

natural person who is a (i) registered representative, (ii) securities lending representative, or (iii) securities trader if such status will not preclude his or her characterization and treatment as an employee for purposes of the Constitution and rules of the Amex.<sup>13</sup> The independent contractor and the member must agree that the independent contractor is subject to the member's direct, detailed supervision, control and discipline. In addition, Amex Rule 341B requires a member to assure the Exchange in writing that it will supervise and control all activities of the independent contractor effected on the member's behalf to the same degree and extent that it regulates the activities of all other registered persons and in a manner consistent with Amex Rule 320.

Amex Rule 341B further provides for supervision of independent contractors by requiring the member to submit to the Amex a copy of a written agreement between the member and the independent contractor which provides that: (1) The independent contractor will engage in securities related activities solely on the member's behalf (except as otherwise permitted by the member); (2) the independent contractor's securities related activities will be subject to the direct, detailed supervision, control and discipline of the member; and (3) the independent contractor is not subject to a statutory disqualification, as defined in Section 3(a)(39) of the Act. In addition, the proposal requires a member to assure the Exchange that, if required by Amex Rule 330, the individual is covered by the organization's fidelity insurance and has complied with applicable state Blue Sky provisions. Amex Rule 341B also requires an independent contractor to subject himself to the Amex's jurisdiction.<sup>14</sup>

The Commission believes that these requirements should help to ensure that members employ qualified persons as independent contractors and provide

<sup>13</sup> As noted above, only a natural person who is a registered representative, securities trader or securities lending representative may assert independent contractor status. Telephone conversation between Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on December 6, 1996. Persons with supervisory functions may not assert independent contractor status. In addition, Amex Rule 341B does not permit the incorporation of registered persons.

<sup>14</sup> Registered persons submit to the authority of the organizations to which they apply for registration on the Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). Accordingly, the independent contractors discussed in the proposal become subject to the Amex's jurisdiction when they apply for registration with the Exchange.

adequate supervision of their securities related activities, as required by the Act. In addition, Amex Rule 341B will make clear to independent contractors that they are subject to the Amex's jurisdiction and, accordingly, are subject to disciplinary proceedings by the Amex for violations of the Exchange's rules. The Commission also believes that the provision requiring an independent contractor to be covered by the member's fidelity insurance, if required under Amex Rule 330, will help to protect the member against losses resulting from dishonesty by an independent contractor and is consistent with the proposal's general requirement that independent contractors be treated as employees for purposes of the Exchange's Constitution and rules. The Commission notes that the provisions of Amex Rule 341B are similar to the NYSE's requirements for independent contractors.<sup>15</sup>

The Commission finds that the proposed amendments to Amex Rules 340 and 341 are appropriate and consistent with the Act. Specifically, the Commission believes that the proposed amendments to Amex Rule 341 requiring securities lending representatives and securities traders, as well as direct supervisors of registered representatives, securities lending representatives, or securities traders, to register with and be qualified and approved by the Amex will protect investors and the public interest by allowing the Amex to evaluate persons who seek to perform these functions.<sup>16</sup>

The Commission believes, as it has concluded previously, that it is consistent with the Amex's regulatory responsibility to monitor the activities of securities traders and securities lending representatives.<sup>17</sup> In addition, the Commission continues to believe that requiring securities lenders and securities traders to register with the Amex and assuring that they have

<sup>15</sup> See note 7, *supra*.

<sup>16</sup> Registered representatives, securities traders, and securities lending representatives apply for registration with the Exchange through the Form U-4. To approve a registered representative, securities trader, securities lending representative, or his or her direct supervisor, the Amex reviews the Form U-4, which contains a registered person's disciplinary history and information concerning whether he or she is subject to a statutory disqualification as defined in Section 3(a)(39) of the Act. The Amex also reviews the Form U-4 to determine whether another exchange has approved or rejected the registered person's application to register with that exchange. Telephone conversation between Robert Klein, Managing Director, Membership Services, Amex, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on December 6, 1996.

<sup>17</sup> See Securities Exchange Act Release No. 25312 (February 4, 1988), 53 FR 4089 (February 11, 1988) (order approving File No. SR-NYSE-86-22).

adequate qualifications ultimately will protect investors and the public interest. The Commission believes that the proposal also protects investors by applying Amex Rule 341 to an independent contractor who performs the duties normally performed by a registered representative, securities lending representative, or a securities trader.

Finally, the Commission believes that the examination requirements contained in Amex Rule 340, Commentary .03, will help to ensure that only a person with an understanding of the applicable rules acts as a securities trader, securities lending representative, or as a direct supervisor of a securities trader or securities lending representative.<sup>18</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Amex-96-34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 97-902 Filed 1-14-97; 8:45 am]

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[Release No. 34-38138; File No. SR-BSE-96-12]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to Chapter 11, Section 34A ("Trading Halts Due to Extraordinary Market Volatility")**

January 8, 1997.

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> notice is hereby given that on December 31, 1996, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange submitted to the Commission Amendment No. 1 to its proposal on January 7, 1997.<sup>3</sup> The Commission is

<sup>18</sup> As noted above, there currently is no qualification examination for securities lending representatives. The provision relating to securities lending representatives will apply if a qualification examination for securities lending representatives is developed.

<sup>19</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>20</sup> 17 CFR 200.30-3(a)(12) (1996).

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

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

<sup>3</sup> See Letter from Karen A. Aluise, Assistant Vice President, BSE, to Holly Smith, Associate Director,

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 Exchange proposes to amend its Rule—Chapter 11, Section 34A (Trading Halts Due to Extraordinary Market Volatility “circuit breakers”)—to increase the trigger levels for its circuit breakers. The existing circuit breakers would be triggered if the Dow Jones Industrial Average (“DJIA”)<sup>4</sup> declines by 250 and 400 points, respectively, from its previous day's close. The Exchange proposes establishing new thresholds of 350 and 550 points decline in the DJIA before the respective one-half hour and one hour circuit breakers are triggered.<sup>5</sup>

### 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 of the most significant aspects of such statements set forth in Sections A, B, and C below.

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

##### 1. Purpose

The purpose of the proposed rule change is to raise the circuit breaker levels from 250 points to 350 points and from 400 points to 550 points to account for the overall rise in market values since the rules were first adopted on a pilot basis. These levels have not been changed since the inception of the pilot program in 1988. At that time, a 250 point drop in the Dow Jones Industrial Average (“DJIA”)<sup>6</sup> represented

Division of Market Regulation, SEC, dated January 7, 1997 (“Amendment No. 1”). For a description of Amendment No. 1, see *infra* note 5 and accompanying text.

<sup>4</sup> “Dow Jones Industrial Average” is a service mark of Dow Jones & Company, Inc.

<sup>5</sup> In Amendment No. 1, the BSE corrected a typographical error which would have left the existing second circuit breaker level at 400 points. Amendment No. 1 clarifies the BSE's proposal that, if the DJIA declines by 550 or more points from its previous trading day's closing value, trading on the Exchange will halt for one hour.

<sup>6</sup> “Dow Jones Industrial Average” is a service mark of Dow Jones and Company, Inc.

approximately a 12% decline, and a 400 point drop represented a decline of about 19%. Today, these values represent roughly a 3.8% and 6.2% decline respectively. The proposed 350 and 550 points trigger levels would respectively represent around a 5.4% and 8.5% decline in the DJIA.

Chapter II, Section 34A currently provide that if the DJIA falls 250 or more points below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one-half hour. It further provides that, if on the same day the DJIA drops 400 or more points from its previous trading day's close, trading on the Exchange will halt for one hour. The Exchange seeks to amend this section to provide that if the DJIA falls 350 points or more below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one-half hour; and, if on that same day, the DJIA drops 550 points or more from its previous trading day's close, trading on the Exchange will halt for one hour.

The circuit breaker rules are a coordinated effort by the equities and futures markets to halt trading in all stocks, stock options, stock index options, stock futures, and options on stock futures when the DJIA reaches certain established trigger values. As such, these changes are intended to mirror the rules of the New York Stock Exchange (“NYSE”) that would become applicable during periods of extraordinary market conditions.

The Exchanges's circuit breaker rules were originally approved by the Commission for a one-year pilot on December 14, 1988,<sup>7</sup> and were extended for a two year pilot on October 23, 1989,<sup>8</sup> October 28, 1991,<sup>9</sup> October 29, 1993,<sup>10</sup> and October 25, 1995.<sup>11</sup> The 1995 pilot program is due to expire on October 31, 1997, and the Exchange seeks to adopt these amendments to coincide with the current pilot program.

##### 2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market

<sup>7</sup> See Securities Exchange Act Release No. 26357 (December 14, 1988), 53 FR 51182.

<sup>8</sup> See Securities Exchange Act Release No. 27370 (October 23, 1989), 54 FR 43881.

<sup>9</sup> See Securities Exchange Act Release No. 29868 (October 28, 1991), 56 FR 56535.

<sup>10</sup> See Securities Exchange Act Release No. 33120 (October 29, 1993), 58 FR 59503.

<sup>11</sup> See Securities Exchange Act Release No. 36414 (October 25, 1995), 60 FR 55630.

and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments to Chapter II, Section 34A are consistent with these objectives in that the proposed trading halt requirement during periods of significant market stress can be expected to provide 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose 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 any comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing of 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 the 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-96-12 and the submitted by February 5, 1997.

For the Commission, by the Divisions of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 97-901 Filed 1-14-97; 8:45 am]

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[Release No. 34-38132; File No. SR-NASD-96-08]

**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. 1 to the Proposed Rule Change  
Relating to Quotation and Reporting  
Requirements of Direct Participation  
Programs**

January 7, 1997.

**I. Introduction**

On March 12, 1996, the National Association of Securities Dealers, Inc. ("NASD") 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 permit the quotation of Direct Participation Programs ("DPPs") on the OTC Bulletin Board Service ("OTCBB" or "OTC Bulletin Board") and require all transactions in DPPs to be reported through the Automated Confirmation Transaction Service ("ACT").

The proposed rule change was published for comment in the Federal Register on April 25, 1996.<sup>3</sup> The Commission received seven comment letters concerning this proposal.<sup>4</sup> The

NASD initially responded to these comments in a letter dated October 16, 1996.<sup>5</sup> On November 26, the NASD submitted Amendment No. 1 to the proposed rule change.<sup>6</sup> After careful consideration of all of the comments, the Commission has decided to approve the proposal, including Amendment No. 1 on an accelerated basis.

**II. Background**

In response to findings by the NASD's Direct Participation Programs Committee ("DPP Committee" or "Committee") and recently issued Internal Revenue Service ("IRS") regulations, the NASD submitted a proposed rule change to permit the quotation of DPPs<sup>7</sup> on the OTCBB by NASD members and, subject to a few exceptions, require that all transactions in DPPs be reported through ACT.

**A. NASD Study of DPPs**

The NASD has contemplated the implementation of a system that

1996 ("Fotenos & Suttle Letter"); letter from James Frith, Jr., President, CPB, to Jonathan G. Katz, Secretary, SEC, dated June 10, 1996 ("CPB Letter No. 2") (concentrating primarily on the Qualified Matching Service Safe Harbor); letter from James Frith, Jr., President, CPB, to Jonathan G. Katz, Secretary, SEC, also dated June 10, 1996 ("CPB Letter No. 3") (focusing on the NASD's standardized Distribution Allocation Agreement form); letter from George E. Hamilton, President, NAPEX, to Jonathan G. Katz, Secretary, SEC, dated June 10, 1996 ("NAPEX Letter"); letter from Gregory S. Paul, President, American Partnership Services ("APS"), to Jonathan G. Katz, Secretary, SEC, dated June 10, 1996 ("APS Letter"); letter from Laura J. Lacey, President, Nationwide Partnership Marketplace Inc. ("NPM"), to Jonathan G. Katz, Secretary, SEC, dated June 26, 1996 ("NPM Letter").

<sup>5</sup> See letter from Joan Conley, Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 16, 1996 ("NASD Response").

<sup>6</sup> See letter from Joan Conley, Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 26, 1996 ("Amendment No. 1"). Amendment No. 1 explained when a DPP trade needs to be reported, made technical corrections to the proposal so that it now conforms with the NASD Manual's new format, clarified the implementation schedule for these new rules, and extended the time period for Commission action.

<sup>7</sup> The NASD defines a DPP as a program that provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agriculture programs, condominium securities, Subchapter S corporate offerings and all other programs similar in nature, regardless of the industry represented by the program, or any combination thereof. Excluded from the definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that code, tax sheltered annuities pursuant to Section 403(b) of the Internal Revenue Code, and any company including separate accounts, registered pursuant to the Investment Company Act of 1940. Proposed NASD Rule 6910(a); NASD Rule 2810(a)(4).

facilitates the dissemination of information concerning DPPs for quite some time. In fact, the NASD began examining this issue as early as 1980 when it solicited its members' opinions on this topic in the form of a voluntary questionnaire mailed to all of its members.<sup>8</sup> The positive reaction to the questionnaire prompted the NASD to design the "Electronic Bulletin Board" system, draft the necessary rules, and solicit comments from its members regarding these rules and "the overall concept of such a system."<sup>9</sup> The NASD received eighteen comment letters, most of which supported the concept.<sup>10</sup> After considering these comments, the NASD filed a proposed rule change with the Commission on January 20, 1983.<sup>11</sup> After notice of this proposed rule change was published by the Commission, additional comment letters were received.<sup>12</sup> Subsequently, the NASD decided to further analyze the issues raised in the comment letters and withdrew the proposal on August 21, 1985.<sup>13</sup>

The NASD revisited this issue in 1990. At the direction of the DPP Committee, NASD staff undertook a study of the nature and operation of the secondary market for limited partnership securities.<sup>14</sup> This study indicated that approximately \$90 billion was invested in public DPPs in the 1970s and 1980s by more than ten million investors. The programs were organized to invest in a variety of

<sup>8</sup> Dennis C. Hensley, A Study of the NASD "Electronic Bulletin Board" for Limited Partnerships in American Bar Association, Section of Corporation, Banking and Business Law, Committee on Partnerships and Unincorporated Business Organizations, Publicly Traded Limited Partnerships IV-25 (Aug. 2, 1983). Nearly 20% of the NASD membership responded. *Id.* of those members, 68% favored the development of such a system. *Id.* Among those members who dealt in DPPs, the percentage of those in favor of the idea rose to be over 80%. *Id.*

<sup>9</sup> NASD Notice to Members 82-13.

<sup>10</sup> Although most of the concerns raised by the commenters were specific to that proposal, some of the comments focused on issues that are pertinent to the current rule proposal (e.g., potential tax law implications, appropriate level of general partner involvement, and costs). See File No. SR-NASD-83-1 (comment letters attached as Exhibit 2 to the Form 19b-4).

<sup>11</sup> File No. SR-NASD-83-1.

<sup>12</sup> Securities Exchange Act Release No. 19675A (May, 9, 1983), 48 FR 21693 (publishing notice of File No. SR-NASD-83-1).

<sup>13</sup> Letter from Frank J. Wilson, then-Executive Vice President, Legal and Compliance, NASD, to Stuart J. Kaswell, then-Branch Chief, Over-the-Counter Regulation, SEC, dated August 20, 1985.

<sup>14</sup> See NASD Notice to Members 91-69 ("NTM-91-69") (publishing the Committee's findings and noting that the primary concern of the study was to determine how the market currently operates, whether it functions efficiently, and whether NASD members are in compliance with the applicable securities laws and rules).

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

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

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

<sup>3</sup> Securities Exchange Act Release No. 37131 (Apr. 19, 1996), 61 FR 18452.

<sup>4</sup> See letter from James Frith, Jr., President, Chicago Partnership Board, Inc. ("CPB"), to Jonathan G. Katz, Secretary, SEC, dated May 14, 1996 ("CPB Letter No. 1"); letter from James F. Fotenos, Attorney, Fotenos & Suttle, P.C., to Jonathan G. Katz, Secretary, SEC, dated May 22,