

investors require a suspension of trading in the securities of e-Smart.

Therefore, it is ordered that, pursuant to section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), trading in the securities of e-Smart is suspended for the period from 9:30 a.m. e.s.t. December 13, 2002, through 11:59 p.m. e.s.t., on December 27, 2002.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46983; File No. SR-Amex-2002-95]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Member Notifications Required in Connection With Offerings and Distributions of Amex-Listed Securities

December 11, 2002.

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 November 18, 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 and II 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 and to grant accelerated approval of the proposed rule change.

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

The Exchange has proposed new Amex Rules 193(f) and 570A that would require notification to Amex by members and member organizations in connection with offerings and distributions of Amex-listed securities. The text of the proposed rule change is as follows; new text is underlined:

##### Affiliated Persons of Specialists

Rule 193. (a) through (e): No change.  
(f)(i) *An approved person associated with a specialist member organization ("Affiliated Specialist") that is entitled to an exemption from certain Exchange*

*rules pursuant to Exchange Rule 193 shall notify the Exchange of its participation in any distribution or tender or exchange offer of any security covered by paragraph (f)(ii) of this rule, in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:*

1. name of security
2. symbol
3. type of security
4. symbol of reference security or securities (if different from security being distributed)
5. description of distribution or tender or exchange offer
6. distribution price or terms of tender or exchange offer
7. date of pricing
8. time of pricing
9. pricing basis (e.g., Amex or consolidated close)
10. beginning and ending dates of the restricted period under Regulation M (if applicable) or, for a tender or exchange offer, the date the offer is publicly announced and its expiration date
11. firm submitting notification
12. name and title of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require.

(ii) *The notification requirements of this rule are applicable to any security in which the Affiliated specialist is registered where such security is either:*

1. *the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 14e-5 under the Securities Exchange Act of 1934; or*
2. *a covered security as defined in Rule 100 of Regulation M.*

\* \* \* Commenatry

No change.

##### Notification Requirements for Offerings of Listed Securities

Rule 570A. (a) *A member or member organization which acts as the lead underwriter of any offering in a listed security shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:*

1. name of security
2. symbol
3. type of security
4. number of shares offered
5. offering price
6. date of pricing
7. time of pricing
8. pricing basis (e.g., Amex or Consolidated close)

9. *beginning and ending dates of the restricted period under Regulation M (if applicable)*

10. *syndicate members*
11. *firm submitting notification*
12. *name of individual submitting notification*
13. *telephone number*
14. *such other information as the Exchange may from time to time require.*

(ii) *The notification requirements of this rule are applicable to any security in which the Affiliated Specialist is registered where such security is either:*

1. *the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 14e-5 under the Securities Exchange Act of 1934; or*
2. *a covered security as defined in Rule 100 of Regulation M.*

\* \* \* Commentary

No change.

##### Notification Requirements for Offerings of Listed Securities

Rule 570A. (a) *A member or member organization which acts as the lead underwriter of any offering in a listed security shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:*

1. name of security
  2. symbol
  3. type of security
  4. number of share offered
  5. offering price
  6. date of pricing
  7. time of pricing
  8. pricing basis (e.g., Amex or Consolidated close)
  9. beginning and ending dates of the restricted period under Regulation M (if applicable)
  10. *syndicate members*
  11. *firm submitting notification*
  12. *name of individual submitting notification*
  13. *telephone number*
  14. *such other information as the Exchange may from time to time require.*
- (b) *Any Exchange member or member organization effecting a syndicate covering transaction or imposing a penalty bid or placing or transmitting a stabilizing bid in a listed security shall provide prior notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.*

\* \* \* \* \*

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

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

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

In its filing with the Commission, Amex 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 III 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 Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange is proposing new paragraph (f) to Amex Rule 193 (Affiliated Persons of Specialists) and new Amex Rule 570A to require notification by Amex members and member organizations when they are participating in an offering of Amex-listed securities. The proposed rules, which are substantially similar to New York Stock Exchange ("NYSE") Rules 460.30 and 392, respectively, are intended to codify the disclosure and notification requirements included in Regulation M under the Act. Amex has stated that it has previously issued Information Circulars (97-0262, 97-0570, and 01-0295) that set forth member obligations and provided the formats for reporting to Amex information relating to stabilizing transactions, covering transactions, penalty bids, and distributions.

Amex Rule 193(f) would require notification to the Exchange whenever an approved person associated with a specialist member organization that has a functional separation approved pursuant to Amex Rule 193 participates in a distribution or tender offer of a specialist's specialty security, as covered by Amex Rule 193(f)(ii). The required information is similar to that required under proposed Amex Rule 570A.

Amex Rule 570A (Notification Requirements for Offerings of Listed Securities) would require notification to the Exchange whenever a member or member organization acts as a lead underwriter of any offering of an Amex-listed security. Such notification would enable the Exchange to monitor trading in the security or any related security traded on the Exchange for possible price manipulation. The data required to be transmitted to the Exchange would include the name and type of the

security, symbol, number of shares offered, offering price, date, time and basis of pricing, applicable restricted period, and syndicate members, as well as the firm, name, and telephone number of the individual submitting the notification.

#### 2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(5)<sup>4</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

Amex does not believe that the proposed rule change would impose any burden on competition.

### 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 in connection with the proposed rule change.

## III. 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. 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 at the Commission's Public Reference

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

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-2002-95 and should be submitted by January 7, 2003.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires that an exchange have rules that are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

As previously noted, the rules proposed by Amex are nearly identical to two rules of the New York Stock Exchange.<sup>6</sup> Given that the Commission has previously found the NYSE rules to be consistent with the Act,<sup>7</sup> the Commission finds good cause for approving the Amex proposal pursuant to Section 19(b)(2) of the Act prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2002-95) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

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

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

<sup>6</sup> Proposed Amex Rule 193(f) imitates NYSE Rule 460.30; proposed Amex Rule 570A imitates NYSE Rule 392.

<sup>7</sup> See Securities Exchange Act Release No. 38478 (April 4, 1997), 62 FR 17899 (April 11, 1997) (approving NYSE Rules 460.30 and 392). See also Securities Exchange Act Release No. 38873 (July 24, 1997), 62 FR 41118 (July 31, 1997) (amending NYSE Rule 392 to require notification by NYSE member organizations of any stabilizing bid made in connection with an offering of a NYSE-listed security). Proposed Amex Rule 193(f) incorporates the NYSE amendment.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).