

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35660; File No. SR-Amex-95-09]

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Entry of Market-at-the Close Orders

May 2, 1995.

On February 22, 1995, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new Commentary .02 to Exchange Rule 109 to require members entering market-at-the-close ("MOC") orders through the Exchange's order routing systems, Post Execution Reporting ("PER") or Amex Options Switching ("AMOS"),<sup>3</sup> to do so by no later than 3:50 p.m.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35492 (Mar. 15, 1995), 60 FR 14985 (Mar. 21, 1995). No comments were received on the proposal.

The Amex Rule 109(d) sets forth the procedures for executing MOC orders.<sup>4</sup> Under Rule 109, a member must execute MOC orders in a stock where the member is holding simultaneously both buy and sell MOC orders in accordance with certain procedures. Where there is an imbalance between the buy and sell MOC orders, a member at the close of trading must execute the imbalance of buy orders against the offer and imbalance of sell orders against the bid. The member must then stop the remaining buy and sell orders against each other and pair them off at the price of the immediately preceding sale. The member must report the paired off transactions to the consolidated last sale reporting system as "stopped stock."

In situations where there is no imbalance between the buy and sell MOC orders, the buy and sell orders are

stopped against each other and paired off at the price of the last sale on the Exchange just before the close of trading in that stock on that day. The transaction must be reported to the consolidated reporting system as stopped stock.

At the present time, members may enter MOC orders until 4:00 p.m. when trading closes. Members may enter MOC orders through the Exchange's order routing systems, PER and AMOS, or manually through a floor broker to the specialists.

The Exchange proposes to amend Amex Rule 109 by adopting new Commentary .02, which would impose a 3:50 p.m. deadline for the entry, cancellation, or reduction of all MOC orders through the PER or AMOS systems. Thereafter, a member may only enter, modify, and cancel MOC orders through other means than the Exchange's order routing systems.

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, with the requirements of Section 6(b) of the Act.<sup>5</sup> The Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission has been aware for several years that the use of composite-asset trading techniques and strategies has increased substantially, which has prompted the need to establish greater price certainty at the close.<sup>6</sup> The Commission believes that the Exchange's proposed rule change will assist specialists in ascertaining the closing price<sup>7</sup> of a security in a timely manner by providing specialists with a reasonable period to assess whether there is an imbalance of MOC orders, and to pair off MOC buy and sell orders, entered through the Exchange's automated routing systems. Unlike other orders, MOC orders do not appear on the specialist's electronic book and specialists must process the orders

manually.<sup>8</sup> Therefore, on days where there is heavy volume of MOC orders, the execution of MOC orders and, in turn, the determination of the closing price, may be delayed under the current practice. The Commission believes that the extra time allotted under the proposal should allow specialists to effectuate an orderly closing in stocks by alleviating the problem of MOC orders being entered through the Amex automated systems so close to the 4:00 p.m. deadline that the specialists cannot execute the MOC transactions and determine the closing price until after the close.<sup>9</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-95-09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35657; File No. SR-NASD-95-13]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Cold Calling Requirements

May 1, 1995.

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 April 10, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. The Commission is publishing this notice to

<sup>8</sup> Telephone conversation with Stuart Diamond, Director, Rulings Department, Amex, and Jennifer S. Choi, SEC, on April 19, 1995.

<sup>9</sup> Under the proposed rule change, members may continue to enter, cancel, or modify MOC orders manually until 4:00 p.m. MOC orders that are manually brought to the specialist post by a floor broker are less likely to delay the specialist's processing of the MOC orders because a floor broker has the discretion not to place a MOC order when an imbalance of buy and sell MOC orders has affected the price of a stock. Under the proposed rule change, a specialist would be able to process MOC orders entered through the Exchange's automated routing system soon after the 3:50 deadline and negotiate with a floor broker when there is an imbalance between the MOC buy and sell orders.

<sup>10</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> Although there is no specific Amex rule describing the types of orders that AMOS may accept, it has been the practice of the Exchange to allow AMOS to accept MOC options orders. Telephone conversation with Stuart Diamond, Director, Rulings Department, Amex, and Linda Tarr, Special Counsel, Amex, and Jennifer Choi, Attorney, SEC, on May 1, 1995.

<sup>4</sup> A market-at-the-close order is a market order that is to be executed at or as near to the close as practicable. See *American Stock Exchange Guide*, Rule 131(e), (CCH) ¶ 9281.

<sup>5</sup> 15 U.S.C. 78f(b) (1988 & Supp. v. 1993).

<sup>6</sup> See Securities Exchange Act Release No. 31610 (Dec. 16, 1992), 57 FR 61131 (Dec. 23, 1992) (File No. SR-Amex-92-34) (permanently approving procedures to execute MOC orders on every trading day).

<sup>7</sup> The closing price is the price at which the MOC orders were executed. Telephone conversation with Stuart Diamond, Director, Rulings Department, Amex, and Linda Tarr, Special Counsel, Amex, and Glen Barentine and Jennifer Choi, SEC, on March 7, 1995.

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 NASD is herewith filing a proposed rule change to Article III, Section 21 of the Rules of Fair Practice. Proposed new language is italicized.

#### **Books and Records**

Sec. 21.

\* \* \* \* \*

#### *Cold Call Requirements*

(g) *Each member shall 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.*

### **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 NASD 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 NASD had 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*

Pursuant to the Telephone Consumer Protection Act (TCPA), which became law in 1991, the Federal Communications Commission (FCC) developed rules, effective December 20, 1992, to protect the rights of telephone consumers while allowing legitimate telemarketing practices. In addition, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Prevention Act") became law in August, 1994, and requires the Federal Trade Commission (FTC) to adopt rules on abusive cold calling within twelve (12) months.

Members who engage in telephone solicitation to market their products and services are subject to the requirements of the rules of the FCC and FTC relating to telemarketing practices and the rights of telephone consumers and shall refer to FCC rules for specific restrictions on telephone solicitations. This includes, but is not limited to, the requirements to make and maintain a list of persons who do not want to receive telephone solicitations (a "do-not-call" list).

The Prevention Act also requires the SEC to engage in its own additional rulemaking, or, alternatively, to require the SROs to promulgate telemarketing rules consistent with the legislation. In August of 1994, SEC Chairman Arthur Levitt wrote to the NASD and NYSE urging the SROs to adopt a rule similar to the cold calling rule established by the FCC. Since then, there have been ongoing discussions between the SEC and SROs on the structure of a rule or rules to apply pursuant to the Prevention Act. As a first step, the NASD is proposing to adopt a rule to implement that portion of the FCC rules that requires the establishment and maintenance of a do-not-call list. The proposed rule would add new Subsection (g) to Section 21 of Article III of the Rules of Fair Practice to require that each member who engages in telephone solicitation to market its products and services shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member of its associated persons.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>1</sup> which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of customers and the public interest in that the proposed rule change establishes minimum standards designed to protect members' customers against abusive telemarketing practices.

#### *(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*

Written comments were neither solicited nor received.

### **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 NW., 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 available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-95-13 and should be submitted by May 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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[Release No. 34-35661; File No. SR-NYSE-95-05]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Near Neighbor Approach to Measuring Specialist Performance**

May 2, 1995.

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 February 28, 1995, the New York Stock Exchange, Inc. ("NYSE" 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 self-regulatory organization. The Commission is publishing this notice to

<sup>1</sup> 15 U.S.C. 78o-3.

<sup>2</sup> 17 CFR 200.30-3(a)(12).