concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that each Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the Reorganizations are reasonable and fair and do not involve overreaching. Applicants state that the investment objectives, policies and restrictions of the Acquired Funds are similar to those of the corresponding Acquiring Funds. Applicants also state that each Franklin Board and the FTI Board, including all of the Disinterested Trustees, found that the participation of the Acquired and the Acquiring Funds in the Reorganizations is in the best interests of each Fund and its shareholders and that such participation will not dilute the interests 4 of the existing shareholders of each Fund. In addition, applicants state that the Reorganizations will be on the basis of the Funds' relative net asset values.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–5432 Filed 3–6–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45488; File No. SR–AMEX–2001–107]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating the Allocation to Specialists of Securities Admitted to Dealings on an Unlisted Trading Privileges Basis

February 28, 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 December 17, 2001, 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 Exchange filed Amendment No. 1 to its proposal on February 1, 2002.[3] 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 Amex proposes to adopt Amex Rule 28 to establish allocation procedures for securities admitted to dealings on a UTP basis. The text of the proposed rule change is below. Proposed new language is in *italics.*

* * * * *

Allocation of Securities Admitted to Dealings on an Unlisted Trading Privileges (''UTP'') Basis Rule 28. (a) The UTP Allocations Committee shall allocate securities admitted to dealings on an unlisted basis. The UTP Allocations Committee shall consist of the Chief Executive Officer of the Exchange who shall serve as the Chairman of the Committee, three members (selected from among Exchange Officials, Senior Floor Officials and Floor Governors), and three members of the Exchange's senior management as designated by the Chief Executive Officer of the Exchange. The Committee shall make its decisions by majority vote. The Chairman of the Committee may only vote to create or break a tie.

(b) The UTP Allocations Committee shall select the specialist that appears best able in the professional judgment of the members of the Committee to perform the functions of a specialist in the security to be allocated. Factors to be considered in the allocation may include, but are not limited to: (1) quality of markets made by the specialist, (2) experience with trading the security or similar securities, (3) willingness to promote the Exchange as a marketplace, (4) operational capacity including number and quality of professional staff, (5) number and quality of support personnel, (6) record of disciplinary, Committee on Floor Member Performance (''Performance Committee'') and cautionary actions including significant pending enforcement matters, (7) Performance Committee evaluations, (8) Specialist Floor Broker Questionnaire ratings and data, (9) the degree of interest expressed by a specialist in receiving the allocation in question, (10) undertakings by specialist applicants with respect to market quality, (11) order flow statistics, (12) the existence of a common ownership or similar economic interest among one or more specialists and market makers, (13) trading expertise in the primary market for the securities to be traded on an unlisted basis, and (14) ability and willingness to trade with other markets where the securities to be allocated trade.

(c) The UTP Allocations Committee may meet with potential specialists to obtain information regarding their qualifications. The Committee also may require specialists to submit information regarding their qualifications in writing.

(d) Willingness to promote the Exchange as a market place includes providing financial and other support for the Exchange's program to trade securities on an unlisted basis, contributing to the Exchange's marketing effort, consistently applying for allocations, assisting in meeting and educating market participants (and taking time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to competition by offering competitive markets and competitively priced services, and other like activities.

(e) The Exchange may allocate Nasdaq securities eligible for inclusion in the Exchange's Integrated Market Making Pilot Program (''Pilot Program'') prior to the commencement of the Pilot Program. If such securities are so allocated, upon the commencement of the Pilot Program, the UTP Allocations Committee shall conduct a reallocation proceeding in order to implement the Pilot Program at which proceeding the Committee may reallocate such Nasdaq securities. The UTP Allocations Committee shall follow the procedures described in this Rule 28 when it reallocates Nasdaq securities pursuant to this paragraph (e).

* * * * *

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 Exchange 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

[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, Commission, dated January 30, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified its proposal to consider potential integrated market making arrangements as a factor in determining the specialist allocation of equity securities traded on the Exchange pursuant to unlisted trading privileges (''UTP''), if the Amex's integrated market making proposal (SR–Amex-2001–75) is approved by the Commission.

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

Presently, the Exchange allocates securities to specialists that are able to fulfill the responsibilities of a specialist with respect to the securities. Recently, the Exchange determined to admit equity securities to dealings on a UTP basis. Since the Exchange would not be the primary listing market for these securities, the Exchange's ''issuer choice'' program (which gives issuers a role in the selection of their specialist) would be inapplicable to UTP securities. In addition, a specialist competing for order flow in securities admitted to dealings on a UTP basis against an established primary market would require a different set of qualifications than a specialist in securities that are listed on the Exchange. The Exchange, accordingly, believes that it is desirable to adopt new equity allocation procedures for UTP securities.

The proposal would establish a UTP Allocations Committee and procedures by which it would allocate securities admitted to dealings on a UTP basis. Three members selected from among Exchange Officials, Senior Floor Officials and Floor Governors would serve on the UTP Allocations Committee. The Chief Executive Officer of the Exchange and three other senior members of the Amex staff also would serve on the Committee.[4]

The Exchange's UTP Allocations Committee would receive the same information that customarily is provided to the Exchange's Allocations Committee and would generally consider factors that are the same as the Allocations Committee. In addition to the criteria that is generally considered by the Allocations Committee, the UTP Allocations Committee would also consider the following special criteria in making allocation determinations: (a) trading expertise in the primary market for the securities to be traded on an unlisted basis; (b) ability and willingness to trade with other markets where the securities to be allocated trade; and (c) financial support of the Exchange's UTP technology and marketing initiatives. The UTP Allocations Committee also could solicit information from potential specialists. As previously noted, issuer choice would not be a factor in allocating securities admitted to dealings on a UTP basis.

The Exchange recently filed a proposal with the Commission to institute a six-month pilot program to permit integrated market making and side-by-side trading[5] with respect to Nasdaq stocks that meet specified characteristics.[6] The Exchange wants to implement the Nasdaq UTP program as soon as possible, and believes that integrated market making would add substantial value to the Nasdaq UTP program. The Exchange notes, however, that Commission action on the Integrated Market Making Pilot Proposal may not occur until after Commission action on the Exchange's proposal to adopt general rules relating to trading Nasdaq stocks on a UTP basis.[7] Thus, the Exchange proposes to allocate the securities that may be eligible for the Integrated Market Making Pilot Proposal on a temporary basis, and that these securities would then be subject to reallocation if the Commission approves the Integrated Market Making Pilot Proposal.[8] In particular, the UTP Allocations Committee would reallocate such securities considering the availability of an integrated market making arrangement for Nasdaq securities admitted to dealing on a UTP basis.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, which requires, among other things, that the rules of an exchange be designed 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. More specifically, the Exchange believes that trading securities on a UTP basis will provide investors with increased flexibility in satisfying their investment needs by providing additional choice and increased competition in markets to effect transactions in the securities subject to UTP.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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

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

[4] This Committee structure is similar to the NYSE's UTP Allocations Committee. *See* Exchange Act Release Nos. 44272 (May 7, 2001), 66 FR 26898 (May 15, 2001), and 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001).

[5] According to the Exchange, ''integrated market making'' refers to the trading of options and their underlying stocks by the same specialist and/or specialist firm, while ''side-by-side trading'' refers to the trading of options and the underlying stocks in the same vicinity, though not necessarily by the same specialist or firm.

[6] *See* SR-Amex-2001–75 (''Integrated Market Making Pilot Proposal'').

[7] *See* Exchange Act Release No. 45365 (January 30, 2002), 67 FR 5626 (February 6, 2002).

[8] *See* Amendment No. 1, note 3, *supra*.

[9] *Id.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

submissions should refer to File No. SR-AMEX–2001–107 and should be submitted by March 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–5430 Filed 3–6–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45492; File No. SR–NASD–2002–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Use of Share Caps To Comply With the Shareholder Approval Rules of The Nasdaq Stock Market

March 1, 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 February 6, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') 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 Nasdaq. On February 27, 2002, the NASD—through Nasdaq—submitted Amendment No. 1 to the proposal.[3] Nasdaq has asserted that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, is immediately effective pursuant to Rule 19b–4(f)(1) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[12] 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 Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated February 26, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq clarified the consequences for Nasdaq issuers of engaging in transactions that employ defective share caps.

[4] 17 CFR 240.19b–4(f)(1).

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

Nasdaq is adopting interpretive material on the use of share caps to comply with the 20% limitations under NASD Rule 4350(i) and to make conforming changes to NASD IM–4300, NASD IM–4310–2, and NASD Rule 4350(i). Text of the proposed rule change, as amended, appears below. New language is italicized; deletions are bracketed.

* * * * *

IM–4300, Interpretive Material Regarding Future Priced Securities, is renumbered as IM–4350–1 and footnote 2 is amended as follows:

2. [In order to obviate the need for shareholder approval through such an arrangement, those shares already issued in connection with the Future Priced Security must not be entitled to vote on the proposal to approve the issuance of additional shares upon conversion of the Future Priced Security.] *See IM–4350–2, Interpretative Material Regarding the Use of Share Caps to Comply with Rule 4350(i).*

New Rule, IM–4350–2, Interpretative Material Regarding the Use of Share Caps to Comply with Rule 4350(i), is added as follows:

IM–4350–2—Interpretative Material Regarding the Use of Share Caps to Comply with Rule 4350(i)

Rule 4350(i) limits the number of shares or voting power that can be issued or granted without shareholder approval prior to the issuance of certain securities.[1] Generally, this limitation applies to issuances of 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.[2]

Issuers sometimes comply with the 20% limitation in this rule by placing a ''cap'' on the number of shares that can be issued in the transaction, such that there cannot, under any circumstances, be an issuance of 20% or more of the common stock or voting power previously outstanding without prior shareholder approval. If an issuer determines to defer a shareholder vote in this manner, shares that are issuable under the cap (in the first part of the transaction) must not be entitled to vote to approve the remainder of the transaction. In addition, a cap must apply for the life of the transaction, unless shareholder approval is obtained. For example, caps that no longer apply if a company is not listed on Nasdaq are not permissible under the Rule. Of course, if shareholder approval is not obtained, then the investor will not be able to acquire 20% or more of the common stock or voting power outstanding before the transaction and would continue to hold the balance of the original security in its unconverted form.

Nasdaq has observed situations where issuers have attempted to cap the issuance of shares at below 20% but have also provided an alternative outcome based upon whether shareholder approval is obtained, such as a ''penalty'' or a ''sweetener.'' For example, a company issues a convertible preferred stock or debt instrument that provides for conversions of up to 20% of the total shares outstanding with any further conversions subject to shareholder approval. However, the terms of the instrument provide that if shareholders reject the transaction, the coupon or conversion ratio will increase or the issuer will be penalized by a specified monetary payment. Likewise, a transaction may provide for improved terms if shareholder approval is obtained. Nasdaq believes that in such situations the cap is defective because the related penalty or sweetener has a coercive effect on the shareholder vote, and thus may deprive shareholders of their ability to freely exercise their vote. Accordingly, Nasdaq will not accept a cap that defers the need for shareholder approval in such situations. Instead, if the terms of a transaction can change based upon the outcome of the shareholder vote, no shares may be issued prior to the approval of the shareholders. Issuers that engage in transactions with defective caps will be in violation of Nasdaq rules and will be subject to delisting.

Issuers having questions regarding this policy are encouraged to contact The Nasdaq Stock Market, Listing Qualifications Department at (877) 536–2737, which will provide a written interpretation of the application of Nasdaq Rules to a specific transaction, upon prior written request of the issuer.

IM–4310–2, Definition of a Public Offering, is renumbered as IM–4350–3 and the first paragraph is amended as follows:

[1] *An exception to this rule is available to issuers when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise. Rule 4350(i)(2). However, a share cap is not permissible in conjunction with the financial viability exception provided in Rule 4350(i)(2), because the application to Nasdaq and the notice to shareholders required in the rule must occur prior to the issuance of any common stock or securities convertible into or exercisable for common stock.*

[2] *While Nasdaq's experience is that this issue is generally implicated with respect to these situations, it may also arise with respect to the 5% threshold set forth in Rule 4350(i)(1)(C)(i).*