permanent approval, the Commission expects, at a minimum, that the Exchange's staff will issue a cautionary letter to a specialist for an initial ''nonsubstantive'' violation during a rolling twelve-month period and to refer any subsequent ''nonsubstantive'' violations by the same specialist during this period to the Minor Floor Violation Disciplinary Committee (''Committee'') for a fine pursuant to the Amex's Minor Rule Plan (''MRP'').[26]

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange will continue to use 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, and no comments have ever been received. Furthermore, the Commission approved a similar rule change for the NYSE, also without receiving comments on that proposal.[27] For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 6, Section 11, and Section 19(b)(2) of the Act.[28]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Amex–97–12), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Jonathan G. Katz,

Secretary.

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[26] See Amex Rule 590(h). Although Amex Rule 590 states that the Committee ''may'' impose a fine, the Commission believes the use of such ''prosecutorial discretion'' to issue a cautionary letter in lieu of a fine for ''nonsubstantive'' violations of this rule should be exercised only in extraordinary circumstances. This position is bolstered by the fact that the specialist, at a minimum, already would have received such a letter from the Amex's staff in connection with its first ''nonsubstantive'' violation of this rule within the last twelve months.

In addition, each instance of noncompliance should be addressed individually. Although instances of noncompliance by a specialist that occur between regularly scheduled meetings of the Committee may be presented as a single bundle, each infraction should be considered a separate offense for calculating the appropriate fine. For example, if a specialist fails to properly obtain Floor Official approval 15 times during a 5 month period, that specialist should be fined for 15 violations, instead of the minimum amount for a first offense simply because all 15 violations were presented to the Committee at the same meeting.

[27] See Securities Exchange Act Release No. 31797 (Jan. 29, 1993), 58 FR 7277 (approving File No. SR–NYSE–92–20).

[28] 15 U.S.C. 78f, 78k, and 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[Release No. 34–38398; File No. SR–NASD–97–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Transfer of Limited Partnership Securities

March 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 29, 1997 the NASD Regulation, Inc. (''NASD Regulation'') 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 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 proposing to amend Rules 11580 and 11870 of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to expand the current exceptions to the requirement that members use the Limited Partnership Transfer Forms for the transfer of limited partnership securities and require that the Forms be used by members in account transfers of limited partnerships.

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.

[1] 15 U.S.C. 78s(b)(1).

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

1. Purpose

On January 29, 1996, the Commission approved new NASD Rule 11580 (formerly, Section 73) to the NASD's Uniform Practice Code requiring members to use Standardized Transfer Forms when transferring limited partnership securities.[2] Use of the forms became mandatory for NASD members on May 15, 1996. NASD Regulation is proposing two amendments related to the use of the Standardized Transfer Forms. The first is an amendment to NASD Rule 11580 to expand the current exceptions to include limited partnerships that trade in the non-Nasdaq over-the-counter market that are in a depository. The second amendment is to NASD Rule 11870 (formerly, Section 65) to require that the Standardized Transfer Forms be used by members in account transfers of limited partnerships.

i. *Amendment to Rule 11580.* This rule includes an exception for limited partnership securities that are listed on an exchange or the Nasdaq Stock Market. The exception does not cover those limited partnership securities that are quoted on the OTC Bulletin Board that trade with such frequency that use of the Standardized Transfer Forms would not be appropriate. In order to broaden the exception, NASD Regulation is proposing to amend subparagraph (a) of NASD Rule 11580 to except from the requirements of the rule those limited partnership securities that are in a depository and that settle regular way.[3] It is believed that the proposed criteria of depository eligibility and regular way settlement identify that group of non-Nasdaq over-the-counter limited partnership securities that do not need the Standardized Transfer Forms to facilitate settlement. The Forms were specifically adopted to address problems associated with the settlement of limited partnership interests that are generally illiquid and where the transfer requirements contained in the General Partnership Agreement vary widely as to the type of information and documents necessary for a valid transfer of a interest.

[2] Securities Exchange Act Release No. 36783 (Jan. 29, 1996), 61 FR 3955 (Feb. 2, 1996).

[3] The Commission notes that the proposal requires that the securities be physically present in a depository to qualify for this exception. Simply being ''eligible for deposit'' in a depository is not enough.

ii. *Amendment to Rule 11870.* Since the adoption of NASD Rue 11580, members have inquired as to whether the Standardized Transfer Forms can be used to accomplish account transfers under NASD Rule 11870. In order to clarify this issue, NASD Regulation is proposing to amend Rule 11870 to provide that in the case of limited partnership securities, members must use the Standardized Transfer Forms unless exempted by that rule.[4]

2. Statutory Basis

NASD Regulation believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[5] in that the proposed rule change is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect the public interest.

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

NASD Regulation believes the proposed rule change will 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

NASD Regulation has neither solicited nor received written comments.

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

Within 35 days of the 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. Also, copies of such filing will be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–97–05 and should be submitted by April 14, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

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[4] The Commission notes that use of the Forms will supplement, rather than replace, the current forms utilized by members, when effecting an account transfer. NASD Regulation represents that the use of the Forms is necessary because these securities are held in the member's name for the benefit of the investor. Thus, it is necessary to notify the general partner of the ''change in ownership'' when an investor transfers its account to a different member so the general partner may adjust its records accordingly. Telephone conversation between Suzanne E. Rothwell, Dorothy Kennedy, NASD Regulation, and Anthony P. Pecora, Division of Market Regulation, SEC (Mar. 7, 1997).

[5] 15 U.S.C. 78*o*–3.

[6] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–38406; File No. SR–NYSE–96–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to a One-Year Pilot Program for Transmission of Proxy and Other Shareholder Communication

March 14, 1997.

I. Introduction

On December 6, 1996, the New York Stock Exchange, Inc. (''NYSE'' 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] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rules 451 and 465, which establish guidelines for the reimbursement of expenses by issuers to NYSE member organizations for the processing of proxy materials and other issuer communications to security holders whose securities are held in street name.

The proposed rule change was published for comment in Securities Exchange Act Release No. 38058 (Dec. 18, 1996), 61 FR 68082 (Dec. 26, 1996). Thirty-nine comment letters were received on the proposal, which include a letter submitted by the NYSE in response to the Commission's request for comment.[3] On March 7, 1997, the NYSE submitted Amendment No. 1 to the proposed rule change.[4] This order approves, on a one-year pilot basis, the proposed rule change, as amended, and Amendment No. 1 on an accelerated basis.

II. Background

NYSE member organizations holding securities in street name solicit proxies and deliver communications to and from beneficial owners of securities on behalf of issuers.[5] For this service, issuers reimburse member organizations for out-of-pocket, reasonable clerical, postage and other expenses incurred for a particular distribution. NYSE Rules 451 and 465 provide guidelines for the reimbursement of these expenses.

Since the late 1960's, NYSE member firms increasingly have used an outside contractor for these types of services

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1997 (''NYSE Letter'').

[4] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated March 5, 1997. In Amendment No. 1, the NYSE changes the proposal to a one-year pilot and represents that, following the 1997 proxy season, a certified public accounting firm will audit the results of the pilot period. The NYSE states that the independent accountant will report to the Commission and the NYSE no later than October 31, 1997. As discussed below, the independent accounting firm must conduct an audit of the results of operations of ADP Investor Communication Services, the division of Automatic Data Processing, Inc. (''ADP'') that performs proxy intermediary services for approximately 200 NYSE member firms.

[5] Street ownership encompasses shares purchased through a broker or bank (referred to as a nominee). The shares are then registered in the name of that nominee, or in the nominee name of a depository such as The Depository Trust Company (''DTC''). According to a recent NYSE analysis, on average, approximately 70 to 80 percent of all outstanding shares are held in street name.