

Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (i) The options expire by their terms within ten years; (ii) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (iii) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (iv) the options are not transferable except for disposition by gift, will or intestacy; (v) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (vi) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states in support of the application that the Non-employee Directors are actively involved in the oversight of applicant's affairs and that it relies on the judgment and experience of the Board. Applicant also states that the Non-employee Directors provide guidance and advice on operational issues, underwriting policies, credit policies, asset valuation, and strategic direction, as well as serving on committees. Applicant believes that the options to be granted to the Non-employee Directors provide significant incentives for the Non-employee Directors to remain on the Board and to devote their best efforts to the success of applicant's business.

Applicant also states that the options will provide a means for the Non-employee Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with the interests of applicant's stockholders.

4. Applicant submits that the granting of options to the Non-employee Directors to purchase shares of applicant's common stock is fair and reasonable and does not involve overreaching of applicant or its stockholders. Applicant states that the number of voting securities that would result from the exercise of all options issued or issuable to officers, employees, and Non-employee Directors under the Plan, assuming approval of the Pool Increase Proposal, is 2,000,000 shares, or approximately 17.4% of applicant's outstanding common stock, which is below the percentage limitations in the Act. The total number of options issuable under the Plan that may be granted in any one year to Non-employee Directors represents about 0.4% of applicant's outstanding common stock. Applicant asserts that, given the small amount of common stock issuable upon exercise of the options, the exercise of options pursuant to the Plan would not have a substantial dilutive effect on the net asset value of applicant's stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [68 FR 395, January 3, 2003]

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**ANNOUNCEMENT OF CLOSED MEETING:** Additional Meeting.

The Securities and Exchange Commission held an additional Closed Meeting during the week of January 6, 2003.

An additional Closed Meeting was held on Monday, January 6, 2003 at 1:30 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries attended the Closed Meeting. Certain staff members who have an interest in the matters were also present.

The subject matter of the Closed Meeting held on Monday, January 6, 2003 was:

Regulatory matter bearing enforcement implication.

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 8, 2003.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 03-667 Filed 1-8-03; 3:59 pm]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 13, 2003: A Closed Meeting will be held on Tuesday, January 14, 2003, at 10 a.m., and an Open Meeting will be held on Wednesday, January 15, 2003, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, January 14, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;  
Institution and settlement of injunctive actions; and

Amicus participation.

The subject matter of the Open Meeting scheduled for Wednesday, January 15, 2003 will be:

1. The Commission will consider adopting new rules and amendments regarding the use of pro forma financial information in order to implement Section 401(b) of the Sarbanes-Oxley Act of 2002. In addition, the Commission will consider an amendment to Form 8-K requiring the submission of earnings announcements and releases.

2. The Commission will consider whether to adopt new rules to prohibit an issuer's directors and executive officers from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity securities transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. These rules implement Section 306(a) of the Sarbanes-Oxley Act of 2002. In addition, the rules will require issuers to provide advance notice to their directors and executive officers and the Commission of the imposition of a pension plan blackout period.

3. The Commission will consider whether to adopt new disclosure requirements mandated by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. The new rules require a company subject to the reporting requirements of the Securities Exchange Act of 1934 to disclose: (1) Whether it has adopted a code of ethics that applies to certain of its senior officers; and (2) whether a financial expert serves on the company's audit committee. The Commission will consider whether to adopt rules under Section 404 of the Sarbanes-Oxley Act relating to internal control reports by management in a separate release at a later date—these rules were proposed in the same release as the rules under Sections 406 and 407.

4. The Commission will consider whether to adopt Regulation Analyst Certification, a new rule that would require research analysts to provide certifications regarding the views they express in research reports and public appearances and to provide disclosures regarding any compensation they may have received related to those views and recommendations.

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 8, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47123; File No. SR-Amex-00-48]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the American Stock Exchange LLC, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 To Amend Amex Rule 590, Minor Rule Violation Fine Systems

January 3, 2003.

On August 17, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Amex's Minor Rule Violation Fine Plan ("Plan"). On December 7, 2000, the Amex amended the proposal.<sup>3</sup> The Amex again amended the proposal on January 29, 2001.<sup>4</sup> On March 19, 2001, the proposed rule change, as modified by Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register**.<sup>5</sup> The Commission received no comments on the proposed rule change. On December 23, 2002, the Amex amended the

proposed rule change.<sup>6</sup> This order approves the proposed rule change as modified by Amendment Nos. 1 and 2. Simultaneously, the Commission provides notice of filing of Amendment No. 3 and grants accelerated approval of Amendment No. 3.

The Commission has reviewed carefully the proposed rule change and 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<sup>7</sup> and, in particular, the requirements of section 6 of the Act<sup>8</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) of the Act<sup>9</sup> in that it will provide a procedure whereby member organizations can be appropriately disciplined in those instances when a rule violation is minor in nature, but a sanction more serious than an admonition letter is appropriate. Additionally, the Commission finds the proposed rule change is consistent with the requirements of sections 6(b)(7)<sup>10</sup> and 6(d)(1)<sup>11</sup> of the Act. Section 6(b)(7) requires the rules of an exchange to be in accordance with the provisions of section 6(d) of the Act, and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires an exchange to bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record, in any proceeding to determine whether a member or person associated with a member should be disciplined. Finally, the Commission finds the proposal is consistent with

<sup>6</sup> See December 20, 2002 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments ("Amendment No. 3"). In Amendment No. 3, the Amex removed the following rules from the list of rules that the Amex originally proposed to add to the Plan: (1) Violations of the Amex's short sale borrowing policies; (2) failure to liquidate positions as directed by the Amex that are over applicable position limits; and (3) failure to comply with the Amex's restrictions on transactions and exercises in specified options. As a result of Amendment No. 3, the only rules that the Amex proposes to administer pursuant to the Plan are violation of SEC Rule 11Ac1-4 (commonly referred to as the "Limit Order Display Rule," and violation of the Amex's rules regarding the deactivation of Quote Assist (Amex Rule 170, Commentary .10).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(6).

<sup>10</sup> 15 U.S.C. 78f(b)(7).

<sup>11</sup> 15 U.S.C. 78f(d)(1).

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

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

<sup>3</sup> See December 1, 2000 letter from William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). In Amendment No. 1, the Amex made technical changes to the proposed rule language to clarify which language was added and which language was rearranged.

<sup>4</sup> See January 26, 2001 letter from William Floyd-Jones, Jr., Esq., to Nancy J. Sanow, Assistant Director, Division, Commission, and attachments ("Amendment No. 2"). While the cover letter indicates that Amendment No. 2 replaces and supersedes the original filing, Amendment No. 2 only replaces and supersedes the proposed rule language provided in the original proposal and Amendment No. 1. Telephone conversation March 12, 2001 between William Floyd-Jones, Jr., Esq., Assistant General Counsel, Amex, and Joseph P. Morra, Special Counsel, Division, Commission.

<sup>5</sup> See Securities Exchange Act Release No. 44066 (March 12, 2001), 66 FR 15511.