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

Jonathan G. Katz,

Secretary.

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[Release No. 34–38379; File No. SR–Amex–97–12]

Self-Regulatory Organizations; Notice of Filing of, and Order Granting Accelerated Approval to, Proposed Rule Change by the American Stock Exchange, Inc. Relating to Execution of Specialists' Liquidating Transactions

March 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 28, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. Subsequently, the Exchange submitted Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The Amex is proposing permanent approval of a pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick,[3] in the case of a ''long'' position, or a zero plus tick,[4] when covering a ''short'' position, without Floor Official approval. The pilot program also amended Exchange Rule 170 to set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

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 land 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 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

On February 18, 1997, the Commission approved an extension until March 7, 1997 of a pilot program that amended exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' position, or a zero plus tick, when covering a ''short'' position, without Floor Official approval.[5] The Rule continues to require that Floor Official approval be obtained prior to effecting a liquidating transaction on a straight destabilizing tick (*i.e.,* a minus tick in the case of a ''long'' position or a plus tick when covering a ''short'' position). The amendments also set forth the affirmative action that specialists are required to take subsequent to effecting various types of liquidating transactions.

During the course of the pilot program, the Exchange has carefully monitored compliance with the requirements of the Rule. The Amex believes that the amendments have provided specialists with flexibility in liquidating specialty stock positions in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. In addition, the specialist's concomitant obligation to participate as dealer on the opposite side of the market after a liquidating transaction has been strengthened. The Exchange is therefore proposing permanent approval of the amendments to Amex Rule 170.

In addition, the Exchange is proposing to adopt a formal policy to address its enforcement with respect to ''non-substantive'' (*i.e.,* if the approval would have been granted if it had been sought) violations of the requirement that specialists obtain Floor Official approval for reliquidating transactions on straight destabilizing ticks. Absent unusual circumstances, the Exchange will, at a minimum, take the following action:

—The Exchange staff will issue a cautionary letter to the specialist for an initial violation, during a ''rolling'' twelve-month period.

—Any subsequent violation(s) by the same specialist during the ''rolling'' twelve-month period will be referred to the Minor Floor Violation Disciplinary Committee for appropriate action. Pursuant to Rule 590 and its commentary, the Committee has the authority to issue a cautionary letter to the specialist or impose fines ranging from $500 to $2,500 ($1,000 to $5,000 for member organizations).

Of course, the Exchange, even for an initial violation, has the authority to take more stringent action either pursuant to Rule 590 or in accordance with the Exchange's formal disciplinary procedures. In addition, the Exchange's policy with respect to ''substantive'' violations of this rule (*e.g.,* failure to properly re-enter the market or failure to obtain the required Floor Official approval when such approval, if sought, would not have been granted) remains unchanged. Such instances of noncompliance will be dealt with according to the Exchange's formal disciplinary procedures.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the pubic interest. The Exchange also believes the proposed rule change is consistent with Section 11(b) of the Act[8] which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

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

[2] Letter from Claudia Crowley, Special Counsel, Amex, to Anthony Pecora, Attorney, Division of Market Regulation, SEC, dated March 4, 1997 (''Amendment No. 1''). Amendment No 1 added a paragraph explaining the Exchange's enforcement policy concerning ''substantive'' violations of Amex Rule 170 and included an interpretation of that rule in the form of an information circular that the Exchange has represented to be binding on it.

[3] A zero minus tick is a price equal to the last sale where the last preceding transaction at a different price was at a higher price.

[4] A zero plus tick is a price equal to the last sale where the last preceding transaction at a different price was at a lower price.

[5] Securities Exchange Act Release No. 38299 (Feb. 18, 1997), 62 FR 8464 (''February 1997 Approval Order'') (approving File No. SR–Amex–97–01).

[6] 15 U.S.C. 78f(b).

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

[8] 15 U.S.C. 78k(b).

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 with respect to the proposed rule change.

III. 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. Also, copies of such filing will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–97–12 and should be submitted by April 14, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval to the Proposed Rule Change

After careful consideration, 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, with the requirements of Section 6(b) and Section 11 of the Act.[9] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[10] requirements 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, in general, to protect investors and the public interest. The Commission also believes the proposal is consistent with Section 11(b) of the Act[11] and Rule 11b–1[12] thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Both the Act and the Exchange's rules reflect the crucial role played by specialists in providing stability, liquidity, and continuity in the Exchange's auction market. Recognizing the importance of the specialist to the auction market, the Act and the Exchange's rules impose stringent obligations upon specialists.[13] Primary among these obligations is the requirement to restrict a specialist's dealings to those that are ''reasonably necessary'' to maintain a fair and orderly market.[14]

The importance of specialist performance to the quality of exchange markets was highlighted during the 1987 and 1989 market breaks. In the Division of Market Regulation's (''Division'') 1987 Market Break Report, the Division examined specialist performance on the Amex on October 19 and 20, 1987.[15] Although some Amex specialists performed well under the adverse conditions, the Division found that others appeared to perform inadequately.[16]

The Division also examined Amex specialist performance during the volatile conditions of October 13 and 16, 1989. It found that specialist performance during that time was similar in many respects to the pattern of specialist performance during the October 1987 Market Break.[17] Specifically, the Division found that specialists were confronted with extreme volume and volatility.[18]

Both the 1987 Market Break Report and the 1989 Market Analysis Report reaffirmed the importance of specialist participation in countering market trends during periods of market volatility. At the same time, the reports emphasized the importance the Commission placed on the Amex's ability to ensure that all specialists comply with their affirmative and negative market making obligations during such periods.[19]

One area of specialist performance specifically reviewed by the 1989 Market Analysis Report involved specialists' compliance with the negative obligations imposed by Amex Rule 170.02. Prior to the implementation of the Amex's pilot program, this rule stated that, unless the specialist had the prior approval of a Floor Official, he or she should avoid liquidating all or substantially all of a dealer position on a destabilizing tick (*i.e.*, purchases on plus or zero plus ticks and sales on minus or zero minus ticks) unless the transaction was reasonably necessary in relation to the specialist's overall position in the stocks in which he or she was registered. The Division requested in the 1989 Market Analysis Report that the Amex examine the language of this rule[20] because it appeared to provide specialists with unnecessarily broad latitude for effecting transactions on destabilizing ticks.[21]

The proposed rule change is responsive to the request regarding Amex Rule 170.02, as well as the conclusions of the two market reports.

[9] 15 U.S.C. 78f(b) and 78k.

[10] 15 U.S.C. 78f(b)(5).

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

[12] 17 CFR 240.11b–1.

[13] In general specialists' activities are circumscribed by Section 11 of the Act and the rules thereunder and by the rules of the exchange where the specialist is registered. *See* 15 U.S.C. 78k (prohibiting members of a national securities exchange from effecting transactions on such exchange for their own accounts but allowing, among other things, market making transactions). Rule 11b–1(a)(2), which sets forth the primary responsibilities of a specialist, states that a specialist's course of dealings for his or her own account must assist in the maintenance of a fair and orderly market, so far as practicable. 17 CFR 240.11b–1(a)(2). Rule 11b–(a)(2) also states, however, that a specialist should restrict his or her dealings, so far as practicable, to those reasonably necessary to permit him or her to maintain a fair and orderly market. *Id.* See also Amex Rule 170(c) (prohibiting a specialist from effecting purchases or sales of any security in which that specialist is registered for any account in which that specialist is directly or indirectly interested, unless such dealings are reasonably necessary to maintain a fair and orderly market in such security); Amex Rule 170(d) (stating that transactions effected by a specialist on the Exchange for his or her own account in the securities in which he or she is registered are to constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and minimize the effects of temporary disparities between supply and demand).

[14] 17 CFR 240.11b–1(a)(2).

[15] *See* SEC, Division of Market Regulation, The October 1987 Market Break 4–29 to 4–41 (Feb. 1988) [hereinafter 1987 Market Break Report].

[16] *Id.* at 4–40 to 4–41.

[17] See SEC, Division of Market Regulation, Market Analysis of October 13 and 16, 1989, at 33 (Dec. 1990) [hereinafter 1989 Market Analysis Report].

[18] See 1987 Market Break Report, *supra* note 15, at 4–30; 1989 Market Analysis Report, *supra* note 17, at 27.

[19] A specialist's dealer responsibilities consist of ''affirmative'' and ''negative'' obligations. In accordance with their affirmative obligations, specialists are obligated to trade for their own accounts to minimize order disparities and contribute to continuity and depth in the market. Conversely, specialists, pursuant to their negative obligations, are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. In view of these obligations, the price trend in a security should be determined by the movements of the incoming orders that initiate the trades, not by a specialist's proprietary trading activity.

[20] 1989 Market Analysis Report, *supra* note 17, at n.56.

[21] 1989 Market Analysis Report, *supra* note 17, at n.31.

The Amex, recognizing that market conditions may necessitate that a specialist participate heavily in a rapidly declining market, proposed amendments to Amex Rule 170.02 to provide specialists with flexibility in liquidating specialty stock positions in order to facilitate a specialist's ability to maintain fair and orderly markets, particularly during unusual market conditions. At the same time, the amendments were designed to strengthen the specialist's concomitant obligation to participate as dealer on the opposite side of the market after a liquidating transaction. The Commission approved the proposed amendments as a one-year pilot program, and subsequently extended the pilot on several occasions.[22]

The Exchange is requesting permanent approval of the pilot program procedures. Under the proposal, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or zero plus tick, which previously required Floor Official approval, can be effected under the pilot procedures without a Floor Official's approval, but would continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, a specialist is required to re-enter the market on the opposite side to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In the prior approval orders concerning this pilot program, the Commission requested that the Amex submit a report setting forth the criteria developed by the Exchange to determine whether any reliquidating transactions by specialists were necessary and appropriate in connection with fair and orderly markets. The Commission also asked, among other things, that the Exchange provide information regarding the Exchange's monitoring of liquidating transactions effected by specialists on any destabilizing tick. In particular, the Commission asked the Amex to report any noncompliance with the rule and the action the Amex took as a result of such noncompliance.

The Amex submitted its reports concerning the pilot program to the Commission in January 1997, April 1996, and May 1995. As noted above, the Amex believes that the pilot procedures appear to be working well in enabling specialists to reliquidate appropriately to meet the needs of the market.

After careful review, the Commission finds that it is appropriate to approve the amendments to Amex Rule 170.02 on a permanent basis. In making this determination, the Commission notes that the pilot period has provided the Commission and the Exchange an opportunity to monitor the operation of the amendments during unusual or volatile market conditions. The Commission believes that the experience with the pilot indicates that specialists, for the most part, have been meeting their obligations under the Rule and are properly assuming their responsibilities of re-entering the market following liquidating transactions.

In sum, the Commission believes the amendments to Amex Rule 170.02 reinforce a specialist's obligation to maintain a fair and orderly market by providing stabilizing dealer participation to the marketplace, especially during periods of volatile or unusual market activity. For example, during periods of high market volatility, not only would specialists continue to be obligated to temper disparities between supply and demand, but specialists would specifically have to re-enter the market at a specified rate after a liquidating transaction. Similarly, the amendments to Amex Rule 170.02 reinforce the negative market making obligations of specialists. For example, a specialist is not permitted to reliquidate in the absence of a large dealer position; rather, he or she is able to do so only if reasonably necessary to enable him or her to maintain a fair and orderly market. Thus, the amendments to Amex Rule 170.02 do not allow the specialist to use the rule as a vehicle for trading.

The Commission recognizes that future periods of market volatility accompanied by increasing volume and selling pressure may place specialists under extreme duress to keep the markets orderly and continuous by entering the market as buyers. In these instances, the Commission believes the amendments should assist specialists in tempering sudden price movements and keeping any general price movements orderly, thereby furthering the maintenance of fair and orderly markets consistent with Section 6 and Section 11 of the Act.[23]

Finally, the Commission believes aggressive enforcement of this rule is warranted given the negative effect noncompliance has on the market. Therefore, the Commission expects the Exchange to continue to carefully monitor specialist compliance with Amex Rule 170's procedures as required under Section 19(g) of the Act.[24] In particular, the Exchange should continue to ensure that specialists are meeting their market making obligations and appropriately re-entering the market as required under the Rule.[25] If a specialist fails to properly enter the aftermarket or fails to seek Floor Official approval where such approval, if sought, would not have been granted, the Commission expects the Exchange to bring full disciplinary procedures.

In addition, the Commission expects the Exchange to address all ''nonsubstantive'' violations of this rule (*i.e.*, instances where a specialist fails to seek Floor Official approval where such approval, if sought, would have been granted). The Commission recognizes that most, if not all, ''nonsubstantive'' violations of these procedures will be inadvertent. Nevertheless, given the crucial role that specialists play in providing stability to the Exchange's market, it is important to reinforce the specialists' obligations. Thus, consistent with the interpretation adopted by the Amex in conjunction with its request for

[22] See Securities Exchange Act Release No. 33957 (Apr. 22, 1994), 59 FR 22188 (approving File No. SR–Amex–92–26) (''1994 Approval Order''); Securities Exchange Act Release No. 35635 (Apr. 21, 1995), 60 FR 20780 (approving File No. SR–Amex–95–11) (''April 1995 Approval Order''); Securities Exchange Act Release No. 36014 (July 21, 1995), 60 FR 38870 (approving File No. SR–Amex–95–19) (''July 1995 Approval Order''); Securities Exchange Act Release No. 37448 (July 17, 1996), 61 FR 38487 (approving File No. SR–Amex–96–16); Securities Exchange Act Release No. 37704 (Sept. 19, 1996), 61 FR 50525 (approving File No. SR–Amex–96–33); Securities Exchange Act Release No. 37958 (Nov. 15, 1996), 61 FR 59476 (approving File No. SR–Amex–96–42); February 1997 Approval Order, *supra* note 5.

[23] 15 U.S.C. 78f and 78k.

[24] 15 U.S.C. 78s(g) (requiring every self-regulatory organization to comply with, and enforce compliance with, the Act, the rules thereunder, and its own rules).

[25] Although liquidating transactions are not precluded during periods of significant price movements, the Commission emphasizes that such transactions should be accompanied by the necessary dealer participation against the trend of the market, even in situations where continuity and depth reflect variations that normally may be experienced in the stock.

permanent approval, the Commission expects, at a minimum, that the Exchange's staff will issue a cautionary letter to a specialist for an initial ''nonsubstantive'' violation during a rolling twelve-month period and to refer any subsequent ''nonsubstantive'' violations by the same specialist during this period to the Minor Floor Violation Disciplinary Committee (''Committee'') for a fine pursuant to the Amex's Minor Rule Plan (''MRP'').[26]

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange will continue to use the identical procedures contained in the pilot program. These procedures have been published in the **Federal Register** on several occasions for the full comment period, and no comments have ever been received. Furthermore, the Commission approved a similar rule change for the NYSE, also without receiving comments on that proposal.[27] For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 6, Section 11, and Section 19(b)(2) of the Act.[28]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Amex–97–12), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Jonathan G. Katz,

Secretary.

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[26] See Amex Rule 590(h). Although Amex Rule 590 states that the Committee ''may'' impose a fine, the Commission believes the use of such ''prosecutorial discretion'' to issue a cautionary letter in lieu of a fine for ''nonsubstantive'' violations of this rule should be exercised only in extraordinary circumstances. This position is bolstered by the fact that the specialist, at a minimum, already would have received such a letter from the Amex's staff in connection with its first ''nonsubstantive'' violation of this rule within the last twelve months.

In addition, each instance of noncompliance should be addressed individually. Although instances of noncompliance by a specialist that occur between regularly scheduled meetings of the Committee may be presented as a single bundle, each infraction should be considered a separate offense for calculating the appropriate fine. For example, if a specialist fails to properly obtain Floor Official approval 15 times during a 5 month period, that specialist should be fined for 15 violations, instead of the minimum amount for a first offense simply because all 15 violations were presented to the Committee at the same meeting.

[27] See Securities Exchange Act Release No. 31797 (Jan. 29, 1993), 58 FR 7277 (approving File No. SR–NYSE–92–20).

[28] 15 U.S.C. 78f, 78k, and 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[Release No. 34–38398; File No. SR–NASD–97–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Transfer of Limited Partnership Securities

March 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 29, 1997 the NASD Regulation, Inc. (''NASD Regulation'') 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 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

NASD Regulation is proposing to amend Rules 11580 and 11870 of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to expand the current exceptions to the requirement that members use the Limited Partnership Transfer Forms for the transfer of limited partnership securities and require that the Forms be used by members in account transfers of limited partnerships.

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.

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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 29, 1996, the Commission approved new NASD Rule 11580 (formerly, Section 73) to the NASD's Uniform Practice Code requiring members to use Standardized Transfer Forms when transferring limited partnership securities.[2] Use of the forms became mandatory for NASD members on May 15, 1996. NASD Regulation is proposing two amendments related to the use of the Standardized Transfer Forms. The first is an amendment to NASD Rule 11580 to expand the current exceptions to include limited partnerships that trade in the non-Nasdaq over-the-counter market that are in a depository. The second amendment is to NASD Rule 11870 (formerly, Section 65) to require that the Standardized Transfer Forms be used by members in account transfers of limited partnerships.

i. *Amendment to Rule 11580.* This rule includes an exception for limited partnership securities that are listed on an exchange or the Nasdaq Stock Market. The exception does not cover those limited partnership securities that are quoted on the OTC Bulletin Board that trade with such frequency that use of the Standardized Transfer Forms would not be appropriate. In order to broaden the exception, NASD Regulation is proposing to amend subparagraph (a) of NASD Rule 11580 to except from the requirements of the rule those limited partnership securities that are in a depository and that settle regular way.[3] It is believed that the proposed criteria of depository eligibility and regular way settlement identify that group of non-Nasdaq over-the-counter limited partnership securities that do not need the Standardized Transfer Forms to facilitate settlement. The Forms were specifically adopted to address problems associated with the settlement of limited partnership interests that are generally illiquid and where the transfer requirements contained in the General Partnership Agreement vary widely as to the type of information and documents necessary for a valid transfer of a interest.

[2] Securities Exchange Act Release No. 36783 (Jan. 29, 1996), 61 FR 3955 (Feb. 2, 1996).

[3] The Commission notes that the proposal requires that the securities be physically present in a depository to qualify for this exception. Simply being ''eligible for deposit'' in a depository is not enough.