II

By letter dated June 20, 1995, the licensee requested a one time schedular exemption from the Final Safety Analysis Report (FSAR) update submittal requirements of 10 CFR 50.71(e)(4) which requires that FSAR revisions must be submitted annually or 6 months after a refueling outage provided the interval between updates does not exceed 2 years. The licensee also requested a one time schedular exemption from 10 CFR 50.54(a)(3) which requires that changes to the quality assurance program description that do not reduce commitments must be submitted to the NRC in accordance with the FSAR update requirements of 10 CFR 50.71(e).

In February 1993, the licensee shut down IP3 for an extended performance improvement outage. The plant was recently restarted on June 27, 1995. Although this extended shutdown was not a refueling outage, the number of facility changes made by the licensee during the shutdown equates it to one. As such, a one time FSAR update schedular exemption was requested to enable the licensee to include most of the modifications, technical specifications amendments, and other changes completed during the extended shutdown in the next FSAR update. This would result in a more complete and accurate update. The requested schedular exemption would reschedule the required FSAR update from July 22, 1995, to 6 months after restart from the extended shutdown.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) when special circumstances are present as set forth in 10 CFR 50.12(a)(2).

The licensee has indicated that the requested exemption does not produce undue risk to the public health and safety since the exemption is an extension of reporting requirements. Other reporting requirements such as 10 CFR 50.59(b)(2), 50.72, 50.73, and the license amendment process ensure that the NRC will receive timely notifications concerning changes to the plant and its licensing basis. The common defense and security are not impacted by this exemption.

The licensee has also indicated that the 6-month schedular extension would provide only temporary relief from the applicable regulation and a good faith effort has been made to comply with the regulation.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12, that (1) the exemption as described in Section II is authorized by law, will not endanger life or property, and is otherwise in the public interest and (2) special circumstances exist pursuant to 10 CFR 50.12(a)(2)(v), in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants the following one time schedular exemption:

(1) The Power Authority of the State of New York is exempt from the requirement of 10 CFR 50.71(e)(4), to the extent that the current FSAR update submittal due date has been extended from July 22, 1995, to December 27, 1995.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 48528). A specific one time schedular exemption from the reporting requirements of 10 CFR 50.54(a)(3) is not required since the 10 CFR 50.54(a)(3) reports are submitted in accordance with the requirements 50.71(e)(4), which has been authorized above for a one time schedular exemption.

This exemption is effective upon issuance.

Dated at Rockville, MD, this 28th day of September 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–25009 Filed 10–6–95; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Intent To Prepare an Environmental Impact Report/Environmental Impact Statement: Rincon Hill Sports and Entertainment Center, San Francisco, California

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: To comply with requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Postal Service intends to prepare a joint environmental impact report/environmental impact statement (EIR/EIS) for the proposed Rincon Hill Sports and Entertainment Center in San Francisco, California. The public is invited to participate in the project scoping process, to review and comment on the draft EIR/EIS, and to attend public meetings.

DATES: The public is invited to attend a scoping meeting scheduled for 7 p.m. on October 24, 1995, at the San Francisco Marriott, 55 Fourth Street, San Francisco, California.

ADDRESSES: Mail or deliver written comments to the Real Estate Specialist, Realty Asset Management, Facilities Service Office, U.S. Postal Service, 850 Cherry Avenue, San Bruno, CA 94099–0300.

FOR FURTHER INFORMATION CONTACT: David Klement, (415) 794–6343.

SUPPLEMENTARY INFORMATION: A 21,000-seat sports arena with 450,000 square feet of associated entertainment and retail facilities is proposed at 101 and 201 Folsom Street in the Rincon Hill area of San Francisco, California. The proposed project would be developed by a private firm on real properties owned in part by the Postal Service. The proposed project would be considered a joint development and use. In addition to NEPA, 42 U.S.C. 4321 et seq. (1988), the proposed action would be subject to the requirements of CEQA, Cal. Health & Safety Code 25570 (West 1992). As a result, a joint EIR/EIS will be prepared to satisfy the requirements of both NEPA and CEQA.

As required by NEPA, 42 U.S.C. 4332(C)(iii), the EIR/EIS will evaluate alternatives to the proposed action. Potential alternatives that will be explored in the document include a no-action alternative, an arena with reduced retail, and no arena with a zoning change (residential and commercial). Off-site alternatives will also be examined.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–25176 Filed 10–6–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36326; File No. SR–Amex–95–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Updates to the Exchange's Company Guide

October 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 19, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change, and on September 28, 1995, filed an Amendment No. 1 to the proposed rule change,[2] as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange is proposing various updating revisions to the Exchange's *Company Guide.* The text of the proposed rule change is available at the Office of the Secretary, the Amex, 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 self-regulatory organization 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 self-regulatory organization 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

I. Purpose

a. Preferred Stock

Section 103 of the *Company Guide* contains the listing guidelines for preferred stock and, as a general rule, only permits the listing of convertible preferred stock if the underlying common stock is listed on the Amex or the New York Stock Exchange, Inc. (''NYSE''). This however, dates from a time when there was no last sale reporting other than for stocks traded to the Amex or NYSE and, thus, it was difficult to trade convertible preferred stock without the availability of such last sale information on the underlying equity. In view of the advent of last sale reporting for Nasdaq securities, the Exchange proposes that Section 103 be amended to permit the listing of convertible preferred stock so long as the underlying common stock of the company is subject to real-time last sale reporting. This also would be consistent with Section 104 of the *Company Guide* which permits the listing of convertible bonds and debenture issues so long as current last sale information is available with respect to the underlying security.[3] In addition, the Exchange proposes that the references to ''aggregate market value'' in Section 103 be changed to read ''aggregate public market value'' to clarify that the particular numerical guidelines are applicable to the market value of publicly held shares only.

b. Warrants

The Exchange's listing guidelines for warrants are set forth in Section 105 of the *Company Guide.* The Exchange, however, also requires warrant issuers to execute a related agreement with the Exchange prior to listing, and this relating agreement is not referenced in Section 105. This agreement specifies the applicable notice provisions that warrant issuers must adhere to regarding changes with respect to the expiration date or call date of the warrants or both. In order to simplify the listing process, the Exchange proposes that these matters be incorporated into Section 105. In addition, the Exchange proposes that a new paragraph (e) be added to specify that the Amex must receive advance notice (preferably two months) of any extension of the expiration date of a warrant issue. The Exchange also proposes that Section 508 of the *Company Guide,* which requires under certain circumstances that warrants be split in the same proportion as the underlying common stock, be deleted and incorporated into Section 105. Further, the Exchange proposes to amend Section 105 to reference the guidelines applicable to redeemable (callable) issues that are contained in Section 902 of the *Company Guide.*

c. Conflicts of Interest

Section 120 of the *Company Guide* concerns conflicts of interest between companies and their officers, directors, or principal shareholders. In determining whether to approve a company's listing application, the Exchange reviews any such conflicts of interest. As specified in Section 120, all pertinent factors are considered and, in many cases, a company is able to eliminate a conflict situation prior to listing or within a reasonable period of time thereafter. Section 120 also authorizes the Exchange to require a company to enter into a special agreement designed to reduce the possibility of abuse of a conflicted situation that could not be terminated immediately or that may arise in the future.

This special agreement was utilized in the past by the Amex and the NYSE prior to the time when the exchanges required listed companies to establish and maintain an audit committee.[4] This provision is now obsolete because audit committees are responsible for reviewing transactions presenting potential conflicts of interest and, as a practical matter, the Exchange no longer utilizes it. Accordingly, the Exchange proposes that Section 120 be amended to delete such a reference. The NYSE previously deleted its similar provision[5] and, at the present time, neither the NYSE nor the NASD reference such agreements in their rules.

d. Original and Annual Listing Fees

Section 140 of the *Company Guide* specifies the original listing fees applicable to issuers listed on the Exchange. Due to an oversight by the Exchange, the schedule contained in Section 140 is unclear with respect to the original listing fee payable for exactly one million shares (*i.e.,* it refers only to the fee for less than one million

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Glen Barrentine, Team Leader, SEC (Sept. 28, 1995).

[3] *See* Securities Exchange Act Release No. 22714 (Dec. 20, 1985), 50 FR 51958 (permitting the listing of convertible bonds and debentures if the underlying issue into which the bond or debenture is convertible is subject to last sale reporting).

[4] *See* Amex Company Guide § 121 (requiring a listed company to maintain an audit committee).

[5] Securities Exchange Act Release No. 20767 (Mar. 20, 1984), 49 FR 11275 (approving File No. SR–NYSE–83–11).

and more than one million). Therefore, the Exchange proposes that the original listing fee schedule be amended to refer to ''one million—two million shares,'' clarifying that the appropriate fee for exactly one million shares is $10,000.

The Exchange also proposes that Section 141 of the *Company guide* be amended to clarify that the annual listing fee for a warrant issue is based on the number of warrants issued, not the number of shares underlying the warrants.

e. Opinion of Counsel

Section 213 of the *Company Guide* requires a company seeking to list stock on the Exchange to provide a opinion of counsel addressed to the Exchange that addresses a variety of issues, including (if applicable) the company's qualification to conduct business in jurisdictions other than that of its state of incorporation.[6] The American Bar Association (''ABA'') recently sponsored a study of third-party legal opinions that resulted in various recommendations as to the format and coverage of such opinions.[7] One of its recommendations was that an opinion as to a corporation's qualification to do business in jurisdictions other than that of incorporation was generally not cost effective or necessary. In view of the position taken by the ABA, and because this is essentially a factual rather than a legal issue, law firms are increasingly reluctant to provide this opinion. Therefore, the Exchange proposes that Section 213 be amended to delete this item from the opinion of counsel guidelines. The Exchange notes that the NYSE does not have a comparable guideline.

f. Listing Resolution

Section 213 of the *Company Guide* also requires the board of directors of a prospect company listing stock or warrants to provide a listing resolution authorizing the filing of the listing application. This requirement is often burdensome to comply with and can delay a listing if a prospect company's board of directors is not scheduled to meet for a month or more. The requirement to obtain a listing resolution is essentially ceremonial in nature and does not serve any significant purpose. Therefore, the Exchange proposes that this requirement be deleted. The Exchange also proposes that Section 330 of the *Company Guide* be amended similarly to delete this requirement with respect to additional listing applications.

g. ''Backdoor'' Listings

Section 341 of the *Company Guide* sets forth the Exchange's policy with respect to ''backdoor'' listings, *i.e.,* any plan of acquisition, merger, or consolidation, the net effect of which is that a listed company is acquired by an unlisted company even though the listed company is the nominal survivor. Currently, the literal language of this section can be read to preclude the Exchange from listing the additional shares issued to effect such a combination unless the company resulting from the combination meets the Exchange's original listing guidelines in all respects.

The Exchange's longstanding practice, however, has been to evaluate a ''backdoor'' listing on the same basis that an original listing is reviewed, *i.e.,* an application may be approved even though the company does not meet all of the numerical guidelines.[8] To conform Section 341 to Exchange practices, the Exchange proposes that this section be amended to provide that the Exchange will apply its original listing guidelines when evaluating the listing eligibility of a ''backdoor'' listing.

h. Fractional Shares

Section 507 of the *Company Guide* outlines the procedures companies should follow to settle fractional share interests as a result of issuing stock dividend and urges companies to pay cash in lieu of fractional share interests. The Exchange's practice is to require companies that do not choose to settle such interests with a cash payment to ''round up'' to a full share in payment for the fractional amount. This practice is based on the premise that if the issuer were to ''round down'' the holder would essentially be deprived of assets due him or her. The Exchange proposes to amend Section 507 to conform to the Exchange's practice.

i. Listing Agreement

Companies seeking to list securities are required to execute a listing agreement with the Exchange. In its present form, the agreement specifies a number of obligations that a listed company is subject to by virtue of listing its securities on the Amex. Most of these matters, however, also are addressed by specific provisions in the *Company Guide*. This has proven to be confusing to company representatives. The Exchange, therefore, has reviewed and greatly simplified the listing agreement by eliminating all of the redundancies.[9] In order to ensure that all matters previously covered by the listing agreement are adequately reflected in the *Company Guide*, the Exchange also proposes that: Section 132 of the *Company Guide* be amended to require a listed company to furnish to the Exchange, upon request, such information concerning the company as the Exchange may require; Section 340 of the *Company Guide* be amended to clarify that a listed company must disclose promptly to the holders of listed securities any information with respect to the allotment of rights or benefits pertaining to the ownership of listed securities; Section 340 also be amended to require that listed companies issue all transferable rights or benefits pertaining to listed securities in a form approved by the Exchange and make them assignable, exercisable, and deliverable in the Borough of Manhattan, City of New York; Section 610 of the *Company Guide* be amended to clarify that a listed company's annual report must contain audited financial statements prepared in conformity with SEC requirements; Section 610 also be amended to require the company to disclose in its annual report to security holders, for the year covered by the report, the number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan and any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options; Section 623 of the *Company Guide* be amended to clarify that a listed company must publish quarterly statements of sales and earnings on the basis of the same degree of consolidation as the annual report, and such statements must disclose any substantial items of an unusual or

[6] The opinion of counsel also must express an opinion as to: the legality of organization and valid existence of the applicant; the validity of authorization and issuance (or proposed issuance) of the securities applied for; whether the securities are (or will be) fully paid and non-assessable, and whether the outstanding securities were registered or issued pursuant to an exemption under the Securities Act of 1933.

[7] *See* American Bar Association, *Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law,* 47 Bus. Law. 167 (Nov. 1991).

[8] Conversely, the fact that an issuer may meet the numerical guidelines does not necessarily mean that its application will be approved.

[9] The listing agreement will now simply contain the company's agreement to ''comply with all Exchange rules, policies and procedures which apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the company's organization documents would allow for a different result.'' In addition, several other forms associated with the listing process also are being streamlined.

nonrecurrent nature and will show net income before and after federal income taxes; Section 920 of the *Company Guide* be amended to require a listed company to notify the Exchange, at least 20 days in advance, of any change in the form or nature of any of its listed securities or in the rights, benefits, and privileges of the holders of any such security; Section 1102 of the *Company Guide* be amended to require a listed company to file with the Exchange all proposed amendments to and certified copies of its Certificate of Incorporation, By-Laws, or other similar organization documents, all SEC filings, and all materials sent to shareholders or released to the press.

In addition, the *Company Guide* will be amended to delete references to Form SD–1, the old listing agreement.

j. Interim Reports

Section 623 of the *Company Guide* specifies that a company whose stock is listed on a national securities exchange is not required to send interim (usually quarterly) statements to its securities holders, but must disseminate such information in the form of a press release.[10] Some listed companies elect to send such reports to shareholders, but many send them to record holders (*i.e.*, ''street name'' (not beneficial) holders) only. In contrast, the Exchange requires that annual reports be mailed to both record and beneficial holders.[11]

Various groups, including the NYSE, the American Society of Corporate Secretaries, and the Securities Industry Association, have been reviewing this area in an attempt to achieve uniformity among listed companies with respect to their dissemination of interim earnings reports to shareholders. The NYSE recently amended its rules to provide that while a company could continue to elect not to mail interim reports to shareholders, if the company chose to make such a mailing, it should send the reports to both the record and the beneficial owners.[12] This change strikes an appropriate balance between the benefit of requiring that these reports be mailed to all shareholders against the high cost of doing so with respect to beneficial holders of securities held in ''street name.'' Therefore, the Exchange proposes that Section 623 be amended to conform to the NYSE change described above.

k. Legending Requirements

Section 980 of the *Company Guide* requires that listed securities that are issued in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1993[13] bear a legend specifying that sale or transfer restrictions apply to such securities. Issuers have occasionally complained that the Exchange requirement is unnecessary and, on occasion, more restrictive than the applicable laws. In order to avoid placing an undue burden on prospective listed companies, the Exchange proposes that the requirement be withdrawn. The Exchange notes that the NYSE does not impose an independent legending requirement on its listed companies.

l. Delisting

Section 1003 of the *Company Guide* specifies certain numerical guidelines that the Exchange will consider in determining whether to delist a particular security. It provides that the Exchange will normally consider delisting common stock ''if the total number of round lot shareholders of record is less than 300. . . .''[14] In recent years, the proportion of beneficial holders to record holders has increased dramatically because brokerage firms are increasingly holding securities for their customers in ''street name,'' and fewer customers are demanding physical delivery of their securities.[15] Notwithstanding the fact that a company may have well over 300 round-lot beneficial shareholders, the present guideline suggests that a company will be subject to delisting for failing to satisfy the requirement with respect to record holders. Accordingly, the Exchange proposes that Section 1003(b)(i)(B) will be amended to refer to ''public shareholders'' (or warrantholders, in the case of warrant securities). This term will include both shareholders of record and beneficial holders, but exclude officers, directors, controlling shareholders, and other concentrated (*i.e.,* 5% or greater), affiliated, or family holdings. In addition, the Exchange proposes that conforming changes be made to Sections 102, 103, 105, 106, 107, 110, and 118.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[16] of the Act in general and furthers the objectives of Section 6(b)(5)[17] in particular in that it is designed to promote just and equitable principles of trade and facilitate transactions in securities.

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

The Exchange believes the proposed rule change will impose no burden on competition.

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.

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 within such other 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. 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 Section, 450 Fifth Street, N.W.,

[10] A company whose common stock is not listed on a national securities exchange, however, must send unaudited quarterly statements to holders of its Exchange-listed securities. Amex Company Guide § 623.

[11] Amex Company Guide § 610.

[12] Securities Exchange Act Release No. 35373 (Feb. 14, 1995), 60 FR 9709 (approving File No. SR–NYSE–94–42).

[13] 15 U.S.C. 77e.

[14] Amex Company Guide § 1003(b)(i)(B).

[15] This change in practice is in accordance with recommendations for increased safety and soundness in the securities industry made by the Bachmann Task Force. *See* Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement Reform in the U.S. Securities Markets 24–26 (May 1992) (recommending the reduction in use of physical certificates).

[16] U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No. SR–Amex–95–28 and should be submitted by October 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–25019 Filed 10–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36320; File No. SR–AMEX–95–15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Solicitation of Options Transactions

September 29, 1995.

I. Introduction and Background

On March 22, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 950(d), Commentary .03, to modify the manner in which members solicit other members to participate in options transactions. The Exchange filed Amendment No. 1 to the proposed rule change on May 30, 1995.[3] Notice of the proposal, as amended, appeared in the **Federal Register** on June 9, 1995.[4] No comments were received on the proposed rule change set forth in the Notice. This order approves the Exchange's proposal.

II. Description of the Proposal

In 1989, the Exchange adopted its solicitation rule[5] to govern the manner in which members may solicit other members and non-member broker dealers to participate in options transactions. Generally, members solicit participation in large size orders and orders that might contain complex terms and conditions, including orders involving both stocks and options. Currently, if the solicited party is a broker dealer other than a registered trader, the rule permits the solicitation of such a broker dealer to participate in trades without first attempting to determine whether the trading crowd wishes to participate. Generally, Rule 950(d) has sought to reconcile the growing practice of soliciting participation in orders outside of trading crowds with the rules and practices of the auction market.

Currently, the rule permits the solicitation of on-floor and off-floor members outside of a trading crowd to participate as the contra-side of an order so long as the trading crowd is given (1) the same information about the options order that is given to the solicited party; and (2) a reasonable opportunity to accept the bid or offer before the solicited party participates in the transaction. With respect to the solicitation of a registered options trader, however, the soliciting member must also disclose to the trading crowd, prior to the solicitation, the same terms and conditions that will be disclosed to the solicited registered options trader.

The Exchange proposal modifies the solicitations rule to eliminate the requirement that the terms and conditions of a solicitation be disclosed to the trading crowd prior to the solicitation of registered options traders. Thus, once other market participants in the trading crowd are given a reasonable opportunity to accept the bid or offer, the solicited party may accept all or any remaining part of such order, or the member may cross all or any remaining part of the originating order with the solicited party at such bid or offer by announcing that the member is crossing the orders and stating the quantity and price. In effect, registered traders will have the same standards apply to them as have broker dealers who are not registered traders.

The Exchange's proposal also adds language to Rule 950(d) that states explicitly that non-solicited market participants and floor brokers holding non-solicited discretionary orders in the trading crowd will have priority over the solicited party or the solicited order to trade with the original order at the best bid or offer price subject to the precedence rules set forth in Rule 155.[6]

Finally, the Exchange's proposal codifies its policy that the solicitations rule also applies to the solicitation of non-member broker dealers.

III. Discussion

The Commission 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 and, in particular, the requirements of Section 6(b)(5) of the Act.[7] Specifically, the Commission finds that the Exchange's proposal is consistent with the requirements of Section 6(b)(5) of the Act because the proposal is designed to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

The Exchange's proposal seeks to eliminate the requirement that a soliciting member first disclose to a trading crowd the terms and conditions of the order prior to the solicitation of a registered trader, but requires that the trading crowds be given a reasonable opportunity to accept the bid or offer,[8] after the terms and conditions of the order are announced.

The Commission believes that the Amex's proposal strikes a proper balance of allowing members to solicit, in advance, the other side of an order, while ensuring at the same time that the order will be exposed to the trading crowd consistent with auction market principles. Specifically, the Amex's proposal addresses the concern that Amex members who solicit orders may at times find it difficult to determine prior to the solicitation whether the solicited party is a registered options trader by removing the distinction between broker dealers who are

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[18] 17 C.F.R. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1994).

[3] Amendment No. 1 concerns the priority of non-solicited market participants and floor brokers in the trading crowd over solicited parties or solicited orders. In addition, Amendment No. 1 makes certain minor technical and clarifying modifications to the proposed changes to Amex Rule 950(d), Commentary .03. *See* letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated May 26, 1995 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 35797, (June 1, 1995), 60 FR 30612.

[5] Securities Exchange Act Release No. 26947 (June 19, 1989), 54 FR 26869 (approving Amex Rule 950(d), Commentary .03).

[6] Amex Rule 155 generally provides that a specialist shall give precedence to orders entrusted to him as an agent in any stock in which he is registered before excuting at the same price any purchase or sale in the same stock for an account in which he has an interest.

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] Since the size and complexity of orders for options can vary widely, the phrase ''reasonable opportunity to accept the bid and offer'' has not been specifically defined. However, the Exchange has stated that the following factors should be considered when deciding whether a reasonable opportunity has been given: (1) size and complexity of the order; (2) ease of executing hedging transactions in the underlying stock; and (3) effect of the options order on the positions held by participants in the trading crowd.