

expenses associated with any such disposition of a portfolio security.

5. If an Adviser Affiliate desires to make a "follow-on" investment (*i.e.*, an additional investment in the same entity) in a portfolio company whose securities are held by the Company or to exercise warrants or other rights to purchase securities of such an issuer, the Adviser will notify the Company of the proposed transaction at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by the Company in a follow-on investment and provide the recommendation to the Company's Independent Directors along with notice of the total amount of the follow-on investment. The Company's Independent Directors will make their own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment opportunity is not based on the amount of the company's and the Adviser Affiliate's initial investments, the relative amount of investment by the Adviser Affiliate and the Company will be based on the ratio of the company's remaining funds available for investment to the aggregate of the Company's and the Adviser Affiliate's remaining funds available for investment. The company will participate in such investment to the extent that a Required Majority of its Independent Directors determine that it is in the company's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Company's Independent Directors will review quarterly all information concerning co-investment opportunities during the preceding quarter to determine whether the conditions set forth in the application were complied with.

7. The Company will maintain the records required by section 57(f)(3) of the Act as if each of the investments permitted under these conditions were approved by the Company's Independent Directors under section 57(f).

8. No Independent Director of the Company will be a director or general partner of any Adviser Affiliate with which the Company co-invests.

For the SEC, by the Division of Investment Management, under delegated authority.
Jonathan G. Katz,
Secretary.

[FR Doc. 96-31614 Filed 12-12-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38024; File No. SR-Amex-96-47]

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

December 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 2, 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.

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

The Exchange proposes to extend until February 10, 1997 its existing pilot program under Amex Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charged.²

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

The Commission has approved, on a pilot basis extending to December 6, 1996, amendments to Amex Rule 205 to require execution of odd-lot market orders at the Amex quote with no odd-lot differential charged.³ The procedures were initially approved by the Commission in 1989⁴ and were most recently extended in February 1996.⁵

In approving prior extensions to the Exchange's odd-lot pilot program, the Commission has expressed interest in the feasibility of the Exchange utilizing the Intermarket Trading System ("ITS") best bid or offer, rather than the Amex bid or offer, for purposes of the Exchange's off-lot pricing system. In File No. SR-Amex-95-03, requesting a further extension of the pilot program, the Exchange stated that it had determined to proceed with systems modifications to provide for execution of odd-lot market orders at the ITS best bid or offer.⁶

The Commission has approved amendments to Amex Rule 205 to accommodate the prospective modifications to the Exchange's odd-lot pricing system.⁷ Specifically, amended Amex Rule 205 would provide that odd-lot market orders to buy or sell would be filled at the "adjusted ITS offer" or "adjusted ITS bid," respectively, which

³ Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR-Amex-95-03).

⁴ Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR-Amex-88-23).

⁵ See Securities Exchange Act Release No. 37462 (July 19, 1996), 61 FR 39170 (approving File No. SR-Amex-96-25). Prior to that release, the Commission had extended this pilot program twelve times. See Securities Exchange Act Release Nos. 36821 (Feb. 8, 1996), 61 FR 6050 (approving File No. SR-Amex-96-06); 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR-Amex-95-03); 34949 (Nov. 8, 1994), 59 FR 58863 (approving File No. SR-Amex-94-47); 34496 (Aug. 8, 1994), 59 FR 41807 (approving File No. SR-Amex-94-28); 33584 (Feb. 7, 1994), 59 FR 6983 (approving File No. SR-Amex-93-45); 32726 (Aug. 9, 1993), 58 FR 43394 (approving File No. SR-Amex-93-24); 31828 (Feb. 5, 1993), 58 FR 8434 (approving File No. SR-Amex-93-060); 30305 (Jan. 20, 1992), 57 FR 4653 (approving File No. SR-Amex-92-04); 29922 (Nov. 8, 1991), 56 FR 58409 (approving File No. SR-Amex-91-30); 29186 (May 19, 1991), 56 FR 22488 (approving File No. SR-Amex-91-09); 28758 (Jan. 10, 1991), 56 FR 1656 (approving File No. SR-Amex-90-39); and 27590 (Jan. 5, 1990), 55 FR 1123 (approving File No. SR-Amex-89-31).

⁶ See Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR-Amex-95-03).

⁷ See Securities Exchange Act Release No. 36181 (Sept. 1, 1995), 60 FR 47194 (approving File No. SR-Amex-95-24).

¹ 15 U.S.C. 78s(b)(1).

² The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which expires on December 6, 1996, to continue without interruption.

would be defined in Amex Rule 205, Commentary .04, as the lowest offer and highest bid disseminated by the Amex or by another ITS participant market.⁸ Where quotation information is not available (e.g., when quotation collection or dissemination facilities are inoperable) odd-lot market orders would be executed at the prevailing Amex bid or offer, or at a price deemed appropriate under prevailing market conditions. These procedures also will apply to odd-lot limit orders that are immediately executable based on the Amex quote at the time the order is received at the trading post or through Post Execution Reporting ("PER") system.

As the Exchange noted in SR-Amex-95-24, it will implement these amendments upon completion of the necessary systems enhancements by the Exchange and the Securities Information Automation Corporation ("SIAC"). Upon implementation of the amended rule, the Exchange will notify the Commission, as well as Exchange members and member organizations. In order to provide the additional time necessary to implement these systems enhancements, the Exchange proposes to extend the existing pilot program procedures under Amex Rule 205 until February 10, 1997.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁹ of the Act in general and furthers the objectives of Section 6(b)(5)¹⁰ and Section 11A(a)(1)¹¹ in particular in that it is designed to facilitate the economically efficient execution of odd-lot transactions and to improve the execution of customers' orders.

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

The Exchange believes the proposed rule change will impose no burden on competition.

⁸ In order to protect against the inclusion of incorrect or stale quotations when determining the highest bid and lowest offer, Amex Rule 205, Commentary .04, contains seven criteria that must be met before a quotation in a stock from another ITS market center will be considered. If the ITS quotation fails to meet one of the specified criteria, the best bid or offer disseminated by the Exchange will be used. See Securities Exchange Act Release No. 36181 (Sept. 1, 1995), 60 FR 47194 (approving File No. SR-Amex-95-24).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1).

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-96-47 and should be submitted by January 6, 1997.

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

The Commission finds that the Exchange's proposal to extend its pilot program concerning the execution of odd-lot orders through February 10, 1997, 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 Section 6(b)(5) and Section 11A(a)(1) of the Act¹² because the Exchange's proposed pricing procedures are designed to facilitate transactions in odd-lot orders, to help ensure the economically efficient execution of these transactions, and, in general, to protect investors and the public interest. The Commission further believes the revised procedures should provide investors with more timely executions of their odd-lot orders and should produce execution prices that more accurately reflect market conditions than would otherwise be the

case under the pre-pilot pricing procedures.¹³

Nevertheless, the Commission is concerned that the Exchange has been unable to implement the new odd-lot pricing procedures as planned. Under the current pilot pricing procedures, which only use the Amex quote in establishing the execution price, some odd-lot orders may not be receiving the best available price.¹⁴ Therefore, the Commission expects the Exchange to complete the systems modifications upon which implementation of the new odd-lot pricing procedures depend before the February 10, 1997 deadline.¹⁵ To ensure that the Commission is adequately informed of the Exchange's progress towards such completion, the Commission again requests that the Exchange provide the Commission with a status report regarding this project on the first day of every month until the necessary system modifications are completed. Finally, upon completion of the systems modifications, the Exchange should give advance notice to the Commission of the date when the new odd-lot pricing procedures are to be implemented.¹⁶

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. This will permit the pilot program to continue on an uninterrupted basis while the Amex works to implement the new procedures. In addition, the procedures the Exchange proposes to continue using are identical to the procedures that were published previously in the Federal Register for the full comment period and were approved by the Commission.¹⁷

¹³ Prior to the 1989 pilot program, odd-lot market orders were routed to a specialist and held in accumulation in the PER system or by the specialist until a round-lot execution in that security took place on the Exchange. Subsequent to the round-lot execution, the odd-lot order received the same price as the last Exchange round-lot transaction, plus or minus an odd-lot dealer differential. See Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR-Amex-88-23).

¹⁴ See Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430 (noting that the Exchange's current pricing formula does not include quotations from other markets).

¹⁵ As noted above, the new procedures provide for odd-lot market orders to be filled at the "adjusted its best bid or offer."

¹⁶ The Commission expects the Amex to implement the new odd-lot pricing procedures no later than the February 10, 1997 expiration of this pilot extension.

¹⁷ See Securities Exchange Act Release No. 35344 (Feb. 8, 1995); 60 FR 8430; Securities Exchange Act Release No. 36821 (Feb. 8, 1996), 61 FR 6050; and Securities Exchange Act Release No. 37462 (July 19, 1996), 61 FR 39170.

¹² 15 U.S.C. 78f(b)(5) and 78k-1(a)(1).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-Amex-96-47) is approved on a pilot basis for a two-month period ending on February 10, 1997.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 96-31725 Filed 12-12-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38009; File No. SR-NASD-96-28]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing of, and Order Granting Accelerated Approval to, Amendment No. 3 to the Proposed Rule Change Relating to NASD Telemarketing Rules

December 2, 1996.

I. Introduction

On June 28, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD telemarketing rules.³ The proposed rule change was published for comment in the Federal Register on July 30, 1996.⁴ The Commission received two comment letters regarding the proposal.⁵

II. Background

Pursuant to the Telephone Consumer Protection Act ("TCPA"),⁶ the NASD adopted in June 1995, a "cold call" rule⁷ that paralleled one of the rules of the Federal Communications Commission ("FCC Rule")⁸ and requires persons who engage in telephone solicitations to sell products and services ("telemarketers") to establish and maintain a list of persons who have requested that they not be contacted by the caller ("do-not-call list").⁹

Under the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), which became law in August 1994,¹⁰ the Federal Trade Commission adopted detailed regulations ("FTC Rules")¹¹ to prohibit deceptive and abusive telemarketing acts and practices that became effective on December 31, 1995.¹² The FTC Rules, among other things, (i) require the maintenance of "do-not-call" lists and procedures, (ii) prohibit certain abusive, annoying, or harassing telemarketing calls, (iii) prohibit telemarketing calls before 8 a.m. or after 9 p.m., (iv) require a telemarketer to identify himself or herself, the company he or she works

for, and the purpose of the call, and (v) require express written authorization or other verifiable authorization from the customer before the firm may use negotiable instruments called "demand drafts."¹³

Under the Telemarketing Act, the SEC is required either to promulgate or to require the SROs to promulgate rules substantially similar to the FTC Rules, unless the SEC determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or SEC rules already provide for such protection. The NASD believes that, because the SROs will be the primary enforcers of these rules, it may be more appropriate for the SROs individually to adopt separate rules than for the SEC to adopt rules for the entire industry. In addition, these rules relate to the regulation of sales practices, which the NASD believes it should take the lead in promulgating and enforcing. The NASD believes it has implemented the prohibition against certain abusive, annoying, or harassing telemarketing calls contained in the FTC Rules by issuing an interpretation that such conduct is violative of existing rules.¹⁴ The NASD believes that the proposed rule change addresses all other relevant elements of the FTC Rules not covered by existing federal securities laws and regulations.

III. Description of the Proposals

Time Limitations and Disclosure

The proposed rule change adds Rule 2211 to the NASD's Conduct Rules to prohibit, under proposed paragraph (a) to Rule 2211, a member or person associated with a member from making outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the

¹⁸ 15 U.S.C. § 78s(b)(2).

¹⁹ 17 C.F.R. 200.30-3(a)(12).

¹ 15 U.S.C. (§ 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ On July 18, 1996, the NASD filed Amendment No. 1 to its proposal. Letter from John Ramsay, Deputy General Counsel, NASD Regulation, Inc. ("NASDR"), to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated July 18, 1996. On July 24, 1996, the NASD filed Amendment No. 2 to its proposal. Letter from John Ramsay, Deputy General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated July 24, 1996. On October 21, 1996, the NASD filed Amendment No. 3 to its proposal. Letter from John Ramsay, Deputy General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 18, 1996.

⁴ See Securities Exchange Act Release No. 37475 (July 24, 1996), 61 FR 39686 (July 30, 1996) (notice of File No. SR-NASD-96-28).

⁵ See Letter from Brad N. Bernstein, Assistant Vice President & Senior Attorney, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated August 19, 1996 ("Merrill Lynch Letter"), and Letter from Frances M. Stadler, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, SEC, dated Aug. 21, 1996 ("ICI Letter").

⁶ 47 U.S.C. § 227.

⁷ Under the "cold call" rule, each NASD member who engages in telephone solicitation to market its products and services is required to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons. Securities Exchange Act Release No. 35831 (Jun. 9, 1995), 60 FR 31527 (Jun. 15, 1995) (order approving File No. SR-NASD-95-13).

⁸ Pursuant to the TCPA, the FCC adopted rules in December 1992 that, among other things, (1) prohibit cold-calls to residential telephone customers before 8 a.m. or after 9 p.m. (local time at the called party's location) and (2) require persons or entities engaging in cold-calling to institute procedures for maintaining a "do-not-call" list that included, at a minimum, (a) a written policy for maintaining the do-not-call list, (b) training personnel in the existence and use thereof, (c) recording a consumer's name and telephone number on the do-not-call list at the time the request not to receive calls is made, and retaining such information on the do-not-call list for a period of at least ten years, and (d) requiring telephone solicitors to provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made and a telephone number or address at which such person or entity may be contacted. 57 FR 48333 (codified at 47 CFR 64.1200). With certain limited exceptions, the FCC Rules apply to all residential telephone solicitations, including those relating to securities transactions. *Id.* While the FCC Rules are applicable to brokers that engage in telephone solicitation to market their products and services, those regulations cannot be enforced by either the SEC or the securities self-regulatory organizations ("SROs").

⁹ Release No. 35831, *supra* note 7.

¹⁰ 15 U.S.C. §§ 6101-08.

¹¹ 16 CFR 310.

¹² §§ 310.3-4 of FTC Rules.

¹³ *Id.* Pursuant to the Telemarketing Act, the FTC Rules do not apply to brokers, dealers, and other securities industry professionals. Section 3(d)(2)(A) of the Telemarketing Act.

A "demand draft" is used to obtain funds from a customer's bank account without that person's signature on a negotiable instrument. The customer provides a potential payee with bank account identification information that permits the payee to create a piece of paper that will be processed like a check, including the words "signature on file" or "signature pre-approved" in the location where the customer's signature normally appears.

¹⁴ The NASDR issued a Notice to Members ("NTM") that sets forth the interpretation that abusive communications from members or associated persons of members to customers is a violation of Rule 2110 of the NASD's Conduct Rules. The NASDR published this NTM in July 1996. NTM 96-44 (July 1996).