For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the In Person Trading Volume Requirement for Registered Option Traders

May 31, 1995.

On November 18, 1994, the American Stock Exchange, Inc. (''Amex'' or ''Exchange''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''Commission'') a proposal regarding the in person [3] trading volume requirement for Registered Options Traders (''Traders'').[4] Notice of the proposal appeared in the **Federal Register** on December 12, 1994.[5] No comment letters were received on the proposed rule change. The Exchange filed Amendment No. 1 to the proposal on January 9, 1995,[6] and Amendment No. 2 on April 6, 1995.[7] This order approves the proposal, as amended.

Specifically, the Exchange proposes to amend Rule 958 to: (1) Require Traders to execute at least 25% of his or her individual options transactions and total contract volume in each calendar quarter in person and not through the use of orders; [8] (2) require Traders to have at least 75% of their trading activity (measured in terms of contract volume) in the classes of options to which they are assigned, as opposed to the 50% currently required;[9] and (3) extend market maker capital and margin treatment for a Trader's opening off-floor orders provided that at least (i) 80% of their total transactions and contract volume on the Exchange in each calendar quarter are executed in person and not through the use of orders and (ii) the Trader satisfies its obligations pursuant to Rule 958.[10] In addition, the proposal requires Traders to satisfy the market making obligations set forth in Amex Rule 958 [11] for all off-floor orders for which a Trader receives market maker treatment and, in general, that those orders be effected only for purposes of hedging, reducing the risk of, rebalancing, or liquidating open positions of the Trader.

Currently, under Amex Rule 958 there is no in person trading volume or transaction requirement for Traders. The Exchange believes, however, that establishing an in person requirement for Traders of at least 25% of a Trader's individual transactions and total contract volume during each calendar quarter will result in better, more liquid markets because Traders will be available in trading crowds to contribute to the maintenance of fair and orderly markets, and will encourage Traders to make more competitive bids and offers and trade for their own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for options contracts, or a temporary distortion of the price relationships between options.

With regard to market maker treatment for off-floor options transactions, Amex Rule 958(g) currently provides that only option transactions initiated on the Amex's floor count as market maker transactions. Thus, only on-floor market maker transactions qualify for favorable capital and margin treatment under the Amex's rules, even if such orders are entered to adjust or hedge the risk of positions of the Trader that result from the Trader's on-floor market making activity.[12]

The Amex states that because a Trader currently cannot effectively adjust his or her positions or engage in hedging or other risk limiting opening transactions from off the Exchange floor without incurring a significant economic penalty, Amex Traders must either be physically present on the floor at all times while the market is open, or face significant risks of adverse market movements during those times when they must necessarily be absent from the trading floor. The Amex argues that by imposing costs on certain hedging or risk-adjusting transactions of Traders, the Amex's current rules may prevent Traders from effectively discharging their market making obligations and expose them to unacceptable levels of risk. The Amex believes that the amended proposal addresses these concerns by offering Traders the opportunity to obtain market maker treatment for up to 20% of their off-floor opening transactions.

Traders who elect market maker treatment for off-floor opening transactions but fail to satisfy the proposal's requirements, including the 80% in person requirement, will be referred to the Amex's Committee on Specialist and Registered Trader Performance and subject to the disciplinary measures provided in Article V of the Exchange's Constitution.[13] Under Article V of the Exchange's Constitution, the Exchange

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] ''In person'' means that options transactions are personally executed by a Trader on the Amex floor and not through the use of orders given to a floor broker or left on a specialist's book.

[4] Traders are considered specialists for purposes of the Act. *See* Amex Rule 958, Commentary .01.

[5] *See* Securities Exchange Act Release No. 35050 (December 5, 1994), 59 FR 64002.

[6] As discussed herein, in Amendment No. 1 the Exchange clarifies the obligation of Traders receiving market maker treatment for off-floor transactions and proposes disciplinary measures for Traders improperly accepting market maker treatment for such transactions. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated January 9, 1995 (''Amendment No. 1'').

[7] In Amendment No. 2, the Exchange proposes to amend Amex Rule 958, Commentary .01 and .03, to provide that Traders must have at least 75% of their trading activity in classes in which they are assigned. Additionally, the Exchange proposes that Traders who elect market maker treatment for off-floor opening transactions but fail to satisfy the requirements of Rule 958 will be referred to the Exchange's Committee on Specialist and Registered Trader Performance rather than the Exchange's Minor Floor Violation Disciplinary Committee as provided in Amendment No. 1. *See* Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated April 5, 1995 (''Amendment No. 2'').

[8] The proposal also gives the Exchange the authority to increase the 25% in person requirement if the Exchange, in its discretion, deems such increase to be necessary. The Exchange would not have the authority to lower the in person requirement below 25% without the prior approval of the Commission pursuant to a rule filing under Section 19b of the Act.

[9] *See* Amendment No. 2, *supra* note 7.

[10] *See* Amendment No. 1, *supra* note 6. Currently, Rule 958, Commentary .03 provides, among other things, that except for unusual circumstances, at least 50% of a Trader's trading activity in any calendar quarter (in terms of contract volume) must ordinarily be in classes of options to which the Trader is assigned. In Amendment No. 2, the Exchange proposes to amend this requirement so that at least 75% of total activity (in terms of contract volume) must be in assigned classes. *See* Amendment No. 2, *supra* note 7.

[11] These obligations include, but are not limited to, requiring that such transactions contribute to the maintenance of fair and orderly markets, and requiring market makers to bid and offer within prescribed parameters.

[12] Questions of margin and capital treatment do not arise in connection with closing transactions initiated from off the floor, because they only reduce or eliminate existing positions.

[13] *See* Amendment No. 2, *supra* note 7.