered persons. The way in which CRD applies these requirements is as follows. CRD establishes a "base date" for each registered person and calculates anniversaries from that date. Usually, the base date is the person's initial securities registration. However, the base date may be revised to be the effective date of a significant disciplinary action in accordance with Amex Rule 341A(a)(3) (which is proposed to be renumbered as Amex Rule 341A(a)(2)) or the date on which a formerly registered person re-qualifies for association with an Amex member by qualification exam. Using the base date, CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Beginning on or after the effective date of the proposed rule change, registered persons formerly exempt from the Regulatory Element requirement must satisfy this requirement on the occurrence of a Regulatory Element base date anniversary (*i.e.* the second anniversary of the base date and every three years thereafter) (*see* examples in the Table below).

⁸ Generally, for purposes of Amex Rule 341A, a significant "disciplinary action" includes a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934; suspension or imposition of a fine of \$5,000 or more, or being subject to an order from a securities regulator to re-take the Regulatory Element. *See* Amex Rule 341A(a)(3)(i)-(iii), which is proposed to be renumbered Amex Rule 341A(a)(2)(i)-(iii).

⁹ When Amex Rule 341A was first adopted in 1995, the Regulatory Element schedule required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was "graduated" from the Regulatory Element. A graduated principal re-entered the Regulatory Element if he or she incurred a significant disciplinary action. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

¹⁰ According to the Council's Charter, the Council is composed of at least nine, but not more than fifteen representatives from securities firms and representatives from six self-regulatory organizations ("SROs") including: the Amex; the Chicago Board Options Exchange ("CBOE"); the Municipal Securities Rulemaking Board ("MSRB"); the NASD, the New York Stock Exchange, Inc. ("NYSE"), and the Philadelphia Stock Exchange ("Phlx"). The SEC and the North American Securities Administrators Associations have liaisons to the Council.

⁵ The Firm Element of the CE Program applies to any registered person who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons (collectively called "covered registered persons"). The requirement stipulates that each member firm must maintain a continuing education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

⁶ Amex Rule 341A(a)(4), which is proposed to be renumbered Amex Rule 341A(a)(3), permits a member firm to deliver the Regulatory Element to registered persons on firm premises ("In-Firm Delivery") as an alternative to having persons take the training at a designated center provided that firms comply with specific requirements relating to supervision, delivery site(s), technology, administration, and proctoring. In addition, Amex Rule 341A(a)(3)(E)(iii) requires that persons serving as proctors for the purposes of In-Firm Delivery must be registered.

⁷ This is the current Regulatory Element schedule, as amended in 1998.

	Registered person	Initial registration date	First regulatory element requirement of a registered person formerly exempt from the regulatory element (assuming an effective date of April 4, 2005)
A		¹¹ 4/4/85	4/4/05
B		7/1/83	7/1/06
C		8/1/84	8/1/07
D		4/3/85	4/3/08

In addition, the proposed rule change would replace references in Amex Rule 341A(a)(2) to "re-entry" into the Regulatory Element with a requirement to "re-take" the Regulatory Element to clarify that the significant disciplinary action provisions apply to all registered persons and not only to currently exempt persons. A person's base date may also be revised to be the date on which a formerly registered person re-qualifies for association with a member or member firm.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with the provisions of Section 6(c) of the Act,¹² in general and furthers the objectives of Section 6(c)(3)(B) of the Act,¹³ in particular, since under that section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

Additionally, under Section 6(c)(3)(B) of the Act,¹⁴ the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange is rescinding all currently effective exemptions from required participation in the Regulatory Element programs, as prescribed by Amex Rule 341A.

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

Amex does not believe that the proposed rule change will impose any burden on competition 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 with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶ Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ This proposed rule change will not become operative until 30 days after the date of filing with the Commission. Furthermore, the Commission notes that Amex designates the effective date of the proposed rule change to be the latest to occur of: (1) Not more than 30 days following the implementation of necessary changes to Web CRD administered by the NASD, or (2) April 4, 2005. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.¹⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2004-89 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-2004-89. 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 Room. Copies of the filing also will be available for inspection and copying at

¹¹ A registered person with an initial registration date of April 4, 1985 will have a Regulatory Element anniversary date on April 4 of 1987, 1990, 1993, 1996, 1999, 2002 and 2005.

¹² 15 U.S.C. 78f(c).

¹³ 15 U.S.C. 78f(c)(3)(B).

¹⁴ *Id.*

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange had satisfied the pre-filing five-day notice requirement.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ See Section 19b(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

the principal offices 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-2004-89 and should be submitted on or before December 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3194 Filed 11-16-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50652; File No. SR-NSCC-2004-04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change To Establish a Confirmation and Matching Service for Over-the-Counter U.S. Equity Options Transactions

November 10, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 13, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on September 15, 2004, and on October 28, 2004, amended the proposed rule change described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through May 31, 2005.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking to add Addendum M to its Rules and Procedures to establish a confirmation and matching service for over-the-counter ("OTC") U.S. equity options transactions ("NSCC Equity Options Service").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, confirmation of trade details among dealers and the dealers' buy-side customers in the OTC equity options industry is supported largely by faxes and telephone communication. It is widely acknowledged by the industry that this current operational infrastructure, which depends upon nonstandard and manual processing, results in excessive processing costs, delays, and errors. The industry is seeking to reduce the attendant operational risks associated with OTC equity options processing by automating the trade confirmation process for OTC equity options.

In response to similar conditions prevailing in the credit default swaps industry, the corporate parent of NSCC, The Depository Trust & Clearing Corporation ("DTCC") created a subsidiary, DTCC Deriv/SERV LLC ("Deriv/SERV"), in 2003. Deriv/SERV currently offers a confirmation and matching service for OTC credit default swaps transactions and their associated cash flows. This service is now used by approximately 30 entities including all of the largest OTC credit default swaps dealers.

Deriv/SERV has developed a confirmation and matching service for OTC equity options transactions and their associated cash flows ("Deriv/SERV Equity Options Service"). The Deriv/SERV Equity Options Service will provide for confirmation and matching either between two OTC equity options dealers or between an OTC equity options dealer and its buy-side customer. Where either the buyer or the seller of an equity option is a U.S. person and the equity option is issued by a U.S. issuer ("U.S. Equity Option Transaction"), NSCC will provide confirmation and matching services

("NSCC Equity Options Service") to Deriv/SERV pursuant to the NSCC/DTCC Deriv/SERV Service Agreement ("Service Agreement").³ In connection with the NSCC Equity Options Service, Deriv/SERV will become a Data Services Only Member of NSCC.⁴

The Deriv/SERV Equity Options Service will be operated pursuant to the operating procedures of Deriv/SERV ("Deriv/SERV Operating Procedures"). U.S. Equity Option Transactions will also be subject to NSCC's proposed Addendum M. Therefore, each user of the Deriv/SERV Equity Options Service will enter into an agreement with Deriv/SERV obligating the user to abide by the terms of the Deriv/SERV Operating Procedures and obligating them to abide by Addendum M for any U.S. Equity Option Transactions. Pursuant to the Service Agreement between NSCC/DTCC and Deriv/SERV, NSCC will have the right to require Deriv/SERV to cause Deriv/SERV's users to abide by the terms of Addendum M. In addition, pursuant to the Service Agreement, NSCC and Deriv/SERV have agreed that should the Commission request that NSCC provide to the Commission any information relating to the NSCC Equity Options Service, Deriv/SERV will provide any such information in its possession to NSCC so that NSCC may provide such information to the Commission.

NSCC will neither be responsible for the content of the messages transmitted through the NSCC Equity Options Service nor be responsible for any errors, omissions, or delays that may occur relating to the NSCC Equity Options Service in the absence of gross negligence on NSCC's part. Both the Service Agreement and the Deriv/SERV Operating Procedures will provide that NSCC has no liability in connection with the NSCC Equity Options Service in the absence of gross negligence on NSCC's part. Because the NSCC Equity Options Service does not involve money settlement, securities clearance, or netting through the facilities of NSCC, it will be a nonguaranteed service of NSCC.⁵

³ DTC has represented that the processing of Deriv/SERV's transactions will not be a strain on the capacity of DTC's systems. The host computer and other automated facilities associated with the NSCC Equity Options Service will be provided by DTC pursuant to service agreements between NSCC and DTCC and between DTCC and DTC.

⁴ NSCC Rules and Procedures, Rule 31.

⁵ NSCC offers certain "guaranteed" services through its CNS system in which NSCC acts as a central counterparty and provides settlement-related guarantees regarding certain trades cleared and netted at NSCC. NSCC also offers "non-guaranteed" services, such as NSCC's Mutual

Continued

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by NSCC.