

such time as the calculation methodology for the BBO is based on a price/size/time algorithm pursuant to the 1997 Extension Request or other mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3-1 under the Act, that requires transaction reporting plans to include market identifiers for transaction reports and last sale data, to the BSE through June 30, 1997. The Commission believes that the extensions of the exemptive relief provided to vendors and the BSE, respectively are 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, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through June 30, 1997, and certain exemptive relief until such time as the calculation method for the BBO is based on a price/size/time algorithm, is approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38460; File No. SR-Amex-97-16]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Equity Transaction Fee Changes

April 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 25, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities 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 is making certain changes to its schedule of transaction charges imposed on trades in equity securities executed on the Exchange. 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 IV 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 Amex is revising its schedule of equity transaction charges for PER orders by expanding the exemption from share-based and value-based transaction charges to include PER orders up to 1,099 shares, increased from 500 shares.<sup>2</sup> In addition, the value portion of the Amex's equity transaction charge (based on the value of shares traded as opposed to the other portion of the charge based on the number of shares traded), will be subject to a maximum charge of \$40 per trade.<sup>3</sup>

The exemption for PER orders up to 1,099 shares will not apply to orders of a member or member organization trading as an agent for the account of a

non-member competing market maker. A "competing market maker" will be defined as a specialist or market maker registered as such on a registered stock exchange (other than the Amex), or a market maker bidding and offering over-the-counter in an Amex-traded security.<sup>4</sup> The schedule of Amex share-based and value-based transaction charges otherwise remains unchanged.

The Exchange's schedule of equity transaction charges, as revised, is attached as Exhibit A to the filing and will be implemented by the Exchange beginning May 30, 1997.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(4)<sup>6</sup> in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

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

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### 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 on the proposed rule change.

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

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (e) of Rule 19b-4 thereunder.<sup>8</sup>

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

<sup>2</sup> The Commission notes that the Amex's Post Execution Reporting ("PER") system provides member firms with the means to electronically transmit equity orders, up to volume limits specified by the Exchange, directly to a specialist's post on the trading floor of the Exchange. Securities Exchange Act Release No. 34869 (Oct. 20, 1994), 59 FR 54016.

<sup>3</sup> The Commission notes that orders of competing market makers do qualify for this fee cap. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Anthony P. Pecora, Attorney, Division of Market Regulation, SEC (Apr. 1, 1997).

<sup>4</sup> The Commission notes that this definition of "competing market maker" is identical to the definition used by the New York Stock Exchange. See Securities Exchange Act Release No. 37273 (June 4, 1996), 61 FR 29438, at n.14 (approving a similar fee change proposed by the NYSE).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4.

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

or otherwise in furtherance of the purposes of the Act.

#### 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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-97-16 and should be submitted by April 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38468; File No. SR-NASD-96-46]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASD Regulation, Inc. Relating to the Submission of Information in Electronic Form

April 2, 1997.

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 March 17, 1997,<sup>1</sup> NASD Regulation, Inc. ("NASDR") 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 NASDR. 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

NASDR is proposing to amend Rule 8210 of the Procedural Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to permit the NASD to request that members provide regulatory information in electronic form (where the member maintains its records in electronic form) and to establish electronic submission programs for regularly filed regulatory information. Below is the text of the proposed rule change. Proposed new language is in italics.

##### *Procedural Rules*

##### 8000. Complaints, Investigations and Sanctions

\* \* \* \* \*

##### 8200. Investigations

##### 8210. Reports and Inspection of Books for Purpose of Investigating Complaints

(a) For the purpose of any investigation, or determination as to filing a complaint or any hearing of any complaint against any member of the Association or any person associated with a member made or held in accordance with the Rule 9000 Series, or made or held by another domestic or foreign self-regulatory organization, association, securities or contract market or regulator of such markets, with whom the Association has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement or other regulatory purposes, any District Business Conduct Committee, the Market Surveillance Committee, or the Board of Governors, or any duly authorized member or members of any such Committees or Board or any duly authorized agent or agents of any such Committee or Board shall have the right:

(1) to require any member of the Association, person associated with a member, or person no longer associated with a member when such person is subject to the Association's jurisdiction to report, either informally or on the record, orally or in writing or *electronically (if the requested information is maintained in electronic form)* with regard to any matter involved in any such investigation or hearing, and

(2) to investigate the books, records and accounts of any such member or person with relation to any matter involved in any such investigation or hearing.

(b) No such member or person shall fail to make any report as required in this Rule, or fail to permit any inspection of books, records and accounts as may be validly called for under this Rule. Any notice requiring an *electronic*, oral, or written report or calling for an inspection of books, records and accounts pursuant to this Rule shall be deemed to have been received by the member or person to whom it is directed by the mailing thereof to the last known address of such member or person as reflected on the Association's records.

(c) *In carrying out its responsibilities under this paragraph, the Association may, as approved by the Commission, establish programs for the submission of information to the Association on a regular basis through a direct or indirect electronic interface between the Association and members.*

\* \* \* \* \*

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

In its filing with the Commission, NASDR 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. NASDR 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

(a) Various NASD and SEC rules require members to maintain records of compliance so that information will be available to NASD staff for on-site examination. In addition, members are required by NASD and SEC rules to submit certain information to the NASD on a regular basis or on request. The various rules and regulations of the Municipal Securities Rulemaking Board ("MSRB") also impose recordkeeping requirements on members of the Association. Rule 8210 of the Association's Conduct Rules (formerly, Article IV, Section 5 of the Rules of Fair Practice) requires members to respond to any NASD request for information for the purpose of any investigation or determination as to the filing of a

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> On December 17, 1996, the NASDR filed the proposed rule change with the Commission. However, Amendment No. 1, modifying the rule language, replaces the original rule filing.