

company, Wilderness. Additionally, an order is requested from the Commission continuing the exemptions under section 3(a)(1) of Claverack, Tri-County, and C&T from all provisions of the Act, except section 9(a)(2).

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49041; File No. SR-Amex-2003-97]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Amendment of Exchange Rule 590

January 8, 2004.

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 13, 2003, 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. 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

The Amex proposes to add three existing reports to the list of reports submitted to the Financial Regulation Department ("FRD") that may be subject to a fine under Amex's Minor Rule Violation Fine Plan ("Plan").

The text of the proposed rule change is below. Additions are italicized; deletions are in brackets.<sup>3</sup>

\* \* \* \* \*

#### Rule 590. Minor Rule Violation Fine System

Part 1 General Rule Violations No change

Part 2 Floor Decorum Violations No change

Part 3 Reporting Violations

(a) Notwithstanding Article V, Section 1(b) of the Constitution, the Exchange may, subject to the requirements set forth herein, impose a fine of \$50 a day on any member or member organization for the late filing of those reports listed in Paragraph (g) of Part 3 of this Rule required to be filed pursuant to Rule 30.

(b) In any action taken by the Exchange pursuant to Part 3 of this Rule, any person against whom a fine is imposed shall be served with a written statement, signed by an authorized officer of the Exchange Department or Division responsible for receiving the delinquent report, setting forth (i) the name of the delinquent report (ii) the fine imposed for such violation, and (iii) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided below, such date to be not

less than 20 days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pays the fine, such payment will be deemed to be a waiver of such person's right to a hearing before an Exchange Disciplinary Panel and to an appeal to the Amex Adjudicatory Council.

(d) Any person against whom a fine is imposed pursuant to Part 3 of this Rule may contest the Exchange's determination by notifying the Secretary of the Exchange not later than the date by which such determination must be contested, at which point the matter shall become subject to the provisions of Article V, Section 1(b) of the Constitution. In any such formal disciplinary proceeding, if the Disciplinary Panel determines that the person charged is guilty of the reporting violation, the Panel shall be free to impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and rules.

(e) The Exchange shall issue an information circular to the membership from time to time listing the reports (listed below in Paragraph (g)) as to which the Exchange may impose fines as provided in Part 3 of this Rule.

(f) A request for an extension of time to file a report must be submitted to the Exchange prior to the filing deadline. Any report containing material inaccuracies shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

(g) The following is a list of the reports required to be filed with the Exchange as to which the Exchange may impose fines for late filing pursuant to Part 3 of this Rule.

Report	Required to be filed by	Frequency/due date
A. EXAMINATIONS		
• [Exam 12 (Report of financial condition)] .....	[(1)(6)] .....	[Monthly—17th business day following month-end].
• Equity Computation * .....	[(3)(4)(6) and other orgs. not subject to SEC Rule 15c3-1] <i>Sole members and member organizations designated to the Amex NOT subject to SEC Rule 15c3-1 that are engaged solely in the business of acting as registered traders.</i>	Monthly—17th business day following month-end.
• Net Capital Computation [(Regulatory financial report of individual members not associated with member orgs., and member orgs. which do not transact business with the public)].	[(1)(2)(3)(4) doing no business with public but] <i>Sole members and member organizations designated to the Amex subject to SEC Rule 15c3-1.</i>	Monthly—17th business day following month-end.

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

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

<sup>3</sup> With the Exchange's consent, the Commission made a technical correction to the text of the proposed rule change. Telephone conversation between Bill Floyd-Jones, Associate General

Counsel, Amex, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, on January 7, 2004.

Report	Required to be filed by	Frequency/due date
● X-17A-5 Part II ** (FOCUS Report) .....	[(3)(4)(5) carrying customers (subject to 15c3-1)] <i>Sole members and member organizations designated to the Amex that self-clear or carry customer accounts that are subject to SEC Rule 15c3-1.</i>	Quarterly—17th business day following quarter-end.
● X-17A-5 Part I ** (FOCUS Report) .....	[(3)(4)(5) carrying customers (subject to 15c3-1)] <i>Sole members and member organizations designated to the Amex that self-clear or carry customer accounts that are subject to SEC Rule 15c3-1.</i>	Monthly—(Interim to quarterly filings above) 17th business day following interim month-end.
● X-17A-5 Part IIA (FOCUS Report) .....	[Non-clearing (3)(4)(5) not carrying customers (subject to 15c3-1)] <i>Sole members and member organizations designated to the Amex that are subject to SEC Rule 15c3-1 but do NOT file FOCUS Parts I or II.</i>	Quarterly—17th business day following quarter-end.
● X-17A-5 Part IIA (Short Form) (FOCUS Report).	[(1)(2)(3)(4) not normally filing FOCUS reports] <i>Sole members and member organizations that do not file one of the FOCUS reports listed above.</i>	[Annually—17th business day following calendar year-end] Quarterly—17th business day following quarter-end.
● Form 171 (Self-Clearing Specialist financial form).	(6) .....	Daily—Next business day.
● MO 14 and MO 15 (Specialist financial reports).	(6) .....	Quarterly.
● <i>Written Responses to Financial Regulation Examination Deficiency Letters.</i>	<i>Members and Member Organizations</i> .....	<i>Two weeks from the date on the Deficiency Letter.</i>
● <i>ITSFEA Forms I &amp; II</i> .....	<i>Sole members and member organizations designated to the Amex.</i>	<i>Annually—17th business day following calendar year end.</i>
● <i>Annual Audited Financial Statements</i> .....	<i>Sole members and member organizations designated to the Amex.</i>	<i>Annually—60 calendar days following the date of the financial statement.</i>
<b>B. TRADING ANALYSIS</b>		
● 191 Report (Specialist principal trading) .....	(6) .....	Daily—Next business day.
● Form 958-C (ROT and Specialist Report of orders entered in underlying securities related to Amex options).	(2)(6)(7) .....	Daily—Next business day.
● 114A Report (Registered Equity Market Maker trading).	(8) .....	Daily—Next business day.
● 114B Report (Report of situations when Registered Equity Market Maker was asked to bid and/or offer).	(Floor Official/Floor Broker) .....	Daily—Next business day.
● Equity Floor Broker Questionnaire .....	Designated Equity Floor Brokers .....	Quarterly—By the date specified by the Exchange.
● Option Floor Broker Questionnaire .....	Designated Options Floor Brokers .....	Semi-Annual—By the date specified by the Exchange.
<b>C. MARKET SURVEILLANCE</b>		
● Form 50 (Short Position) .....	(3)(5) .....	Monthly—Varies (usually around the 17th day of each month).
● 1-RA (Exchange transactions initiated from off-floor).	(1)(3)(5) .....	Weekly—Friday following close of the week covered in the Report.
● 1-S (Round lot short sales transactions) .....	Clearing Firms .....	Weekly—Thursday following close of the week covered in the report.
<b>D. MEMBERSHIP SERVICES</b>		
● Form U-5 .....	Members and Member Organizations .....	10 days following termination of a clerk.

\* No prescribed form

\*\* Also applies to self-clearing firms

- (1) Regular Member
- (2) Option Principal Member
- (3) Regular Member Organization
- (4) Option Principal Organization
- (5) Assoc. Member Organization
- (6) Specialist
- (7) Registered Option Trader

#### Commentary:

.01 Nothing in this Rule shall require the Exchange to impose a fine pursuant to this Rule with respect to any violation covered by the Rule, and the Exchange shall be free to proceed under Article V, Section 1(b) of the Constitution or Rule 345 rather than under this Rule.

.02 Fines imposed pursuant to this Rule will generally not be subject to Exchange publicity under Rule 12 of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings. However, except for uncontested floor decorum violations, they will be reported to the SEC as required by SEC Rule 19d1.

.03 Any person that contests a fine imposed under Rule 590 will be required to pay a \$100 fee to contest such fine. This fine will be assessed at the conclusion of any Disciplinary hearing if the person is found guilty of the alleged rule violation. It will not be

assessed if the person is found not guilty of the charge.

\* \* \* \* \*

## 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 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 IV below. The Exchange 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 has had a Plan since 1976 that provides a simplified procedure for the resolution of minor rule violations. Codified in Amex Rule 590, the Plan has three distinct sections: Part 1 (General Rule Violations), which covers more substantive matters that, nonetheless, are deemed "minor" by the Commission and the Amex; Part 2 (Floor Decorum), which covers floor decorum and operational matters; and Part 3 (Reporting Violations) which covers the late submission of routine reports.

Part 3 of Amex Rule 590 allows the specified departments of the Exchange that routinely receive regulatory reports from members and member organizations to issue abbreviated "written statements" to persons who may have violated the specified reporting rules. These statements identify the rules violated, the act or omission constituting the violation, and the amount of the fine. The fines are \$50 per day for each day the report is late. The issuance of a written statement does not constitute a finding of guilt. Persons receiving a written statement may plead "no contest" and return the statement to the Exchange with the specified fine. In the alternative, persons who are charged under the Plan may contest the fine and receive a hearing before an Exchange Disciplinary Panel.

The Exchange is proposing to add three existing reports to the list of reports submitted to the FRD that may subject to a fine under Amex Rule 590. These are: (i) ITSFEA Forms 1 and 2;<sup>4</sup>

(ii) responses to FRD Deficiency Letters; and (iii) annual audited financial statements. The Exchange believes that adding these reports to the list of reports that are subject to a fine for late filing will help ensure the timely submission of these materials. The Exchange is also proposing to revise the text of the schedule to Part 3 of Amex Rule 590 to: (1) Eliminate an obsolete report (Form 12 has been replaced by the FOCUS Report), (2) clarify the obligations of sole members and member organizations designated to the Amex for financial responsibility oversight to file FOCUS and other reports, and (3) provide that sole members and member organizations designated to the Amex for financial responsibility oversight that are not subject to the Commission's Net Capital Rule must file the Short Form FOCUS Report with the Exchange quarterly rather than annually.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(1),<sup>5</sup> 6(b)(6),<sup>6</sup> and 6(b)(7)<sup>7</sup> of the Act in particular, in that it 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. The Exchange also believes that it 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; and will provide a fair procedure for the disciplining of members and persons associated with members.

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

The proposed rule change will impose no 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.

procedures to detect insider trading. ITSEFEA Form II is a list of securities accounts maintained by persons associated with the member or member organization.

<sup>5</sup> 15 U.S.C. 78f(b)(1).

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

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

## 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 Exchange 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.

## 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Amex-2003-97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR-Amex-2003-97 and should be submitted by February 5, 2004.

<sup>4</sup> ITSFEA Form I is a certification that the member or member organization has implemented

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04-879 Filed 1-14-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49042; File No. SR-Amex-2003-84]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Amend Sections 132(c), 623, and 624 of the Amex Company Guide To Update the Requirements for Dissemination of Interim Reports by Listed Companies

January 8, 2004.

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 September 25, 2003, 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 December 29, 2003, the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

The Exchange proposes to amend Sections 132(c), 623, and 624 of the Amex Company Guide to update the requirements for dissemination of interim reports by listed companies.

Below is the text of the proposed rule change, as amended.<sup>4</sup> Proposed new

language is *italicized*; proposed deleted language is [bracketed].

\* \* \* \* \*

#### American Stock Exchange LLC Company Guide

\* \* \* \* \*

#### Section 132. Listing Agreements

\* \* \* \* \*

(a) and (b)—No change.

(c) Accounting, Annual and [Quarterly] *Interim Reports*—Furnish shareholders with annual reports and release [quarterly sales] *interim* [and] earnings *and operating results* (Sections 603–624). [(Companies not having common stock listed on the Amex or NYSE are required to send annual and quarterly reports to security holders)];

(d) and (e)—No change.

\* \* \* \* \*

#### Sec. 623. Dissemination

[Interim statements (unaudited) are not required to be sent to security holders by any company whose common stock is listed on a national securities exchange. (Any company may, and many companies, in response to requests by their shareholders and the recommendation of the Exchange, now do send such statements.)]

[Companies whose common stock is not listed on a national securities exchange must send interim statements (unaudited) to holders of its securities which are listed on the Exchange.]

(a) *Each issuer whose securities are listed pursuant to Section 101(a)—(e) must disseminate (in the form of a press release or other public announcement in accordance with the requirements and procedures set forth in Sections 401–403) statements of earnings and operating results prior to or as soon as practicable following the date the company files its interim reports on an annual, quarterly or other basis with the Commission or other applicable regulatory agency. The [Interim] statement[s] of [sales and] earnings and operating results must be on the same basis of [the same degree of] consolidation as the annual report and[. Such statements should] disclose, at a minimum, any substantial items of unusual or nonrecurrent nature and [will show] net income before and after federal income taxes or net income and the amount of federal income taxes. Three copies must be sent to the Exchange.*

(b) *Interim statements are not required to be sent to security holders. As a matter of fairness, corporations [which] that choose to distribute interim reports to shareholders [should distribute] must send such reports to*

both registered and beneficial shareholders.

[In all cases, such information (whether or not furnished to security holders) must be disseminated in the form of a press release to one or more newspapers of general circulation in New York regularly publishing financial news and to one or more of the national news-wire services. Three copies must be sent to the Exchange.]

[Further information on the handling of press releases is set forth in §§ 401–405.]

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#### Sec. 624. Exceptions

Exceptions to the [Exchange's] requirements *set forth in Section 623 will be made* [that quarterly results be distributed in the form of a press release is made] only in cases where conditions peculiar to the type of company, or to the particular company itself, would make such [a release] *dissemination* impracticable or misleading, as in the case of companies dependent upon long-term contracts, [or companies] dependent upon the growth and sale of a crop in an annual cycle, or [companies] operating under conditions which make such releases virtually impossible or misleading.

When the Exchange is convinced that the release of quarterly *(or other applicable interim)* results is impracticable, or could be misleading, it may require an agreement to release a semi-annual statement of sales and earnings, or an interim statement of certain operating statistics which will serve to indicate the trend of the company's business during the period between annual reports. Only when the Exchange is convinced that any type of interim release is either impracticable, or misleading, will an agreement calling merely for publication of annual statements be accepted.

*A request for an exception should be in the form of a letter directed to the Exchange.*

\* \* \* \* \*

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

<sup>8</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 22, 2003 ("Amendment No. 1"). Amendment No. 1 makes a technical clarification to the proposed rule language of Section 623 of the Amex Company Guide.

<sup>4</sup> The Commission has made minor formatting corrections to the proposal that are technical in nature at the Amex's request. Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Special Counsel, Division, Commission, on January 7, 2004.