

in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

7. By investing in a Series, shareholders will in effect hire OFI to manage the Series' assets through monitoring and evaluation of Subadvisers rather than by hiring its own employees to directly manage assets. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose unnecessary costs and delays on the Series and may preclude OFI from acting promptly in a manner considered advisable by the Board. Applicants note that each Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

8. Applicants assert that many Subadvisers charge their customers for advisory services according to a "posted" rate schedule. Applicants state that while Subadvisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Subadvisers to negotiate lower subadvisory fees with OFI, the benefits of which are likely to be passed on to the Series' shareholders.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. OFI will provide general management and administrative services to each Series, including overall supervisory responsibility of the general management and investment of the Series' assets and, subject to review and approval of the Board, will (i) set the Series' overall investment strategies, (ii) evaluate, select and recommend Subadvisers to manage all or a portion of a Series' assets, (iii) allocate and, when appropriate, reallocate the Series' assets among multiple Subadvisers, (iv) monitor and evaluate Subadviser performance, and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the relevant Series' investment objective, policies and restrictions.

2. Before a Series may rely on the order requested herein, the operation of the Series in the manner described in the application will be approved by a majority of each Series' outstanding voting securities as defined in the Act,

or, in the case of a Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 3 below, by the initial shareholder before such Series' shares are offered to the public.

3. The prospectus for each Series will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Series will hold itself out to the public as employing the "Manager of Managers" structure described in the application. The prospectus will prominently disclose that OFI has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination and replacement.

4. Within ninety days of the hiring of a new Subadviser, OFI will furnish shareholders of the applicable Series all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Subadviser. To meet this obligation, OFI will provide shareholders of the applicable Series, within ninety days of the hiring of a new Subadviser, with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

5. No trustee or officer of the Series nor director or officer of OFI will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser except for (i) ownership of interests in OFI or any entity that controls, is controlled by or is under common control with OFI; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, in controlled by or is under common control with a Subadviser.

6. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. When a Subadviser change is proposed for a Series with an Affiliated Subadviser, the Series' Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of

the Series and its shareholders and does not involve a conflict of interest from which OFI or the Affiliated Subadviser derives an inappropriate advantage.

8. Each Series will disclose in its registration statement the Aggregate Fee Disclosure.

9. At all times, independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent each Series' Independent Trustees. The selection of such counsel will be placed within the discretion of the Independent Trustees.

10. OFI will provide the Board, no less frequently than quarterly, with information about OFI's profitability on a per-Series basis. This information will reflect the impact on profitability of the hiring or termination of any Subadvisers during the applicable quarter.

11. When a Subadviser is hired or terminated, OFI will provide the Board with information showing the expected impact on OFI's profitability.

12. OFI will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-3489 Filed 2-11-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47319]

Order Exempting Options Specialists From Section 11(b) of the Securities Exchange Act of 1934 When Accepting Certain Types of Complex Orders

February 5, 2003.

I. Background

Section 11(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ prohibits a specialist² effecting as broker any transaction except upon a market or limited price order. Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual

¹ 15 U.S.C. 78k(b).

² For purposes of this order, the term "specialist" includes Designated Primary Market Makers on the Chicago Board Options Exchange, Lead Market Makers on the Pacific Exchange, and Primary Market Makers on the International Securities Exchange.

role as agent and principal in executing transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialists' books and their handling of discretionary agency orders.³ Although the Securities and Exchange Commission ("Commission") has interpreted Section 11(b) to mean that all orders, other than market or limit orders, are discretionary and therefore cannot be accepted by a specialist, it has made certain exceptions. For example, the Commission has concluded that it is appropriate to treat percentage orders⁴ and stopped orders⁵ as equivalent to limit orders because, although these orders permit a specialist to use his or her judgment to some extent, the exchange rules applicable to these orders impose sufficiently stringent guidelines to ensure that a specialist would handle the orders in a manner consistent with his or her market making duties and Exchange Act Section 11(b). Accordingly, the Commission approved exchanges' proposals to permit specialists to accept percentage orders under certain circumstances⁶ and to engage in the

³ See H. Rep. No. 1383, 73d Cong., 22; S. Rep. 792, 73d Cong., 2d Sess. 18 (1934).

⁴ A percentage order is a limited price order to buy or sell 50% of the volume of a specified stock after the percentage order is received by a specialist. A percentage order is essentially a memorandum entry left with a specialist that becomes a "live" order capable of execution when either: (i) All or part of the order is elected as a limit order on the specialist's book based on trades in the market; or (ii) a specialist holding a percentage order with a conversion instruction converts all or part of the percentage order into a limit order to make a bid or offer or to participate directly in a trade. See New York Stock Exchange, Inc. ("NYSE") Rules 13 and 123A and American Stock Exchange LLC ("Amex") Rules 131 and 154. The conversion instruction authorizes the specialist to convert all or part of a percentage order into a limit order and to be on parity with the converted percentage order.

⁵ An agreement by a specialist to "stop" securities at a specified price constitutes a guarantee by the specialist of the purchase or sale of the securities at the specified price or better. "Stopping" stock should not be confused with a stop order, which is an order designated as such by the customer that requires the specialist to buy (sell) a security once a certain price level has been reached.

⁶ See Exchange Act Release Nos. 40722 (November 30, 1998), 63 FR 67966 (December 9, 1998) (permitting a NYSE specialist to elect a percentage order based on the election of a previously elected or converted percentage order on the opposite side of the market); 39837 (April 8, 1998), 63 FR 18244 (April 14, 1998) (approving the NYSE's proposal to permit "immediate execution or cancel election" percentage orders); 39009 (September 3, 1997), 62 FR 47715 (September 10, 1997) (approving the NYSE's proposal to allow a converted percentage order to retain its priority on the book when a higher bid (lower offer) is made) and to permit a "last sale-cumulative volume" instruction, which provides that if an elected portion of a percentage order placed on the book

practice of "stopping" stock.⁷ Specifically, in approving the NYSE's proposal to allow specialists to convert a percentage order on a destabilizing tick and to convert a percentage order into a limit order to enter a quotation that betters the market,⁸ the Commission acknowledged that the NYSE's proposal permitted specialists to employ their judgment to a greater extent than the existing percentage order rule.⁹ However, the Commission concluded that the requirements imposed on a specialist when converting a percentage order for execution or quotation purposes provided sufficient limits on the

at the price of the electing sale is not executed, the elected portion of the order shall be cancelled and re-entered on the book at the price of subsequent transactions on the NYSE, if the price of the subsequent transactions is at or better than the limit specified in the order; 30265 (January 17, 1992), 57 FR 3228 (January 28, 1992) (approving an Amex proposal to permit a specialist to accept "last sale" and "buy minus-sell plus" percentage orders, permit the conversion of a percentage order into a limit order on a destabilizing tick, and allow conversions that better the market); 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) ("1987 Order") (permitting a NYSE specialist to convert a percentage order into a limit order on a destabilizing tick and to convert a percentage order into a limit order to enter a quote that betters the market); 20738 (March 8, 1984), 49 FR 9666 (March 14, 1984) (allowing an entering broker to instruct an Amex specialist to convert half of a percentage order rather than the full amount of the percentage order); 19652 (April 5, 1983), 48 FR 15756 (April 12, 1983) (approving an Amex proposal to permit percentage orders to be converted and executed on zero plus ticks (for buy orders) and zero minus ticks (for sell orders) when the order causing the conversion is at least 5,000 shares); and 19466 (January 28, 1983), 48 FR 5627 (February 7, 1983) (amending the Amex's definition of percentage order to differentiate among straight limit, last sale, and buy minus-sell plus percentage orders and adopting procedures for the handling of percentage orders).

⁷ The Commission granted permanent approval to the pilot programs of several exchanges that permit specialists to stop stock in minimum variation markets. See Exchange Act Release Nos. 37134 (April 22, 1996), 61 FR 18634 (April 26, 1996) ("BSE 1996 Order"); 36400 (October 20, 1995), 60 FR 54886 (October 26, 1995) ("Amex 1995 Order"); 36401 (October 20, 1995), 60 FR 54893 (October 26, 1995) ("CHX 1995 Order"); and 36399 (October 20, 1995), 60 FR 54900 (October 26, 1995) ("NYSE 1995 Order"). See also Exchange Act Release No. 40728 (November 30, 1998), 63 FR 67972 (December 9, 1998) (approving a Philadelphia Stock Exchange, Inc. ("PHLX") rule setting forth procedures for stopping stock where the spread in the quotation is greater than twice the minimum variation and for stopping orders in minimum variation markets). The rules of several exchanges permit specialists to stop stock when the spread is twice the minimum variation. See Amex Rule 109(c); Boston Stock Exchange ("BSE") Rule Chapter II, Section 38(b); NYSE Rule 116.30; and PHLX Rule 220. In addition, Chicago Board Options Exchange, Inc. market makers may stop options orders. See CBOE Rule 8.17.

⁸ A conversion that betters the market narrows the spread, adds depth to a prevailing bid or offer, or establishes a new bid or offer immediately after a transaction has cleared the floor of bids and offers.

⁹ See 1987 Order, *supra* note 5.

specialist to ensure that the specialist would implement the conversion provisions in a manner consistent with his or her market making duties and Section 11(b) of the Exchange Act.¹⁰ These requirements are intended to minimize a specialist's discretion and to ensure that the specialist cannot, through his or her use of the conversion process, unduly influence market trends.

In addition, in approving exchanges' rules permitting specialists to stop stock in minimum variation markets, the Commission found it appropriate to treat stopped orders as equivalent to limit orders because a stopped order would be automatically elected at the best bid or offer, or better if obtainable.¹¹ The Commission noted that although stopped orders permit a specialist to employ his or her judgment to some extent, the requirements imposed on a specialist for granting stops in minimum variation markets provide that the specialist will implement the stopping stock provisions in a manner consistent with his or her market making duties and Section 11(b).¹²

¹⁰ Specifically, the 1987 Order noted that the NYSE's proposal imposed three basic limitations on the conversion of percentage orders on a destabilizing tick: (1) An order may be converted on a destabilizing tick for the purpose of participating in a trade of 10,000 or more shares; (2) the execution effected by the conversion may occur no more than 1/4 point away from the last sale, although this requirement may be waived with the approval of an NYSE Floor Official; and (3) the specialist cannot convert percentage orders for consecutive, or contemporaneous, trades on destabilizing ticks without the approval of a Floor Governor. See also NYSE Rule 123A.30. With regard to conversions made to better the market, the 1987 Order noted that the NYSE's proposal permitted a specialist to: (1) Convert an order on a stabilizing tick to better the market in such size as was appropriate to further the specialist's market making duties; (2) convert an order on a destabilizing tick to narrow the spread or to establish a new bid or offer immediately after a transaction had cleared the floor of bids and offers, provided that the conversion was within 1/8 point of the last sale; and (3) convert an order on a destabilizing tick, exclusive of the 1/8 point requirement, to add size to a prevailing bid or offer. The NYSE's rules provide additional restrictions on bettering the market conversions. See NYSE Rule 123A.30.

¹¹ See Amex 1995 Order and NYSE 1995 Order, *supra* note 6. See also BSE 1996 Order and CHX 1995 Order, *supra* note 6 (finding that stopped orders are equivalent to limit orders because they would be elected automatically after a transaction takes place on the primary market at the stopped price).

¹² Specifically, on the Amex and the NYSE, a specialist may stop an order in a minimum variation market only where there is a substantial imbalance on the opposite side of the market from the order being stopped. In this situation there is an increased likelihood of price improvement for the stopped order. In addition, NYSE Rule 116.30 and Amex Rule 109(c) provide that an order to which a specialist grants a stop may not exceed

II. Complex Orders

Current exchange rules permit floor brokers to represent complex options orders, including, among others, spread,¹³ straddle,¹⁴ and combination orders.¹⁵ According to two exchanges, there are fewer floor brokers today on the exchange floors than there were in the past. As a result, there may be times when, under current rules, such orders may not be able to be represented or executed on a national securities exchange. As a result of these concerns, on July 19, 2001, the Amex filed a proposal with the Commission, pursuant to Section 19(b)(1) of the Exchange Act¹⁶ and Rule 19b-4 thereunder,¹⁷ to amend its rules to permit Amex options specialists to accept spread orders.¹⁸ The Commission determined that consideration of the Amex proposal required addressing issues related to Exchange Act Section 11(b).

According to the Amex, the Amex floor brokers who focused primarily on executing spread orders ("spread

2,000 shares and the aggregate number of shares as to which stops are in effect may not exceed 5,000 shares. The 5,000-share limit is designed to ensure that the amount of stopped stock does not become so large that there would, in effect, cease to be an imbalance on the opposite side of the market from the order being stopped (*i.e.*, less likelihood of price improvement for the order being stopped). *See* Amex 1995 Order and NYSE Order, *supra* note 6. With regard to the rules of the Chicago Stock Exchange ("CHX") and the BSE, the Commission concluded that because stopped orders would be elected automatically after a transaction takes place on the primary market at the stopped price, the requirements imposed on specialists under the CHX and BSE rules provided sufficient guidelines to ensure that a specialist would implement the rules for stopping stock in minimum variation markets in a manner consistent with his or her market making duties and Section 11(b). *See* BSE 1996 Order and CHX 1995 Order, *supra* note 6.

¹³ A spread order is an order to buy a stated number of option contracts and to sell the same number of option contracts, or contracts representing the same number of shares at option, in a different series of the same class of options.

¹⁴ A straddle order is an order to buy (sell) a number of call option contracts and to buy (sell) the same number of put option contracts on the same underlying security, which contracts have the same exercise price and expiration date.

¹⁵ A combination order is an order involving a number of call option contracts and the same number of put option contracts on the same underlying security and representing the same number of shares at option. In the case of adjusted option contracts, a combination order need not consist of the same number of put and call contracts if the contracts both represent the same number of shares at option. A adjusted option contract is a contract whose terms are changed to reflect certain fundamental changes to the underlying security. For example, after an adjustment for a 2 for 1 stock split, an investor who held an option on 100 shares of XYZ stock with an exercise price of \$60 may hold two options, each on 100 shares of XYZ stock and with an exercise price of \$30.

¹⁶ 15 U.S.C. 78s(b)(1).

¹⁷ 17 CFR 240.19b-4.

¹⁸ *See* File No. SR-Amex-2001-48.

brokers") were unable to remain in business and the loss of the spread brokers has reduced spread order executions on the Amex.¹⁹ Other exchanges have also expressed concern that the disappearance of floor brokers has meant a shift in business to the over-the-counter ("OTC") market.²⁰

As noted above, the Commission previously has permitted specialists to accept percentage orders and to stop orders in part because the exchange rules allowing specialists to accept percentage orders and to stop orders sufficiently limited a specialist's discretion and ensured that a specialist's handling of those orders was consistent with his or her market making duties and Section 11(b) of the Exchange Act. Similarly, the Commission believes that it is appropriate in the public interest and consistent with the protection of investors to exempt, subject to certain conditions, options specialists from the provisions of Section 11(b) of the Exchange Act to allow them to accept orders in option contracts on the same underlying security where the customer specifies the number of contracts for each series and the net debit or credit at which the order will be executed ("Complex Orders"), including spread, straddle, and combination orders.²¹ Such an exemption would allow market participants to continue to have the ability to purchase and sell Complex Orders on an exchange market, under conditions that would reduce the discretion the specialist has in executing these orders.

The Commission believes it is necessary for the protection of investors and appropriate in the public interest to condition a specialist's handling of Complex Orders, as indicated below. These conditions will limit a specialist's discretion in the handling of such orders. The conditions also require the

¹⁹ See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Sharon M. Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated October 18, 2001.

²⁰ For example, the Philadelphia Stock Exchange, Inc. ("PHLX") has stated that the number of foreign currency options ("FCO") participants and firms clearing FCOs has declined steadily since the 1980s as the market has increasingly shifted to OTC trading. *See* Exchange Act Release No. 44372 (May 31, 2001), 66 FR 30780 (June 7, 2001) (approving on a one-year pilot basis a PHLX proposal to permit FCO participants to, among other things, contact the specialist to negotiate the total debit or credit for transacting a spread, straddle, or combination FCO order). The PHLX allowed the pilot program to expire because there is at least one PHLX floor broker available to handle customer FCO orders and, accordingly, the relief provided by the pilot program currently is not necessary.

²¹ For purposes of this order, the term Complex Order does not include orders that have a non-option component.

exchange on which a specialist trades to have surveillance procedures in place to monitor specialists' handling of these orders for compliance with the exchange's rules and the conditions in this exception.

More specifically, the conditions set forth below should help to ensure that a specialist is not able to unduly influence market trends through his or her handling of Complex Orders. In this regard, the conditions limit a specialist's discretion by providing that an exchange's rules must require a specialist to execute a Complex Order as soon as it becomes possible to execute the order at the net debit or credit specified by the customer, consistent with its priority rules. The conditions also provide that an exchange's rules must require a specialist who accepts a Complex Order to announce the terms of the order to the trading crowd immediately after receiving the order. In addition, to address concerns regarding a potential conflict of interest that may arise if a specialist handles the orders of customers of his or her own firm, as well as the orders of other brokers' customers that are given to the specialist for execution, an exchange must have rules that prohibit a specialist from accepting orders from customers of the firm with which the specialist is associated.²²

As noted above, the conditions set forth below are designed to reduce the specialist's discretion in handling Complex Orders. As a result, the conditions should help to provide the type of protection that the prohibition in Exchange Act Section 11(b) was enacted to provide, and at the same time permit exchange specialists, not solely floor brokers, of which there are relatively few, to accept Complex Orders.

For these reasons, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to exempt a specialist from the provision in Section 11(b) of the Exchange Act that prohibits a specialist from effecting on the exchange as broker any transaction except upon a market or limit order, provided that:

(1) The order effected by such specialist: (i) Is comprised solely of options on the same underlying security and the customer specifies the number

²² The Commission has stated previously that specialists should not be permitted to have their own customers, as opposed to customers of other brokers whose orders are given to the specialist for execution. In this regard, the Commission stated that transactions for a specialist's own customers do not affirmatively assist his market making activities and are fraught with possibilities of abuse. *See* SEC, Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., Part 2, 166 (1963).

of contracts and the net credit or debt at which the order is to be executed ("Complex Order");

(2) The rules of the exchange on which a specialist trades: (a) Prohibit the specialist from accepting Complex Orders from customers of the firm with which the specialist is associated; (b) require the specialist to time stamp a Complex Order upon receipt of the order; (c) require the specialist who accepts a Complex Order to announce immediately after receipt of the order the price, terms, and size of the Complex Order to the trading crowd; (d) require the specialist to execute the Complex Order as soon as it is possible to execute, consistent with the exchange's priority rules, at the net debit or credit specified by the customer; and

(3) The exchange on which the specialist trades has surveillance procedures in place for monitoring specialists' compliance with the exchange's rules governing the handling of Complex Orders.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,²³ that a specialist is exempt from the prohibition in Section 11(b) of the Exchange Act from effecting on the exchange as broker any transaction except upon a market or limit order, subject to the conditions set forth above.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-3487 Filed 2-11-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47328; File No. SR-Amex-2003-05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Conforming Amendments to the Amex Company Guide

February 6, 2003.

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

²³ 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 3, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

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

The Amex proposes to amend Section 102(a) of the Amex *Company Guide* to correct a reference contained therein and conform to recently approved amendments to Section 101 of the Amex *Company Guide*. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

American Stock Exchange Company Guide

Section 102

(a) Distribution—Minimum public distribution* of 500,000, together with a minimum of 800 public shareholders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders, except for applicants seeking to qualify for listing pursuant to Section 101([d] e).

The Exchange may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 public shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the Exchange will review the nature and frequency of such activity and such other factors as it may determine to be relevant in ascertaining whether such issue is suitable for auction market trading. A security which trades infrequently will not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

In addition, the Exchange may also consider the listing of the securities of a bank which has a minimum of 500,000 shares publicly held and a minimum of 400 public shareholders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Except for banks, companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, are normally not considered eligible for listing unless the public distribution appreciably exceeds 500,000 shares.

*The terms "public distribution" and "public shareholders" as used in the *Company Guide* include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (i.e., 10% or greater), affiliated or family holdings.

(b)-(c)—No change.

* * * * *

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 Exchange 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 Exchange 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

The Exchange proposes to amend Section 102(a) of the Amex *Company Guide* to change a reference therein from Section 101(d) to Section 101(e). The Exchange seeks to correct the reference in order to conform to a redesignation of the paragraph references in Section 101 pursuant to recently approved amendments to Section 101³ of the Amex *Company Guide*. The existing reference to Section 101(d) of the Amex *Company Guide* is meant to refer to the Alternative Listing Standards, which are now referenced in Section 101(e).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁴ in general and furthers the objectives of Section

³ See Securities Exchange Act Release No. 47119 (January 3, 2003), 68 FR 1494 (January 10, 2003) (approving File No. SR-Amex-2002-97)

⁴ 15 U.S.C. 78f(b).