granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data.

IV. Comments on the Operation of the Plan

In the January 1995, August 1995, September 1995, October 1995, November 1995, December 13, 1995, December 28, 1995, March 6, 1996, March 18, 1996, and September 16, 1996 Extension Orders, the Commission solicited, among other things, comment on: (1) whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

V. Solicitation of Comment

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 Room. All submissions should refer to File No. S7–24–89 and should be submitted by October 30, 1996.

VI. Conclusion

The Commission finds that an extension of temporary approval of the operation of the Plan through March 30, 1997, is appropriate and in furtherance of Section 11A of the Act as it will provide the Participants with additional time to make reasonable proposals concerning: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants during the extension period so that issues presented by these matters will be resolved prior to March 30, 1997.

Concerning incorporation of the revenue sharing agreement within the present temporary approval of the operation of the Plan, the Commission believes that it is appropriate and in furtherance of the Act and the rules thereunder to approve revised Amendment No. 9 to the Plan. Accordingly, revised Amendment No. 9 to the Plan will be temporarily approved, as are all other elements of the Plan, through March 30, 1997. Consequently, any Participants due payments under revised Amendment No. 9 to the Plan (currently, the Chx) during the extension period are to be paid in accordance with the agreement within the time periods described in revised Amendment No. 9 as of this effective date.

The Commission finds further that extension of the exemptive relief through March 30, 1997, as described above, also is consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

VII. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis, incorporating revised Amendment No. 9 thereto, and certain exemptive relief, through March 30, 1997, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Jonathan G. Katz,

Secretary.

[FR Doc. 96–25924 Filed 10–8–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

Systems of Excellence, Inc.; Order of Suspension of Trading

October 7, 1996.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of adequate and accurate current information about Systems of Excellence, Inc. (''SOE''), of Coral Gables, Florida and Mclean, Virginia. Questions have been raised about publicly-disseminated information concerning, among other things: (1) SOE's reported financial condition; (2) the existence and value of services rendered to SOE in exchange for stock issued by SOE; (3) whether stock was issued by SOE to consultants without registration; (4) the reasons for changes in SOE's independent accountants; and (5) SOE's sales of its video teleconferencing products.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12 (k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:00 a.m. EDT, October 7, 1996 through 11:59 p.m. EDT, On October 21, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26066 Filed 10–7–96; 11:39 am]

BILLING CODE 8010–01–M

[Release No. 34–37773; File No. SR–Amex–96–05]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments Thereto Relating to Assurances of Delivery for Short Sales of Derivative Securities into an Underwriting Syndicate's Stabilizing Bid

October 1, 1996.

On January 31, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require that members trading derivative securities as Registered Options Traders

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

(''ROTs'') pursuant to Amex Rule 958 make prior arrangements either to borrow the necessary securities or to obtain other affirmative assurances that delivery can be made on settlement date prior to effecting a short sale into an underwriting syndicate's stabilizing bid.

Notice of the proposed rule change was published for comment and appeared in the Federal Register on March 20, 1996.[3] No comments were received on the proposal. On June 12 and July 17, 1996, respectively, Amex submitted Amendments No. 1 and 2 to the proposal.[4] This order approves the proposal, as amended, and solicits comments on the Amendments.

I. Description of the Proposal

Since 1989, the Exchange has required members and member organizations effecting short sales for both customer and proprietary accounts either to make prior arrangements to borrow the securities sold short or to obtain other acceptable assurances that delivery can be made on settlement date.[5] Such assurances include knowledge that the security is available for borrowing, conversion privileges, rights exercises or other similar situations so long as the security needed for delivery can be timely obtained. Short sales by specialists, market makers and odd-lot dealers in fulfilling their market making responsibilities are excepted from this requirement. Arbitrageurs and other traders may not rely upon this ''market maker'' exception.

In 1992, the Exchange amended its rules to permit Registered Equity Market Makers (''REMMs'') to register as ROTs in order to trade index warrants for their own account subject to Amex Rule 958.[6] The Exchange deemed it desirable to enable members to trade these equity derivative securities[7] subject to Rule 958 (which affords specialist ''good faith'' margin treatment and an exemption from stabilization requirements) instead of the more restrictive provisions of Rules 111 and 114 applicable to REMMs because the Exchange believed that application of Rules 111 and 114 to index warrants would make it unlikely that members would trade such securities. The 1992 rule change also exempted members trading as ROTs from the short sale policy given their market making activities in index warrants.

According to the Exchange, the purpose of exempting Floor based market makers from ''pre-borrowing'' is that such a requirement would unacceptably interfere with market making activities, thereby degrading liquidity. The exemptions from the ''pre-borrowing'' policy may, however, create situations in the ordinary course of secondary market trading where a market maker or ROT may be unable to borrow a security it has sold short in connection with its market making obligations and, therefore, fails to deliver the security within the normal settlement cycle.

To prevent this result in one particular instance, the Exchange proposes to modify its short sale policy to require ROTs who trade equity derivatives pursuant to Rule 958 to make prior arrangements to borrow these securities or obtain other acceptable assurances that delivery can be made on settlement date in the limited situation where they are selling short into the stabilizing bid of an underwriting syndicate. Amex believes that implementation of this modified short sale policy will provide increased stability to the market for listed Amex equity derivative securities during a stabilized distribution. The result will be a reduction in the number of ''fails'' (*i.e.*, failure to effect delivery of the security to the purchaser), and resulting ''buy-ins'' (*i.e.*, the purchase of the security of the account of the short seller after it fails to deliver in accordance with the procedures of the clearing corporation).

The Amex asserts that this filing addresses only short selling in a distribution of equity derivatives that is being stabilized by the underwriter. The Exchange believes that there is little or no need for supplemental market making during a stabilized distribution since buy side investor interest, in all likelihood, has been accurately gauged and met by the underwriting syndicate either through the initial distribution or an overallotment option. Likewise, sell side investor interest will be met by the underwriting syndicate through the stabilizing bid. As is the case with any equity or equity derivative security, the Exchange notes that the specialist also is available to supply liquidity to investors.

The Exchange notes that it does not seek to impose a pre-borrowing requirement on ROTs who sell short on the offer in connection with satisfying investor buying interest. The Exchange, moreover, does not seek to prohibit short selling by ROTs. It only seeks to require ROTs to obtain adequate assurances that an equity derivative such as an index or currency warrant is available for borrowing. This ensures the ROT's ability to settle the trade in accordance with their contractual obligations.

According to the Exchange, selling into a stabilizing bid adds no liquidity to the market since it involves selling to a bidder who may prefer not to buy. The Exchange believes that to permit ROTs to sell short without pre-borrowing where the sale by definition does not provide liquidity and may result in a fail, is inconsistent with allowing stabilization by underwriters to facilitate a distribution. The Exchange believes that, while it is sound policy to permit market to sell short without pre-borrowing in circumstances where the short sale may add liquidity to the market, a short sale into a syndicate bid is not such a circumstance.

Amex represents that a specialist, unlike a ROT, needs Floor Official approval if it wishes to across the market to hit a bid to establish or increase a short position. In such a circumstance, the specialist must satisfy the Floor Official that the short sale is appropriate relative to the condition of the general market, the market in the particular stock and the adequacy of the specialist's position to the immediate and reasonably anticipated needs of the full lot and the odd lot market.[8] Amex expects that a Floor Official would not approve a specialist's short selling into an underwriting syndicate's stabilizing bid because it would be difficult to imagine a circumstance under which such a course of dealings would be necessary in relation to the needs of the market for the security. As such, Amex does not believe that a ROT would have any justification for selling short into a stabilizing bid. Therefore, rather than make his actions subject to Floor Official approval as could be required by the Exchange to address the problem identified in the instant proposal, Amex

[3] Securities Exchange Act Release No. 36956 (March 11, 1996), 61 FR 11451.

[4] Letters from William Floyd Jones, Amex, to Stephen M. Youhn, SEC dated June 10, 1996 (''Amendment No. 1'') and to Ivette Lopez, SEC, dated July 17, 1996 (''Amendment No. 2,'' together with Amendment No. 1, ''Amendments'').

[5] *See* Securities Exchange Act Release No. 27542 (Dec. 15, 1989) (''Release No. 27542'').

[6] *See* Securities Exchange Act Release No. 24277 (June 8, 1992) (''Release No. 24277''). The SEC has recently approved an Amex proposal to allow regular members to trade currency warrants for their own account subject to the provisions of Amex Rule 958. *See* Securities Exchange Act Release No. 36852 (Feb. 15, 1996).

[7] The term ''equity derivative security'' refers to an underwritten security the value of which is determined by reference to another security, or to a currency, commodity, interest rate or index of the foregoing. Such securities are commonly listed pursuant to Exchange Company Guide Sections 106, 107, 118 or Amex Rule 1102.

[8] *See* Amex Rule 170, Commentary .01.

believes it is more beneficial to impose a pre-borrowing requirement.[9]

Amex represents that the New York Stock Exchange (''NYSE'') also list equity derivative securities and that market makers on the NYSE are subject to rules analogous to those applicable to REMMs on the Amex, including rules relating to short selling (*i.e.*, pre-borrowing requirement). As a result, Amex believes that potential underwriters may view this distinction between the rules of the NYSE and Amex as an incentive to list equity derivatives on the NYSE.

II. Discussion

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, the requirements of Section 6(b)(5).[10] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designated to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

In approving the Amex's current short sale policy in 1982, the Commission noted that the imposition of a formal affirmative borrowing requirement on members effecting short sales for both customer and proprietary accounts was appropriate for the protection of investors and the maintenance of fair and orderly markets.[11] By restricting naked short selling,[12] the Commission noted that the affirmative borrowing requirement should curtail downward speculative selling pressures in stocks traded on the Amex. The Commission noted, however, that it was appropriate for the Exchange to exempt specialists, market makers and odd-lot dealers from the general borrowing requirement in fulfilling their market-making responsibilities, because their short selling often was undertaken passively pursuant to their market-making operations. In this connection, the Commission noted it was reasonable for the Exchange not to exempt arbitrageurs and other traders from the borrowing requirement because their short selling activities were not passive in nature.[13]

When the Commission approved the Amex's 1992 proposal allowing REMMs to trade equity derivatives as ROTs pursuant to Amex Rule 958, these market makers assumed continuous affirmative market making obligations in their assigned securities and were treated as specialists.[14] As a result, these ROTs were entitled to good faith margin treatment and also were exempted from the affirmative determination pre-borrowing requirement when engaging in short sales of their assigned securities. The Commission stated that the purpose of that rule change was to enhance supplemental market making activitiy in equity derivatives, thereby increasing the depth and liquidity of the market.[15]

Consistent with that finding, the Commission believes it is reasonable for the Exchange to adopt this limited exception to its short sale policy in order to require ROTs to make an affirmative determination that an equity derivative security is available for borrowing prior to selling short into the stabilizing bid of an underwriting syndicate. The Commission believes that the imposition of a pre-borrowing requirement should help to reduce the number of times market makers sell short underwritten securities in distribution and are unable to deliver on settlement date. By improving the settlement mechanism of equity derivative securities which are sold short during stabilized distributions, the Commission believes the depth and liquidity of the equity derivative market will be enhanced.

As was stated in Release No. 27542, the Commission believes that short selling by market makers in furtherance of bona-fide market making obligations should not be restricted by imposing a pre-borrowing requirement. The Commission does not believe, however, that market makers who sell short for reasons other than in furtherance of their market making responsibilities (*e.g.*, speculation), should be relieved from the pre-borrowing requirement. As such, the Commission believes that the Amex proposal is a reasonable attempt to limit the availability of the exemption from the affirmative determination requirement to situations where a ROT is engaging in bona-fide market making transactions.

In approving this proposal, the Commission notes that this policy is strictly limited to instances where a ROT sells short into the stabilizing bid of an underwriting syndicate. This policy does not apply to a ROT's short sales outside of an underwritten distribution. The Commission notes that a ROT may sell short in an ordinary secondary market transaction without being required to make an affirmative determination as to the security's availability for pare-borrowing. Nor does this Ampex policy impose an affirmative borrowing requirement upon every short sale undertaken by a ROT during an underwritten distribution. A ROT may sell short into the offer side of the market without a pre-borrowing requirement. Finally, the Commission notes that this Amex policy will not operate as an outright prohibition of short selling by a ROT. While ROTs may still engage in short sale transactions, the availability of the exemption from the pre-borrowing requirement will be limited strictly to short sales undertaken in the course of bona fide market making activities. Accordingly, ROTs will be required to comply with the affirmative pre-borrowing requirement prior to selling short into the stabilizing bid of an underwriting syndicate.

The Commission finds good cause to approve the Amendments to the filing prior to the thirtieth date after the date of publication of notice thereof in the Federal Register. Although the Amendments clarify the original proposal and provide more detailed justification for adopting the instant policy, the Commission notes that they do not change the substance of the Amex proposal as originally filed. Although the filing results in an expansion of the applicability of the Amex short sale policy, the Commission notes that the underlying short sale policy is not changed by the Amendments. Accordingly, the

[9] According to Amex, in one recent situation, a ROT sold short into an underwriter's stabilizing bid more than five percent of the total issuance of a currency warrant. When questioned by the Exchange's staff as to how he intended to settle these trades, the ROT responded that he did not know where he was going to obtain the security and, in fact, expected to fail on settlement date. Amex asserts that it frequently is difficult to borrow index or currency warrants for short sale purposes as these securities may not be marginable. As anticipated, the ROT failed to deliver the security sold short and ultimately was ''bought-in.''

In the situation described above, the Exchange does not believe the ROT in question was providing liquidity to investors. Instead, the Exchange believes the ROT knowingly was taking advantage of the existence of a stabilizing bid of an underwriting syndicate in order to engage in a short sale speculation based on his opinion as to the appropriate price of the security. While short selling can be a perfectly proper strategy and can itself bring supply and demand into balance, Amex believes that it is appropriate to constrain potential excesses by rule.

[10] 15 U.S.C. 78f(b)(5) (1982).

[11] *See* Release No. 27542, *supra* note 5.

[12] A naked security position may be defined as an unhedged or uncovered security position that exposes the holder to the entire market risk associated with the position. A short sale becomes a naked short sale when the short seller or the short seller's broker fails to borrow and deliver stock to the broker's clearing agent. Brokers may fail to deliver stock to the clearing agent in long sales as well, but such fails are normally for short periods or for relatively small quantities of stock.

[13] *See* Release No. 27542, *supra* note 5.

[14] *See* Release No. 24277, *supra* note 6.

[15] *Id.*

Commission believes that Amendments raise no new or unique issues that were not already presented in the original filing. The Commission notes also that the original proposal was subject to the full notice and comment period and no comment letters were received. Accordingly, consistent with Section 6(b)(5) of the Act, the Commission believes that good exists to approve the Amendments to the filing on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the Amendments. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submission should refer to File No. SR–Amex–96–05 and should be submitted by October 30, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposal rule change (File No. SR–Amex–96–05) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–25925 Filed 10–8–96; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–37778; File No. SR–DTC–96–15

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Procedures To Establish a Direct Registration System

October 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 17, 1996, The Depository Trust Company (''DTC'') 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 primarily by DTC. 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 proposed rule change will establish (1) a new service called the Direct Registration System (''DRS''), which was developed by the securities industry, and (2) a new category of participants whose use of DTC's services will be limited to DRS.

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

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

The proposed rule change will amend DTC's rules (1) to establish a new category of participant called a limited participant which would be authorized to use only certain services of the depository; (2) to describe the DRS service to be offered by DTC; and (3) to set forth the requirements for (a) the admission of limited participants authorized to use only the DRS service and (b) the eligibility of securities for the DRS service. DRS will permit an investor to hold a security directly in electronic form as the registered owner of the security on the books of the issuer rather than (1) indirectly through a financial intermediary that holds the security in street name or in an account with a depository or (2) in the form of a certificate. The investor will have the right to transfer its DRS position in the security to a financial intermediary in order to sell or pledge the security or to receive a certificate representing the security.[3]

To facilitate the transfer of a DRS position to a financial intermediary, DTC will offer a new service to transfer agent, bank, and broker-dealer participants of DTC. A transfer agent that participates in the Fast Automated Transfer (''FAST'') program at DTC and meets the other qualifications described below will be able to become a DRS limited participant. Using the DRS service, an investor's DRS position could be transferred by the DRS limited participant (*i.e.*, the transfer agent) to the financial intermediary acting for the investor (*i.e.*, a bank or broker-dealer participant) through the facilities of DTC. Specifically, the limited participant will credit its DTC FAST account with the amount of the security to be transferred, and DTC in turn will credit the account of the receiving participant with that amount of the security.[4]

To qualify for admission as a limited participant for DRS services, an applicant must be a partnership, corporation, or other organization or entity that (1) is registered as a transfer agent pursuant to Section 17A(c) of the of the Act and Rule 17Ac2–1 thereunder, (2) participates in the FAST program, (3) provides Direct Mail Service on transfers, (4) accepts dividend reinvestment instructions from DTC on DRS eligible securities that offer dividend reinvestment plans, (5) communicates with DTC using DTC computer-to-computer (''CCF'') platforms, and (6) executes an accountholder agreement.[5] To qualify as an eligible security for processing

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The commission has modified parts of these statements.

[3] For a complete description of DRS, refer to Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 (concept release on a transfer agent operated book-entry registration system).

[4] A complete description of the DRS service may be found in the Important Notices issued by DTC on the implementation of a DRS, which are attached as Exhibit A and Exhibit B. Important Notice B# 1368–96 (July 15, 1996) and Important Notice B# 1505–96 (July 26, 1996).

[5] Under the accountholder agreement, the transfer agent, among other things, agrees to continue to meet the admission criteria, pay all applicable fees, and indemnify DTC for any expense caused by the limited participant's act or omission.