

handling certain large orders over which they have investment discretion, the specialists may not be able to comply with Amex rules for specialists adopted in conformance with Section 11(b). They also may not be able to comply with the restrictions of Sections 11(a) or 11(b) with respect to these discretionary orders.<sup>2</sup> Accommodating this trading, as a temporary measure, is in the public interest and for the protection of investors in order to maintain or restore fair and orderly securities markets.

Therefore, It Is Ordered, pursuant to Section 12(k)(2) of the Exchange Act, that:

Amex specialists shall be temporarily exempt from Section 11(a) solely for effecting transactions when acting as floor brokers for Amex orders on the floor of the NYSE for accounts in which they have investment discretion provided that,

1. the specialist's discretion, when acting as a floor broker, is limited to time and price discretion of the type exercised by floor brokers on the Amex floor prior to September 11, 2001 pursuant to Amex rules;

2. such discretionary orders to be executed by the Amex specialist acting as a floor broker exceed 50,000 shares; and

3., Amex floor officials take reasonable steps to ensure that the specialist meets its agency obligations and does not disadvantage the customers for which it acts as a floor broker;

It Is Further Ordered, That,

Amex specialists shall be temporarily exempt from Section 11(b) solely for effecting transactions as described above;

It Is Further Ordered, That,

The Amex shall be temporarily exempt from Section 11(b) to permit its specialists to effect transactions as described above.

This order shall be effective with respect to the five business days beginning on the date of the first reopening of trading on the U.S. equities and options markets after September 11, 2001.<sup>3</sup>

<sup>2</sup> While our authority to supplement Exchange Act Sections 11(a) and 11(b) in this context is derived from the Exchange Act, we acknowledge that our action will affect the application of other provisions of the securities laws that require compliance with Sections 11(a) and 11(b). Terms used in this Order have the same meanings as those terms used in Sections 11(a) and 11(b).

<sup>3</sup> The Commission has authority under Section 36 of the Exchange Act to exempt, by order, persons from the requirements of Sections 11(a) and 11(b) of the Exchange Act. Due to exigent circumstances, the procedures for such exemptions established by the Commission under Section 36(b) of the Exchange Act have not yet been followed. The

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 44791]

### Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action To Respond to Market Developments

September 14, 2001.

The United States securities markets are the world's strongest and most vibrant. The Commission has full confidence that the attacks of September 11, 2001, will have little lasting market impact. To that end, the Commission seeks to serve investors and the markets through all available means to facilitate the reopening of fair and orderly markets.

Section 12(k)(2) of the Securities Exchange Act of 1934 ("Exchange Act") grants the Commission the authority, in the event of certain major market disturbances, to issue summarily order to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission. On September 11, 2001, the U.S. equities and options markets determined not to open in light of the attacks that morning. The U.S. equities and options markets have remained closed since then. Based on all available information, the Commission has determined that:

(1) Uncertainty concerning the impact of the closure of the U.S. equities and options markets constitutes a major market disturbance characterized by "sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threatens fair and orderly markets."<sup>1</sup> In particular, the Commission seeks to ensure that, when the U.S. equities and options markets reopen for trading, they will not be confronted with undue order imbalances.

(2) Purchases by registrants of their own securities can represent an

Commission expects that, if necessary, within the period of this order, it could issue a Section 36 order, with appropriate findings and conditions, to provide similar exemptions from Sections 11(a) and 11(b) until the Amex obtains its own space.

<sup>1</sup> This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation.

important source of liquidity during times of market volatility. Registrants may be reluctant to engage in such purchases, however, because of certain securities law requirements. In particular, Exchange Act Rule 10b-18 provides registrants with a safe harbor to effect repurchases, but only if the repurchases meet the conditions specified in the Rule. Certain registrants that recently engaged in or initiated business combinations that otherwise qualify for pooling-of-interests treatment under generally accepted accounting principles also may be reluctant to effect repurchases. In this regard, Regulation S-X, Article 4 (Rules of General Application), Part 4-01, provides in pertinent part that, "Financial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided."

(3) The Commission understands that some registrants may have internal policies relating to purchases of the registrant's securities during specific time periods. These policies are designed to prevent violations of the antifraud provisions of the federal securities laws. While the antifraud provisions remain in effect, a registrant's failure to comply with those timing policies for purchases by the registrant of its securities during the period covered by the Order will not by itself be considered as any indication that the registrant may have violated the antifraud provisions. In addition, certain persons may refrain from purchase activity that otherwise serves the public interest because of concern about potential profit recovery under Section 16(b) of the Exchange Act.

(4) Temporary action with respect to the conditions of Rule 10b-18, the application of Article 4 of Regulation S-X,<sup>2</sup> and the operation of certain other provisions of the federal securities laws will provide additional flexibility and certainty to registrants and others that consider engaging in purchases of securities when the U.S. equities and options markets reopen for trading. Accordingly, these temporary measures are in the public interest and for the protection of investors in order to maintain or restore fair and orderly securities markets.

<sup>2</sup> While our authority to supplement Regulation S-X in this context is derived from the Exchange Act, we acknowledge that our action will affect filings under other provisions of the securities laws that require filings to be in compliance with Regulation S-X.

Therefore, It Is Ordered, pursuant to Section 12(k)(2) of the Exchange Act, that,

In connection with a Rule 10b-18 purchase<sup>3</sup> or with a Rule 10b-18 bid that is made during the period covered by this Order by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, an issuer, or an affiliated purchaser of the issuer, shall not be deemed to have violated Section 9(a)(2) of the Exchange Act or Rule 10b-5 under the Exchange Act, solely by reason of the time or price at which its Rule 10b-18 bids or Rule 10b-18 purchases are made or the amount of such bids or purchases or the number of brokers or dealers used in connection with such bids or purchases if the issuer or affiliated purchaser of the issuer meets all of the conditions in Rule 10b-18, with the exception that:

(i) The timing condition in paragraph (b)(2) may be satisfied if the issuer makes Rule 10b-18 purchases without regard to whether any such Rule 10b-18 purchase constitutes the opening transaction in a reported or exchange traded security or whether any such purchase would occur during the one-half hour before the scheduled close of trading on the primary market for such security; and

(ii) The volume condition in paragraph (b)(4) may be satisfied if the issuer makes all Rule 10b-18 purchases other than block purchases of a reported or exchange traded security in an amount that, when added to the amount of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or an affiliated purchaser of the issuer on that day, does not exceed 100 percent of the trading volume (determined on the basis of the 4 calendar weeks preceding the week beginning on September 10, 2001) for the security; and

It Is Further Ordered, That,

Notwithstanding the pooling-of-interests provisions in Accounting Principles Board Opinion No. 16, Business Combinations, and the related interpretations of the American Institute of Certified Public Accountants, consensuses of the Financial

<sup>3</sup> Terms used in this order have the same meanings as those terms used in Exchange Act Rule 10b-18 unless stated otherwise. Issuers repurchasing their shares pursuant to this Order may qualify for the safe harbor notwithstanding the fact that they may have shareholders selling shares pursuant to a shelf registration, so long as any selling shareholder is not an affiliate of the issuer or, if affiliated, the selling activity does not rise to the level of a distribution under Regulation M. 17 CFR 242.100 *et seq.*

Accounting Standards Board's Emerging Issues Task Force, rules and regulations of the Commission and interpretations by its staff, and other authoritative accounting guidance, acquisitions by registrants of their own equity securities during the period covered by this Order will not affect the availability of pooling-of-interests accounting and, accordingly, a registrant's financial statements will not be misleading or inaccurate solely because the registrant has engaged in such purchases and has accounted for its business combination transactions as a pooling of interests; and

It Is Further Ordered, That,

Notwithstanding the profit recovery provisions of Section 16(b) of the Exchange Act and the rules adopted under it, any purchase during the period covered by this Order by a person subject to Section 16 shall be exempt from the operation of that section with respect to any sale by that person during the preceding six months, and accordingly shall not be matched with such sale. The purchase continues to be reportable on Form 4 under Section 16(a) of the Exchange Act. The Form 4 should use transaction code "J" and describe the transaction in a footnote, making specific reference to this Order; and

It Is Further Ordered, That,

Broker-dealers need not treat the 11th, 12th, 13th and 14th of September, 2001 as business or calendar days for purposes of calculating charges or taking actions under Rules 15c3-1 and 15c3-3 arising from failed transactions or imbalances in securities accounting systems, or for the purposes of FOCUS reporting; and

It Is Further Ordered, That,

Broker-dealers that are required to do a reserve computation (including PAIB) for the week ending September 14, 2001 under Rule 15c3-3 will not be required to do such a computation, provided they do not withdraw money from their reserve bank account without first doing a computation.

This Order shall be effective with respect to the five business days beginning on the date of the first reopening of trading on the U.S. equities and options markets after September 11, 2001.

By the Commission.

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44803; File No. SR-Amex-2001-78]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC; New York Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Cincinnati Stock Exchange, Inc.; Chicago Stock Exchange, Inc.; Pacific Exchange Inc.; Philadelphia Stock Exchange, Inc.; and National Association of Securities Dealers, Inc. Regarding the Temporary Use by the American Stock Exchange LLC of the Facilities of the New York Stock Exchange, Inc.

September 17, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, notice is hereby given that on September 16, 2001, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I.A. and II below. In addition to the Amex, the New York Stock Exchange ("NYSE") filed with the SEC the proposed rule change described in Item II below; and the Boston Stock Exchange ("BSE"), Cincinnati Stock Exchange, Inc. ("CSE"), Chicago Stock Exchange ("CHX"), NYSE, Pacific Exchange, Inc. ("PCX"), Philadelphia Stock Exchange ("Phlx"), and the National Association of Securities Dealers, Inc. on behalf of Nasdaq ("Nasdaq Intermarket" or "ITS/CAES") (collectively, "ITS Participants"), filed with the SEC the proposed rule changes as described in Items I.B. and II below.

The proposed rule change concern temporary arrangements made for Amex's continued trading of Amex listed securities and exchange traded funds ("ETFs") due to the structural damage to its trading floor caused by the recent terrorist attacks. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission is also granting accelerated approval to the proposal.

#### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

##### A. Amex

The Amex proposes to amend its rules to trade Amex listed equity securities and ETFs on and through facilities provided by the NYSE. The NYSE proposes to provide such facilities to