

UTP Specialist with performance ratings that would not trigger remedial action could be referred to the Market Quality Committee for consideration of reallocation or other action based upon sub-standard market share in one or more UTP securities.

As noted above, under the UTP Specialist evaluation procedures, performance reviews can result from: (1) Complaints or surveillance reviews, (2) low scores under the UTP Specialist market quality ratings systems, or (3) low market share in one or more UTP securities. As proposed, a performance review could result in a variety of possible actions, ranging from recommendations for performance improvement, a determination not to permit a firm to seek new allocations, to a reallocation of one or more UTP securities from a UTP Specialist. The Committee would not be precluded from reallocating UTP securities based on a single instance of deficient performance or a single quarter of poor ratings or low market share. Conversely, the Committee would not be required to take such actions. Rather, the purpose of the rules and processes is to identify circumstances that warrant review by the Market Quality Committee. The nature of the appropriate remedial actions is necessarily subject to professional judgment, dependent on such matters as the UTP securities being traded, competition on other market centers, personnel, and systems changes, and other factors.¹⁰ Accordingly, such determinations are left to the expertise, discretion, and judgment of the Market Quality Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,¹¹ in general, and section 6(b)(5) of the Act,¹² in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest by encouraging good performance and competition among markets and specialists.

¹⁰ The phrase "necessarily a subjective matter" has been replaced with "necessarily subject to professional judgment" in both the purpose section and the proposed rule text in Commentary .03. As noted above, the Exchange has committed to submitting a conforming amendment during the comment period of the rule filing. Telephone Conference.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it believes that the proposed rule will enhance and encourage competition both within the Exchange, and, more significantly, between and among the Exchange and other markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing (although this, too, is important), but rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public. The Exchange believes that the procedures as set forth in the proposed rule change for reviewing the performance of specialists and taking remedial action, are necessary to ensure quality markets and thereby attract buyers and sellers to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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. 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 Exchange. All submissions should refer to File No. SR-AMEX-2002-19 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46198; File No. SR-Amex-2002-08]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the American Stock Exchange LLC Relating to Specialist Unit Fees

July 12, 2002.

On February 7, 2002, the American Stock Exchange LLC ("Exchange" or "Amex") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² to modify its Member Fee Schedule to pass through to Amex specialist units any fee paid by the Exchange to a third party in connection with the listing and trading of a security allocated to such specialist unit. On March 13, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.³ On March 18, 2002, the Amex submitted Amendment No. 2 to the proposed rule

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2002.

change.⁴ The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on April 17, 2002.⁵ The Commission received one comment on the proposed rule change.⁶ On May 16, 2002, the Amex filed Amendment No. 3 to the proposed rule change.⁷ The proposed rule change, as amended by Amendment No. 3, was published in the **Federal Register** on May 30, 2002.⁸ On July 12, 2002, the Exchange withdrew the proposed rule change.⁹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46183; File No. SR-CBOE-2002-32]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Time and Manner in Which the Appropriate Allocation Committee May Reallocate a Security

July 11, 2002.

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 June 11, 2002, 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 were prepared by the CBOE. 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 proposes to amend CBOE Rule 8.95 ("Allocation of Securities and Location of Trading Crowds and DPMs") to extend, from six months to one year, the time in which the appropriate Allocation Committee may reallocate a security if the trading crowd or Designated Primary Market-Maker ("DPM") to which the security had been allocated fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. The text of the proposed rule change is available at the CBOE and at the Commission.

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 CBOE 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 CBOE 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

CBOE Rule 8.95(c) currently provides that during the first six months following the allocation of a security to a trading crowd or DPM, the appropriate Allocation Committee may remove the allocation and reallocate the security, if the trading crowd or DPM fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. CBOE now proposes to amend CBOE Rule 8.95(c) to extend the initial review period from six months to one year under which the appropriate Allocation Committee may exercise this authority.

According to CBOE, the appropriate Allocation Committee typically requests that trading crowds and DPMs make market performance commitments as part of their applications to receive allocations of particular securities. These commitments may relate to pledges to keep bid-ask spreads within a particular width, or pledges to make

every effort possible to become the exchange of choice in a particular option class, as measured during the initial months of trading by consistently achieving a certain market share if the class is listed on more than one options exchange. CBOE Rule 8.95(c) permits the appropriate Allocation Committee to remove an allocation if these commitments are not met, thus giving trading crowds and DPMs an incentive to abide by these commitments.

CBOE believes that extending the initial review period from six months to one year is appropriate because it will provide the appropriate Allocation Committee additional time to evaluate whether a particular DPM or trading crowd has adhered to any market performance commitments it made in connection with being allocated the security.

Following this initial review period after an allocation is made, CBOE notes that all the responsibility for monitoring market performance with respect to that security is vested in the appropriate Market Performance Committee or MTS Appointments Committee, which continually evaluate trading crowd and DPM market performance, as applicable, and are authorized pursuant to CBOE Rule 8.60, CBOE Rule 8.90, and other Exchange Rules to take remedial action for failure to satisfy minimum market performance standards.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act³ in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

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

CBOE 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

Within 35 days of the publication of this notice in the **Federal Register** or

⁴ See letter from Claire McGrath, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 14, 2002.

⁵ See Exchange Act Release No. 45727 (April 10, 2002), 67 FR 18962.

⁶ See letter from Brandon Becker, Wilmer, Cutler & Pickering, to Jonathan G. Katz, Secretary, Commission, dated May 2, 2002.

⁷ See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 16, 2002.

⁸ See Exchange Act Release No. 45972 (May 21, 2002), 67 FR 18962.

⁹ See Letter from, Geraldine Brindisi, Vice President and Corporate Secretary, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated July 12, 2002.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b)(5).