to the leverage of these securities. In the Exchange's view, the risk of financial instability created by giving persons an unfettered right to cancel trades merely because the executing specialist acted both as principal and agent outweighs whatever residual benefits the rule may have.

The Exchange, however, is not proposing to eliminate a member's ability to rescind a trade where the specialist may have acted inappropriately. The proposed rule change is intended to eliminate the unchecked right to break trades due to the capacity in which the specialist acted. The Exchange believes that the proposal appropriately limits the financial risk of specialists that provide liquidity to investors by acting as principal while maintaining the ability of members to break trades where the specialist acts inconsistently with his obligations. The Exchanges believes that brokers have developed sophisticated systems for reviewing execution quality in response to the Commission's statements on ''best execution'' of customer orders. Further, the Exchange notes that it has developed sophisticated surveillance systems backed by extensive staff resources for reviewing trading by its members. The Exchange believes that its current surveillance capabilities are sufficient to determine whether specialists are acting consistently with their obligations to maintain fair and orderly markets. In addition, the Exchange plans to automate its order ticket review procedures, which will further enhance its market surveillance.[10]

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 regulation thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.[12] Section 6(b)(5) of the Act [13] requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Commission finds that requiring written Floor Official approval before breaking a trade due to the specialist acting as agent and principal (for good cause shown in relation to the specialist's responsibility to maintain a fair and orderly market) promotes just and equitable principles of trade, facilitates transactions in securities, and removes impediments to and perfects the mechanism of a free and open market and a national market system. By requiring Floor Official approval, the proposal should limit the instances in which a trade can be rejected which could enhance the stability of the marketplace, while providing members with an opportunity to break a trade when a specialist acted in a manner that was not consistent with his or her duty to maintain a fair and orderly market.

The Commission also finds that Amendment No. 2 is consistent with Section 6(b)(5) of the Act, because it promotes just and equitable principles of trade, facilities transactions in securities and removes impediments to and perfects the mechanism of a free and open market and, in general, protects investors and the public interest. The Commission notes that the theory underlying Amex Rule 155, Commentary .05, is that a member who places an order, which the specialist executes as principal, should have a special opportunity to evaluate the execution and decide whether to reject the transaction. As stated above, the purpose would continue to be served, because members will continue to receive notices when a specialist has acted as both principal and agent and members may continue to reject a specialist's principal transactions upon a finding of good cause when the specialist has failed to maintain a fair and orderly market. Thus, a member's ability to rescind a trade in that instance should ensure that the interest of investors are protected. In addition, the Exchange has represented that it has sufficient surveillance for monitoring the activity of its specialists, thus helping to ensure investor protection.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 2 merely clarifies the process by which a member can reject a trade and conveys Amex's representation that it has adequate surveillance to monitor its specialists. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) and 19(b) of the Act [14] to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 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 in Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–23 and should be submitted by January 28, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change, as amended, (SR–Amex–99–23) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42307; File No. SR–Amex–99–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Amendments to the Amex Constitution by the American Stock Exchange LLC Eliminating the Requirement That the Chairman Also Be the CEO

January 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[10] *Id.*

[11] In approving this proposed rule change, the Commission has considered its impact on efficiently, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] 15 U.S.C. 78f(b)(5) and 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 1999, the American Stock Exchange LLC (''Amex'' 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 Exchange. On November 9, 1999, the Amex filed Amendment No. 1 to the proposed rule change.[3] On November 23, 1999, the Amex filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Article II, Section 4(a) of the Amex Constitution to eliminate the requirement that the Chairman of the Board also act as the Chief Executive Officer of the Exchange. Conforming changes to other provisions of the Constitution and rules are also being made.

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 Amex 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 Amex 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

Article II, Section 4(a) of the Amex Constitution currently requires that the Chairman of the Board also act as the CEO of the Exchange. The Chairman thus performs the standard functions of a Board Chairman, as well as being responsible to the Board for the management and administration of the affairs of the Exchange as CEO.

The Exchange is proposing to amend Article II, Section 4(a) of the Constitution to eliminate the requirement that the Chairman also act as the CEO of the Exchange. The NASD's two other subsidiaries (the Nasdaq Stock Market and NASD Regulation), both have non-executive Chairmen. Eliminating this requirement from the Amex Constitution would give the Amex the flexibility to have a non-executive Chairman if desired. Having a non-executive Chairman attend to the functions of a Chairman would allow the CEO to focus on the operations of the Exchange. The Exchange would, of course, always have the ability to continue the dual role of Chairman and Chief Executive Officer if that was thought to be more advantageous.[5]

As a result of the amendment to Article II, Section 4(a) of the Constitution decoupling the Chairman and CEO roles, it is necessary to make a number of conforming changes to other provisions of the Constitution and rules. Because the Chairman and CEO roles may now be held by separate persons, the Amex has attempted to clarify the separate functions of the Chairman and the CEO. Article II, Section 3 (Chairman) and Article II, Section 4(a) (Chief Executive Officer), discussing the selection and authority of the Chairman and CEO respectively, have been appropriately rearranged. In each instance in other provisions of the Constitution and rules where the Chairman functions in his role as CEO, the term Chairman has been changed to CEO. In certain cases, the function may properly be performed by either the Chairman or the CEO, if delegated by the Chairman. Other than de-coupling the Chairman and CEO roles and making the above mentioned conforming changes, the Amex represents that there are no substantive changes being made.

The following examples of conforming changes being made are set forth for purposes of illustration.

a. Article II, Section 4(a) of the Constitution (Officers of the Exchange)

- Describes the authority of the Chairman to appoint officers, determine the salaries of Exchange employees, and make periodic reports to the Board.
- As this is normally a function of a CEO, the term Chairman is being changed to CEO.

b. Article II, Sections 4(c) and (d) of the Constitution (Officers of the Exchange)

- States that the Treasurer and Corporate Secretary report to the Chairman.
- As these two corporate positions normally report to the CEO of a company, the term Chairman is being changed to CEO.

c. Article V, Sections 1(b)(2) and (3) of the Constitution (Discipline of Members)

- Section 1(b)(2) authorizes the Chairman, subject to Board approval, to designate Exchange Officials and other persons to serve on the Hearing Board, a pool of persons who can be asked to serve as members of disciplinary panels in Exchange disciplinary proceedings.
- Section 1(b)(3) authorizes the Chairman, subject to Board approval, to designate one or more hearing officers, who have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters, to act as Chairmen of Amex disciplinary panels.
- As these functions are more appropriately exercised by the CEO as the senior officer of the Exchange, the term Chairman is being changed to CEO.

d. Article V, Sections 3(a) and (b) of the Constitution (Discipline of Members)

- Section 3(a) states that a member or member firm failing to meet its commitments or in financial or operating difficulty putting investors and others at risk shall inform the Chairman of the Exchange and upon such notice be automatically suspended from the Exchange.
- Section 3(b) states that whenever it shall appear to the Chairman of the Exchange that a member or member firm is failing to meet its commitments or in financial or operating difficulty putting investors and others at risk, the Chairman shall announce to the Exchange the suspension of such member or member firm.
- Again, as these functions are more appropriately exercised by the CEO as

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Amex clarified certain aspects of the proposal and amended the proposed rule language to provide for the election of the Chairman by a majority of the members of the Board of Governors. *See* letter from J. Bruce Ferguson, Associate General Counsel, Legal & Regulatory Policy, Amex, to Joseph Corcoran, Attorney, Division of Market Regulation (''Division''), Commission, dated November 8, 1999 (''Amendment No. 1'').

[4] In Amendment No. 2, the Amex amended the proposed rule language to provide for the election of the Chief Executive Officer (''CEO'') by a majority of the members of the Board of Governors. *See* letter from J. Bruce Ferguson, Associate General Counsel, Legal & Regulatory Policy, Amex, to Joseph Corcoran, Attorney, Division, Commission, dated November 22, 1999 (''Amendment No. 2'').

[5] The Commission notes that as a result of dividing the Chairman/CEO position into two separate positions, the proposed language now permits the Chairman to be affiliated with a member of the Exchange.

the senior officer of the Exchange, the term Chairman is being changed to CEO.

2. Statutory Basis

The Exchange believes that the rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(3)[6] in particular in that it is intended to assure fair representation in the selection of its directors and administration of its affairs.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the rule change.

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, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 Amex. All submissions should refer to File No. SR–Amex–99–25 and should be submitted by January 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[6] 15 U.S.C. 78f(b)(3).

[7] 17 CFR 200.30–3(as)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42306; File No. SR–NASD–99–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the use of Hard To Borrow Lists

January 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, 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 Exchange. On November 1, 1999, the NASD filed Amendment No. 1 to the proposed rule change with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as amended 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 NASD Rule 3370 to permit the use of a ''Hard to Borrow'' list to comply with affirmative determination requirements for short sales. The text of the proposed rule change is set forth below. Additions are italicized and deletions are bracketed.

* * * * *

Rule 3370. Prompt Receipt and Delivery of Securities

(a) No change

(b) No change

(1) No change

(2) No change

(3) No change

(4) ''Affirmative Determination''

(A) No change

(B) No change

(C) The manner by which a member or person associated with a member annotates compliance with the ''affirmative determination'' requirement contained in subsection (b)(2) above (e.g., marking the order ticket, recording inquiries in a log, etc.) is not specified by the Rule and, therefore, shall be decided by each member. Members may rely on ''blanket'' or standing assurances *(i.e., ''Easy to Borrow'' lists)* that securities will be available for borrowing on settlement date to satisfy their affirmative determination requirements under this rule. [,] *For any short sales executed in Nasdaq National Market (NNM) or national securities exchange-listed (listed) securities, members also may rely on ''Hard to Borrow'' lists indicating NNM or listed securities that are difficult to borrow or unavailable for borrowing on settlement date to satisfy their affirmative determination requirements under this Rule, provided that: (i) any securities restricted pursuant to UPC 11830 must be included in such a list; and (ii) the creator of the list attests in writing on the document or otherwise that any NNM or listed securities not included on the list are easy to borrow or are available for borrowing. Members are permitted to use Easy to Borrow or Hard to Borrow lists* provided: (i) the information used to generate the *list* [''blanket'' or standing assurance] is less than 24 hours old; and (ii) the member delivers the security on settlement date. Should a member relying on *an Easy to Borrow or Hard to Borrow list* [blanket or standing assurance] fail to deliver the security on settlement date, the Association shall deem such conduct inconsistent with the terms of this Rule, absent mitigating circumstances adequately documented by the member.

(5) No change

* * * * *

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, the Commission, dated October 26, 1999. The substance of Amendment No. 1 is incorporated into this notice.