

[Release No. 34-38071; File No. SR-Amex-96-49]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rule 117 (Circuit Breakers)**

December 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 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 Amex. 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 proposes to amend Exchange Rule 117 to increase circuit breaker parameters. The Exchange proposes to implement the revised parameters. The Exchange proposes to implement the revised parameters on a one-year pilot basis.

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 Exchange included statements concerning the purpose of the basis for the proposed rule change and discussed any comments in 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**

In conjunction with other major exchanges, the Amex filed a proposal (SR-Amex-88-24 and 88-31) in October 1988 to implement trading halts during significant market declines (generally referred to as "circuit breakers"). Exchange circuit breaker procedures

under Amex Rule 117 have been extended most recently by the Commission until April 30, 1997.<sup>1</sup> Amex Rule 117, as amended<sup>2</sup> provides for temporary halts in the trading of all stocks, stock options and index options on the Exchange for one-half hour if the Dow Jones Industrial Average<sup>3</sup> ("DJIA") declines 250 points or more from the previous day's closing value and for one hour if the DJIA declines 400 points from the previous close. The Exchange proposes to amend Rule 117 to increase the parameters that would trigger the 30 minute and one hour halt in trading to 350 points and 550 points, respectively. The Exchange believes these parameters constitute significant market declines, and represent appropriate levels at which to halt trading. The Amex proposes that these changes be implemented on a one-year pilot basis.

The adoption of amendments to Exchange Rule 117 would be contingent upon the adoption of amended rules or procedures substantively identical to Rule 117 by:

- (1) All United States stock exchanges and the National Association of Securities Dealers, Inc. with respect to the trading of stocks, stock options and stock index options; and,
- (2) All United States futures exchanges with respect to the trading of stock index futures and options on such futures.

The Exchange believes that a trading halt requirement at appropriate levels across all markets will promote stability and investor confidence during periods of significant stress by providing market participants with a reasonable opportunity to become aware of and respond to significant price movements, thereby facilitating in an orderly manner the maintenance of an equilibrium between buying and selling interest.

**2. Basis**

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 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.

<sup>1</sup> See Securities Exchange Act Release No. 37890 (October 29, 1996), 61 FR 56983 (November 5, 1996).

<sup>2</sup> See Securities Exchange Act Release No. 37460 (July 19, 1996), 61 FR 39169 (July 26, 1996).

<sup>3</sup> "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

**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 self-regulatory organization 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 Section, 450 Fifth Street, N.W., 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 File No. SR-Amex-96-49 and should be submitted by January 21, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

<sup>4</sup> 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-38069; File No. SR-NASD-96-44]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Extending the Pilot Injunctive Relief for an Additional Year**

December 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 9, 1996, NASD Regulation, Inc., ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III, below, which Items have been prepared by NASD Regulation. On December 17, 1996, NASD Regulation submitted an amendment ("Amendment No. 1") to the proposed rule change.<sup>2</sup> On December 18, 1996, NASD Regulation submitted a second amendment ("Amendment No. 2") to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD Regulation is herewith filing a proposed rule change to extend for one year the pilot injunctive relief rule, Rule 10335 (formerly Section 47) of the Code of Arbitration Procedure ("Code").

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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**

NASD Regulation's injunctive relief rule, Rule 10335 of the Code, provides a procedure for obtaining injunctive relief in arbitration and for expediting proceedings for injunctive relief in intra-industry disputes. Rule 10335 took effect on January 3, 1996, for a one-year pilot period. In its filing with the Commission, the NASD stated that at the end of the one-year pilot program it would evaluate the efficacy of the Rule to determine if the Rule should be made permanent, the pilot should be extended, or the Rule should be permitted to terminate by its terms.

Between January 3 and December 5, 1996, 237 cases were filed with the NASD seeking injunctive relief under Rule 10335. All of the cases under Rule 10335 involved disputes between member firms and their former registered representative employees (often referred to as "raiding" cases). Of those, 147 settled, 21 were withdrawn, and 56 are pending. The remaining cases were either not eligible for resolution in the NASD's forum (2), closed after a hearing (6), inactive (4), or could not be processed because of deficiencies in the claim that were not corrected (1). The details concerning cases filed up to September 19, 1996, and the comments solicited by NASD Regulation from some users of the procedures, are set forth in a report from NASD Regulation to the Commission submitted on October 11, 1996.

Additional comments were received after October 11, 1996. The report and additional comments may be examined at the places specified in Item III below.

On the basis of NASD Regulation's experience and the comments of the participants, NASD Regulation believes that the procedures set forth in Rule 10335 represent a significant improvement to the procedures for resolving intra-industry disputes; however, NASD Regulation also believes that additional experience with the Rule is necessary to evaluate adequately how the Rule could be improved to meet the needs of the participants more effectively.

Accordingly, NASD Regulation is proposing to extend the injunctive relief Rule as a pilot program for another year. During the next year NASD Regulation will review the comments solicited, will

solicit additional comments in a Notice to Members, and will develop modifications or interpretations of the Rule in response thereto.

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>4</sup> in that extending the effectiveness of the injunctive relief procedures will serve the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes.

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

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

NASD Regulation did not solicit comments with respect to extending the pilot program. Instead, comments have been solicited in order to aid NASD Regulation in developing changes to the Rule in anticipation of seeking permanent adoption. Those comments are contained in Exhibits 2 and 3 to the filing. Accordingly, NASD Regulation will address these comments, and any additional comments that may be received, in connection with any rule filing seeking to make the Rule a permanent addition to the Code.

**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 in the Commission's Public Reference Room. Copies of such filing will also be

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> Letter from Alden S. Adkins, Vice President and General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 13, 1996 (indicating final action on the proposed rule change by the NASD Board of Governors).

<sup>3</sup> Letter from Alden S. Adkins, Vice President and General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 17, 1996 (amending filing to: (1) set forth the language of Rule 10335; (2) amend paragraph (i) of the Rule to show the effective date of the Rule; (3) request accelerated approval of the proposed rule change).

<sup>4</sup> 15 U.S.C. § 78o-3.