

3. Consideration of Inspector General Functions.

4. Briefing on Customer Perfect!

5. Briefing on Procurement Policies.

6. Tentative Agenda for the April 7–8, 1997, meeting in New Orleans, Louisiana.

Wednesday, March 5 – 8:00 a.m.
(Closed)

1. Continuation of Monday's Closed Agenda.

CONTACT PERSON FOR MORE INFORMATION:

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Thomas J. Koerber,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38299; File No. SR–Amex–97–01]

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

February 18, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 13, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange submitted Amendment No. 1 on February 14, 1997.² 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 Amex is proposing permanent approval of the pilot program that amended Exchange Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick,³ in the case of a "long" position, or a zero plus tick,⁴ 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. In the alternative, the Exchange is requesting a three-week extension of the pilot program.

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 November 15, 1996, the Commission approved an extension until February 14, 1997 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.⁵ 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 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 a dealer on the opposite side of the market after a liquidating transaction has been strengthened.

The Exchange is therefore proposing permanent approval of the amendments to Rule 170 or, in the alternative, a three-week extension of the pilot program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁶ in general and furthers the objectives of Section 6(b)(5)⁷ 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 Act⁸ 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

¹ 15 U.S.C. 78s(b)(1).

² See letter from Claudia Crowley, Special Counsel, Amex, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated February 14, 1997 ("Amendment No. 1"). Amendment No. 1 modified the proposed rule change by granting the Commission the authority to extend the specialist liquidating pilot program for up to three weeks as an alternative to permanent approval of the pilot program.

³ 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.

⁴ 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.

⁵ Securities Exchange Act Release No. 37958 (Nov. 15, 1996), 61 FR 59476 (approving File No. SR–Amex–96–42) ("November 1996 Approval Order").

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(15).

⁸ 15 U.S.C. 78k(b).

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-97-01 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 March 7, 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 the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to promote just the 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 Act¹⁰ and Rule. 11b-1¹¹ 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-92-26.¹² The proposed rule change, filed as a one-year pilot program, amended Amex Rule 170 to permit specialists to "reliquidate" 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 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 re-enter 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, 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 April 1994 Approval Order, the Commission requested that the Amex Submit a report setting forth the criteria developed by the Exchange to determine whether any reliquidation by specialist were necessary and appropriate in connection with fair and orderly markets.¹³ 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 all of the approval orders, the Commission requested that the Amex continue to monitor the pilot and update its report where appropriate.¹⁴ 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, April 1996, and January 1997. As noted above, the Amex believes the pilot procedures appear to be working well in enabling

specialists to reliquidate 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 liquidating transactions when appropriate.

Nevertheless, the Commission believes 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.¹⁵

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,¹⁶ and no comments have been received. Furthermore, the Commission approved a similar rule change for the NYSE also without receiving comments on the proposal.¹⁷ For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 19(b)(2) of the Act.¹⁸ 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.

¹⁵ All "nonsubstantive" violations of this rule (e.g., failure to obtain the required Floor Official approval when such approval, if sought, would have been granted) should be referred to the Minor Floor Violation Disciplinary Committee, as required by Amex Rule 590. Also, as the Amex has indicated previously, all "substantive" violations of this rule (e.g., failure to properly reenter the market or failure to obtain the required Floor Official approval when such approval, if sought, would not have been granted) will be dealt with according to the Exchange's formal disciplinary procedures.

¹⁶ See *supra* note 12 and November 1996 Approval Order *supra* note 5.

¹⁷ See Securities Exchange Act Release No. 31797 (Jan. 29, 1993), 58 FR 7277 (approving File No. SR-NYSE-92-20).

¹⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78k(b).

¹¹ 17 CFR 240.11b-1.

¹² See Securities Exchange Act Release No. 33957 (Apr. 22, 1994), 59 FR 22188 ("April 1994 Approval Order") (approving File No. SR-Amex-92-26). See also Securities Exchange Act Release No. 35635 (Apr. 21, 1995), 60 FR 20780 (approving File No. SR-Amex-95-11); Securities Exchange Act Release No. 36014 (July 21, 1995), 60 FR 38870 (approving File No. SR-Amex-95-19); Securities Exchange Act Release No. 37448 (July 17, 1996), 61 FR 38487 (approving File No. SR-Amex-96-19); Securities Exchange Act Release No. 37704 (Sept. 19, 1996), 61 FR 50525 (approving File No. SR-Amex-96-33); November 1996 Approval Order, *supra* note 5.

¹³ See 1994 Approval Order, *supra* note 12.

¹⁴ See *supra* note 12.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-Amex-97-01), as amended, is approved for a pilot period ending on March 7, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-38310; International Series Release No. 1054; File No. SR-AMEX-96-36]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to the Policy of the Amex Regarding Information Obtained Pursuant to the SEC's Memorandum of Understanding With the CONSOB

February 19, 1997.

I. Introduction

On October 2, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") 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 a proposed rule change to adopt an official Exchange policy concerning the circumstances and conditions under which the Exchange, in order to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities, may obtain access to information regarding activity on the Italian securities markets obtained by the SEC pursuant to the Commission's Memorandum of Understanding ("MOU") with the Commissione Nazionale per le Società e la Borsa ("CONSOB"). Amex submitted Amendment No. 1 to the filing on November 12, 1996,² which made several clarifications to the original filing.

The proposed rule change was published for comment in the Federal

Register on December 2, 1996.³ No comments were received on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Amex does not have a surveillance sharing agreement with the Milan exchange, which is an unincorporated association and is not able under Italian law to enter into such an arrangement. Therefore, Amex submitted this rule filing to enable the Exchange to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities by seeking the necessary information about activity on the Italian securities markets from the SEC pursuant to the SEC's MOU with CONSOB. The Exchange's proposed policy details the circumstances and conditions under which the Exchange may obtain access to such information from the SEC. By adopting this policy, therefore, the Exchange believes it will be in a position to list derivative products containing Italian component securities because it will be able to have access to information on the underlying securities which it may need for enforcement or market surveillance purposes.⁴

The Exchange's proposed policy provides that the Exchange will advise the SEC of information it needs regarding activity on the Italian securities markets for market surveillance and enforcement purposes. The SEC, in turn, may request the CONSOB's assistance, pursuant to the MOU, in gaining access to such information. The Exchange will use such information it may receive from the SEC only for the purposes of conducting market surveillance and enforcement proceedings. The Exchange will limit distribution of such information to officers and directors of the Exchange and other employees directly responsible for conducting market surveillance and enforcement proceedings relating to the matter in connection with which the SEC provided the information to the Exchange. The Exchange also will undertake to maintain the confidentiality of the information and to take appropriate disciplinary action in the event it learns of a breach of such confidentiality, including referral to the SEC for any action the SEC deems necessary or appropriate.

By adopting a policy that provides access to information on the underlying securities for market surveillance and enforcement purposes, the Exchange will be able to list options and other derivative products containing Italian component securities, provided that all other applicable product listing standards are met. Therefore, the Exchange believes that the proposed rule change could potentially provide investors with the opportunity to invest in such products and hedge their exposure to the Italian securities market.

III. Discussion

After careful review, 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. In particular, the Commission believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5),⁵ in particular, as it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.⁶

Specifically, the Commission believes that, since the Amex does not and cannot have a surveillance sharing agreement with the Milan Exchange, the Amex's adoption of the proposed policy will enable the Exchange to carry out its market surveillance and enforcement functions for derivative products containing Italian component securities by seeking the necessary information about activity on the Italian securities markets from the SEC per the latter's MOU with the CONSOB. The Commission believes that the Exchange's proposed policy adequately details the circumstances and conditions under which the Exchange may obtain access to such information from the SEC.

The Commission believes that, under the Exchange's proposed policy, the Exchange will advise the SEC of information it needs regarding activity on the Italian securities markets for market surveillance and enforcement purposes. The Commission, in turn, may request the CONSOB's assistance, pursuant to the MOU, in gaining access to such information. The Commission notes that the Exchange will use such information it may receive from the SEC only for the purposes of conducting market surveillance and enforcement proceedings. The Commission also

¹⁹ *Id.*

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² On November 12, 1996, Amex submitted Amendment No. 1 to its proposed rule filing, making several clarifications to the original filing. See Letter from Claire P. McGrath, Managing Director and Special Counsel, Amex, to Michael Walinskis, Senior Special Counsel, Division, Commission, dated November 7, 1996.

³ Securities Exchange Act Release No. 37973 (November 22, 1996), 61 FR 63884.

⁴ This filing only addresses trading requirements relating to necessary surveillance sharing procedures.

⁵ 15 U.S.C. 78f(b) and 78f(b)(5).

⁶ In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).