

Securities Industry Association's ("SIA")<sup>6</sup> Telecommunications and Information Management Committee ("TIMC")<sup>7</sup> is opposed to the amendment to the OPRA Plan.<sup>8</sup> TIMC anticipates the separate access charges that result from the unbundling of FCO and index options will constitute a substantial price increase for the data currently provided by OPRA. In addition, TIMC concluded that the establishment of separate accounting centers as well as the necessity for systems modifications by SIAC, vendors and some securities firms will result in additional costs to both the distribution and accounting systems used by securities firms to monitor OPRA's information services. TIMC concluded that the amendment, while generating additional costs, does not provide additional benefits to those entities that use OPRA's services.

### III. Discussion

The Commission has determined to approve the amendment to the OPRA Plan. The Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to OPRA, including the requirements of Sections 11A(a)(1)(C)(iii) and (D) of the Act.<sup>9</sup> Section 11A(a)(1)(C)(iii) states that the availability of information to brokers, dealers and investors, with respect to quotations for and transactions in securities, is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Section 11A(a)(1)(D) provides for the linking of all markets for qualified securities through communications and data processing facilities to foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. Further, the Commission believes that the amendment is consistent with Rule 11Aa3-2(c)(2)<sup>10</sup> in that it is appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; and to remove impediments to, and perfect the

mechanisms of, a national market system.

Although the Commission understands the concerns raised by TIMC, the Commission believes that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to OPRA. As noted above in the summary of comments, TIMC is opposed to the Plan amendment. Generally, the basis for TIMC's opposition is its expectation that additional costs will accrue as a result of the proposal. The amendment, however, does not include a fee increase for the market data currently provided by OPRA. Instead, the amendment permits OPRA to unbundle its services pertaining to FCOs and index options and to change separately for such services on or after January 1, 1996. Under the amendment, the decision to unbundle fees is subject to the conditions of the OPRA Plan and the requirements of Rule 11Aa3-2.<sup>11</sup> Any subsequent decision to change fees by OPRA, therefore, will be filed with the Commission. Further, while some entities may have to incur initial costs to accommodate the changes contemplated by the amendment, such changes will provide flexibility to both vendors and subscribers. Unbundling will allow OPRA market information services to be tailored to the individual needs of vendors and subscribers.

*It is therefore ordered*, pursuant to Section 11A(a)(3)(B) of the Act,<sup>12</sup> that the amendment (S7-8-90) to the OPRA Plan be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**

*Secretary.*

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### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Entry of Market-at-the-Close Orders

March 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 22, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the

<sup>11</sup> *Supra*, note 2.

<sup>12</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>13</sup> 17 CFR 300.30-3(a)(29).

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 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 proposes to adopt new Commentary .02 to Exchange Rule 109 to provide that members entering market-at-the-close ("MOC") orders through the PER of AMOS systems must do so no later than 3:50 p.m. The text of the proposed rule change is as follows [new text is italicized]:

Rule 109

Commentary

.01 Each "stopped" transaction shall be reported for printing on the tape in the form and manner prescribed by the Exchange.

.02 *Members entering market-at-the-close orders through the PER or AMOS systems must do so no later than 3:50 p.m. The foregoing shall not limit or restrict the entry of market-at-the-close orders (or their cancellation) other than via such systems.*

### 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

##### 1. Purpose

Rule 109 sets forth the procedures to be followed in executing MOC orders. Paragraph (d) of the Rule provides that where there is an imbalance between MOC buy and sell orders, the imbalance of buy orders would be executed against the offer and an imbalance of sell orders would be executed against the bid. The remaining buy and sell orders are then paired off and executed at the price of

<sup>6</sup> The SIA is a trade association that represents the business interests of securities firms throughout North America. Its members include investments banks, brokers, dealers and mutual fund companies.

<sup>7</sup> The TIMC focuses on issues pertaining to data processing, market data, telecommunications and related technology activities.

<sup>8</sup> Letter from Heidi H. Heiden, Chairman, SIA TIMC, to Margaret H. McFarland, Deputy Secretary, SEC (September 9, 1994).

<sup>9</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii) and (D).

<sup>10</sup> *Supra*, note 2 at (c)(2).

the immediately preceding last sale. The "pair off" transaction is reported to the consolidated last-sale reporting system as "stopped stock."<sup>1</sup>

Currently, members may enter MOC orders until 4:00 p.m. when trading closes. MOC orders that are entered through the Exchange's order routing systems, PER and AMOS, can have a disruptive effect on the market when they are entered very shortly before the close. Under these circumstances it can take several minutes for the specialist to ascertain whether an imbalance exists and to pair off buyers and sellers, with the result that the executed MOC transactions do not print until after the close. When this happens, it becomes difficult for market participants to ascertain the closing price of a security in a timely fashion.<sup>2</sup>

To address this concern, the Exchange is proposing an amendment to Commentary .02 to Exchange Rule 109 to provide for a 3:50 p.m. cut-off time for MOC orders entered through PER or AMOS on both expiration and non-expiration days. After this time, no MOC order could be entered or reduced in size via AMEX systems. MOC orders may still be entered, modified, or canceled until 4:00 p.m. other than through the automated systems. The Exchange expects that this proposed change will enable specialists to more efficiently execute and report MOC orders.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

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

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

<sup>1</sup> A "stopped stock" transaction is one in which a floor broker or specialist pairs-off buy and sell market-at-the-close orders when holding those orders simultaneously in the same stock.

<sup>2</sup> The closing price is the price at which the MOC orders were executed. Telephone conversation with Stuart Diamond and Linda Tarr, Amex, and Glen Barentine and Jennifer Choi, SEC, on March 7, 1995.

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

No written comments were either solicited or received.

### **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 submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., 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, NW., Washington, DC 20549. 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-95-09 and should be submitted by April 11, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Qualification Examinations Administered by the Exchange and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1**

March 14, 1995.

On October 25, 1994, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to update and revise its examinations to conform them to new rules and procedures.<sup>3</sup> On March 10, 1995, the Amex submitted Amendment No. 1 to the above referenced rule filing.<sup>4</sup> The proposed rule change includes the contents of the qualification examinations and related materials.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35016 (November 29, 1994), 59 FR 62428 (December 5, 1994). No comments were received on the proposal.

The Amex administers six qualification examinations: the Qualification Examination for Regular Members, the Qualification Examination for Options Principal Members ("OPMs"), the Put and Call Stock Option Examination, the Put and Call Option Questionnaire for Listed Personnel, the Specialist Examination and the Registered Equity Trader and Registered Equity Market Maker Examination. All six examinations are specifically designed for Amex membership applicants in order to test the applicant's knowledge in a variety of areas, including general trading principles and procedures as well as specific Amex rules and policies.

Pursuant to Amex Rule 50(a) every applicant for regular and options

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> The proposed rule change was filed pursuant to the SEC's position that all qualification examinations administered by the Exchange be filed with the Commission. See Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906. See also letter from Brandon Becker, SEC, to Gordon L. Nash, Amex, dated March 5, 1991.

<sup>4</sup> See letter from Janice Stroughter, Director of Hearings and Special Counsel Legal & Regulatory Policy, Amex, to Amy Bilbija, Attorney, Commission, dated March 9, 1995. In Amendment No. 1 the Amex made several clarifications and corrections to three of the six exams filed with the Commission.