

exchange unless it finds, among other things, that the exchange is organized so that it has the capacity to carry out the purposes and to comply with the Securities Exchange Act of 1934 ("Exchange Act"). Form 1 is necessary because it requires the information needed by the Commission to determine whether granting registration to an exchange would be appropriate.

Because Form 1 is filed on a one-time basis by an exchange, it is estimated that approximately 1 respondent incurs an average of 45 burden hours annually to comply with the rule.

Rule 6a-2 requires that registered and exempted national securities exchanges file Form 1-A on an annual basis. Form 1-A is necessary because it informs the Commission of any changes to Form 1 during the exchange's preceding fiscal year.

Form 1-A is required to be filed annually by a registered or exempted exchange to update information required to be filed on Form 1 which has changed during the exchange's preceding fiscal year. Such information is elicited, pursuant to the requirements of Rule 6a-1 under the Exchange Act, on Form 1. It is estimated that approximately 9 respondents incur a total of 270 burden hours annually to comply with the rule.

Rule 15Ba2-1 provides that an application for registration by a bank municipal securities dealer must be filed on Form MSD. The information required to be disclosed on Form MSD is necessary for the Commission to determine whether or not registration as a municipal securities dealer should be granted.

It is estimated that approximately 40 respondents will utilize this application procedure annually, with a total burden of 60 hours, based upon past submissions.

Rule 17Ac2-2 requires transfer agents, who are not exempt, to file an annual report of their business activities on Form TA-2 with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

It is estimated that approximately 1,000 respondents are exempt from providing certain information contained in the annual report. An additional 400 non-exempt respondents will file an annual report. The total annual burden is 1,000 hours for exempt respondents and 2,000 hours for non-exempt respondents, based upon past submissions.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the

Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: May 6, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38573; File No. SR-Amex-97-10]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rule 170.01 Pertaining to Specialists Establishing a Position

May 5, 1997.

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> notice is hereby given that on February 24, 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, II, and III below, which Items have been prepared by the Exchange. 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, pursuant to Rule 19b-4 of the Act, proposes to amend Commentary .01 to Exchange Rule 170 to permit a specialist to provide liquidity to orders on the book in stabilizing transactions without the necessity of first obtaining Floor Official approval.

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

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

#### 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 Amex 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 Amex 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 170 ("Rule"), the primary rule governing a specialist's functions, restricts a specialist's transactions in his or her specialty stock to those that are reasonably necessary to the maintenance of a fair and orderly market. Specifically, paragraph (d) of the Rule provides that a specialist is affirmatively required to engage in a course of dealings for his own account to minimize order disparities and contribute to continuity and depth in the market, and is precluded from trading for his own account unless such dealing is necessary for the maintenance of a fair and orderly market. The price trend of a security should thus be determined by incoming orders rather than the specialist's proprietary dealings.

Commentary .01 to the Rule sets forth specific requirements which are applicable when a specialist is establishing or increasing a position, and provides that a specialist should effect such transactions in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of his position to meet the immediate and reasonably anticipated needs of the market. In particular, paragraph (b) of the Rule provides that a specialist must obtain Floor Official approval prior to effecting the purchase of all or substantially all the stock offered on the book at a price equal to the last sale, when such offer represents all or substantially all the stock offered in the market. Paragraph (c) provides that he similarly must obtain Floor Official approval prior to supplying all or substantially all the stock bid for on the book at a price equal to the last sale. In addition, paragraph (a) prohibits a specialist from purchasing stock at a price above the last sale in the same

trading session, without Floor Official approval. Paragraph (d) requires him to re-offer or re-bid where necessary after effecting the transactions described in paragraphs (a), (b), and (c).

The Amex states that the restrictions contained in paragraphs (b) and (c) were intended to strike a balance between protecting the auction market from unnecessary specialist trading and providing immediate liquidity to orders that come to the Floor. The Floor Official's function, at the time Rule 170 was adopted, was to operate as a control mechanism to ensure that the specialist did not trade unnecessarily.

The Amex contends that although the need to obtain Floor Official approval was reasonable in the past, before technology enabled markets to move quickly within seconds, it now has the effect, under certain circumstances, of reducing liquidity and disadvantaging orders entered with the specialist. If an order is brought to the specialist, he is free to execute it immediately without displaying it first. Under such circumstances, the specialist may purchase or sell all or substantially all the stock offered or bid for, at a price equal to the last sale, without obtaining Floor Official approval. However, if the specialist initially decides instead to display the order, providing transparency, in the hopes of either narrowing the market or generating interest on the opposite side, but thereafter determines to take the offer or hit the bid, he must obtain Floor Official approval.

Accordingly, it is proposed that Commentary .01 be amended to provide that a specialist is not required to obtain Floor Official approval with respect to the purchase, on a zero minus tick, of stock offered on the book, or the sale, on a zero plus tick, of stock bid for on the book. A specialist is the buyer and seller of last resort, and is expected to step in when there is a disparity between supply and demand. In this situation, the specialist would only be purchasing the stock offered because there is inadequate demand for the stock. The transaction in question would be stabilizing, in that he is buying on a zero minus tick, against the direction of the market, rather than directing the course of the market.

In addition, the Amex contends that with the advent of improved technology, the Exchange's surveillance systems can now provide an adequate substitute for Floor Official Approval in such circumstances. In the last few years, the Exchange has developed an automated computer program which identifies each instance in which a specialist crosses the market (i.e., buys

on the offer and sells on the bid). Each of these situations can then be individually reviewed by the Exchange Trading Analysis staff to determine whether the specialist was acting appropriately. With respect to the proposed rule change, the Exchange staff would look at how large the specialist's position was prior to the transaction, whether there were imbalances in the limit orders on his book which necessitated the transaction, and whether, if the market subsequently "turned around" he used a reasonable amount of the inventory acquired in the transaction to offset any imbalance between supply and demand.

For example, assume that a customer enters an order to sell XYZ stock at  $10\frac{1}{8}$  (the last sale and a minus tick) when the market is quoted  $10-10\frac{1}{4}$ . And assume that instead of executing the order immediately, which the specialist is entitled to do, he displays it, changing the quote to  $10-10\frac{1}{8}$ . Because no buy side interest develops at  $10\frac{1}{8}$ , several minutes later the specialist determines that it is appropriate to take the offer. He must now locate and explain the circumstances to a Floor Official, and during this time the market may move lower, either on the Amex or on another market, so that the specialist would no longer pay  $10\frac{1}{8}$  for the stock. Had the specialist been free to take the offer without seeking Floor Official approval, the customer would have received an execution and the Exchange staff would have reviewed the circumstances surrounding the transaction to determine whether it appeared to be consistent with the specialist's affirmative and negative obligations. In appropriate cases, the specialist's actions could, of course, be referred to the Exchange's Enforcement Division for possible disciplinary action.

The Amex believes that the proposed change carves out an exception to the existing provisions, but would provide a distinct benefit to the market by permitting the specialist to satisfy a customer's order more expeditiously, while enabling him to enhance the liquidity, depth and transparency of the market as the buyer or seller of last resort.

## 2. Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)<sup>3</sup> in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to

<sup>3</sup> 15 U.S.C. 78f(b)(5).

remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 Amex 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 2, 1997.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38574; File No. SR-NYSE-97-10]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 104.10(5) Pertaining to Specialists Establishing a Position.

May 5, 1997.

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> notice is hereby given that on March 25, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. 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 NYSE, pursuant to Rule 19b-4 of the Act, proposes to amend Exchange Rule 104.10 to remove certain restrictions on specialists' stabilizing purchases and sales. The text of the proposed rule change is available at the Office of the Secretary, the NYSE and at the Office of the Secretary, the NYSE 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 NYSE 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 NYSE has prepared summaries, set forth in Section 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 104 governs specialists' dealings in their specialty stocks. In particular, Rule 104.10(5)(i) describes certain types of transactions to establish or increase a specialist's position which are not to be effected unless they are "reasonably necessary to render the specialist's position adequate to" the needs of the market. Currently, these restrictions apply equally to transactions that are against the market trend ("stabilizing") and those that are with the market trend ("destabilizing"). The Exchange is proposing to apply these restrictions only to destabilizing transactions.

Specifically, the revision to Rule 104.10(5)(i)(B) would prohibit the specialist from establishing or increasing his or her long position by purchasing more than 50% of the stock offered for sale in the market on a zero-plus tick (i.e., at a price equal to the last sale and above the previous different price sale). There would be no restriction on purchasing stock on a zero-minus tick to establish or increase a position, as such transactions are stabilizing in nature and are perceived as being beneficial to the market.

Paragraph (C) of Rule 104 would be deleted to permit the specialist to establish or increase his or her short position by selling stock to the bid without restriction on a zero-plus tick, as these transactions are stabilizing in nature. Prohibitions on short sales on zero-minus ticks are contained in SEC Rule 10a-1 under the Act and Exchange Rule 440B.

References to paragraph 104.(5)(i)(C) elsewhere in the rule would be removed and paragraph (D) would be renumbered as (C).

The proposed amendments are intended to enhance the specialist's ability to deal for his or her own account to provide support to the market. Under the revised rules, specialists will, to a greater degree, be able to counter the market trend in a stock through effecting proprietary transactions that are stabilizing. In today's markets, characterized by increased volatility and institutional activity, the use of dealer capital in this fashion can add liquidity in a manner beneficial to the market.

##### 2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers

the objectives of Section 6(b)(5)<sup>3</sup> in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to remove impediments to, and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 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 N.W., Washington, D.C. 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 in the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549.

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

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

<sup>3</sup> 15 U.S.C. 78f(b)(5).