

notice is hereby given that on September 10, 1996, 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 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 Amex, pursuant to Rule 19b-4 of the Act, proposes to amend Exchange Rules 904 and 904C to revise the firm facilitation exemption provisions from its position and exercise limit rules.

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 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

In May of this year, the Exchange received Commission approval to expand the firm facilitation exemption³ from position and exercise limits to all non-multiply-listed Exchange option classes.⁴ Currently, only a member firm who facilitates and executes an order for its own customers⁵ may qualify for a firm facilitation exemption.

The Exchange is proposing to amend the firm facilitation exemption so that (a) a member firm who facilitates its own customer whose account it carries, whether the firm executes the order itself or gives the order to an

independent broker for execution, and (b) a member firm who receives a customer order for execution only (and thus will not have the resulting position carried by the firm) may qualify for this exemption. The Exchange believes that the proposed rule change will better allow its member firms to meet the investing needs of their customers.

The Exchange also believes that the proposed amendment to the firm facilitation exemption should enhance the depth and liquidity of the market by allowing member firms an exemption from position limits to facilitate large customer orders, whether they are firms who accept customer orders for execution only, or are firms who carry their customers' accounts and positions.

2. Statutory Basis

Based upon the foregoing, the Exchange 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) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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 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, 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 also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-32 and should be submitted by October 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-37704; File No. SR-Amex-96-33]

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

September 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 13, 1996, 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. 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.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

³ The Amex notes that a facilitation trade is a transaction that involves crossing an order of a member firm's public customer with an order from the member firm's proprietary account.

⁴ See Securities Exchange Act Release No. 37179 (May 8, 1996), 61 FR 24520 (May 15, 1996) (approval order for File No. SR-Amex-96-11).

⁵ The Amex defines customer order as one that is entered, cleared, in which the resulting position is carried with the firm.

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

The Amex is proposing an extension, until November 15, 1996, of a pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick,² in the case of a "long" position, or a zero plus tick,³ when covering a "short" position, without Floor Official approval. The pilot program also amended 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 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 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 July 17, 1996, the Commission approved an extension until September 23, 1996 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.⁴ 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 monitored

compliance with the requirements of the Rule, and its findings in this regard have been forwarded to the Commission under separate cover. 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.

In order to permit the Exchange and Commission staff to review certain issues associated with the pilot program, the Exchange is proposing to extend the pilot program until November 15, 1996.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁵ in general and furthers the objections of Section 6(b)(5)⁶ 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 public interest. The Exchange also believes the proposed rule change is consistent with Section 11(b) of the Act⁷ which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

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, 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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-96-33 and should be submitted by [insert date 21 days from date of publication].

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

The Commission finds that the Exchange's proposal to extend its pilot program concerning the execution of specialists' liquidating transactions until November 15, 1996, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)⁸ 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 Act⁹ and Rule 11b-1¹⁰ thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

The Exchange originally proposed to amend Amex Rule 170 in File No. SR-Amex-92-26.¹¹ The proposed rule change, filed as a one-year pilot program, amended Amex Rule 170 to permit specialists to "reliquify" a dealer position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick, but only if such transactions are reasonably necessary for the maintenance of a fair and orderly

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78k(b).

¹⁰ 17 CFR 240.11b-1.

¹¹ See Securities Exchange Act Release No. 33957 (Apr. 22, 1994), 59 FR 22188 ("1994 Approval Order") (approving File No. SR-Amex-92-26). See also Securities Exchange Act Release No. 35635 (Apr. 21, 1995), 60 FR 20780 ("April 1995 Approval Order") (approving File No. SR-Amex-95-11); Securities Exchange Act Release No. 36014 (July 21, 1995), 60 FR 3887 ("July 1995 Approval Order") (approving File No. SR-Amex-95-19); July 1996 Approval Order, *supra* note 4.

² 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.

³ 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.

⁴ Securities Exchange Act Release No. 37448 (July 17, 1996), 61 FR 38487 ("July 1996 Approval Order") (approving File No. SR-Amex-96-16).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78k(b).

market and only if the specialist has obtained the prior approval of a Floor Official. Under the pilot program, a specialist also may sell "long" on a zero minus tick, or by purchasing on a zero plus tick to cover a "short" position, without Floor Official approval.

Although liquidations on a zero minus or on a zero plus tick can be effected under the pilot procedures without a Floor Official's prior approval, such liquidations are still 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, the specialist is required to reenter the market on the opposite side of the market from the liquidating transaction 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 1994 Approval Order, the Commission requested that the Amex submit a report setting forth the criteria developed by the Exchange to determine whether any reliquifications by specialists were necessary and appropriate in connection with fair and orderly markets.¹² The Commission also asked, among other things, that the Exchange provide information regarding the Exchange's monitoring of liquidation transactions effected by specialists on any destabilizing tick. In both of the 1995 approval orders, the Commission requested that the Amex continue to monitor the pilot and update its report where appropriate.¹³ 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 May 1995 and April 1996. As noted above, the Amex believes the pilot procedures appear to be working well in enabling specialists to reliquify appropriately to meet the needs of the market. After reviewing the data, the Commission agrees with the

Exchange that the pilot program generally is working well. In particular, the Commission believes the report indicates that specialists generally are entering the aftermarket after effecting liquifying transactions when appropriate.

The Commission also agrees with the Exchange's assertion that certain issues concerning the pilot program need to be revisited before permanent approval can be granted. In this regard, the Exchange should continue to emphasize the requirements of Amex Rule 170, including the necessity for Floor Official approval of specialists' purchases and sales on direct plus or minus ticks and that such transactions can only be effected if reasonably necessary for the maintenance of fair and orderly markets. In addition, where proper procedures are not followed, the Amex should take appropriate disciplinary action.¹⁴

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using 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,¹⁵ and no comments have been received. Furthermore, the Commission approved a similar rule change for the NYSE also without receiving comments on the proposal.¹⁶ For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 19(b)(2) of the Act.¹⁷ Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program also should include an update on the disciplinary actions taken for violations of these procedures.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-Amex-96-

¹⁴ Failure to obtain the required Floor Official approval when establishing, increasing, or liquidating a position should be enforced by the Exchange through its Minor Rule Violation Fine System unless more serious action is warranted through full disciplinary proceedings. See Amex Rule 590.

¹⁵ See 1994 Approval Order, *supra* note 11; April 1995 Approval Order, *supra* note 11; July 1995 Approval Order, *supra* note 11; July 1996 Approval Order, *supra* note 4.

¹⁶ See Securities Exchange Act Release No. 31797 (Jan. 29, 1993), 58 FR 7277 (approving File No. SR-NYSE-92-20).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 15 U.S.C. 78s(b)(2).

33) is approved for a pilot period ending on November 15, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-37703; File No. SR-PSE-96-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Its Rules on Telephone Solicitations

September 19, 1996.

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 August 27, 1996, the Pacific Stock Exchange, Inc. ("PSE" 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 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 Pacific Stock Exchange Incorporated ("PSE" or "Exchange") proposes to adopt new Rule 9.20(b) and to add a commentary thereunder with respect to the meaning and administration of proposed Rule 9.20(b). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule 9

Conducting Business With the Public

[Conduct of Accounts]

* * * * *

¶ 5905 Transactions for Public Customers

Rule 9.20(a)—No change.

Telephone Solicitations

Rule 9.20(b). Each member and member organization shall make and maintain a centralized list of persons who have informed the member, member organization of any employee thereof, that they do not wish to receive telephone solicitations, and shall refrain from engaging in telephone solicitations of persons named on that list.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² See 1994 Approval Order, *supra* note 11.

¹³ See April 1995 Approval Order and July 1995 Approval Order, *supra* note 11.