may impose appropriate discipline for violations of the Act and the Exchange's rules, including expulsion, suspension, limitation of activities, fines, censure, or any other suitable sanction.¹⁴

The Amex believes that the amended proposal presents a more appropriate and realistic treatment of Trade transactions initiated from both off the trading floor and in person than what is provided for under existing Exchange Rule 958. The Amex believes that requiring Traders to execute at least 25% of their transactions and total contract volume in each calendar quarter in person and, further, extending favorable margin and capital treatment for off-floor transactions only to those Traders who satisfy the 80% in person transaction and trading volume requirement, should have the effect of increasing the extent to which Trader transactions contribute to liquidity and to the maintenance of fair and orderly markets on the Amex by providing for a greater degree of in person trading by Traders and by enabling Traders to better manage the risk of their market making activities. Thus, the Amex believes that the proposal is consistent with and in furtherance of the objectives of Section 6(b)(5) and Section 11(a) of the Act in that it will promote the maintenance of fair and orderly markets on the Amex and will contribute to the protection of investors and the public interest.

The Commission finds that the proposal rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.15 In addition, the Commission finds that the proposal is consistent with the requirement under Section 11(b) of the Act and the rules thereunder that require market maker transactions to be consistent with the maintenance of fair and orderly markets.16

The Commission believes that the proposal is a reasonable effort by the Amex to accommodate the needs of Traders to effect off-floor opening transactions while reinforcing the requirement under Amex Rule 958 that Traders' transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. The Commission

believes that the proposed 25% minimum in person trading requirement, the 75% minimum assigned class requirement, and the 80% in person requirement for market maker treatment for off-floor trades, taken together, will help to ensure that Traders' transactions continue to contribute to the maintenance of fair and orderly markets while, at the same time, enabling Traders to better manage the risk of their market making activities.

As the Amex has noted, under the current requirements, Traders who adjust existing positions for hedging purposes while not physically present on the Exchange floor cannot receive market maker margin treatment for such orders under any circumstances and must decide whether to close out their positions or place their orders in a customer margin account requiring 50% margin. While this may not be an unreasonable result in many cases, the Commission believes that the Amex has set forth a reasonable proposal that permits market maker treatment for certain off-floor orders under very limited circumstances that ensure that such orders must contribute to the maintenance of fair and orderly markets and that require Traders to comply with a heightened 80% in person trading requirement.

Moreover, by requiring that a percentage of Traders' transactions be effected in person and by strengthening the requirement that a substantial percentage of Traders' transactions be effected in their appointed classes, the proposal will improve Amex market maker capabilities. The Commission believes these requirements will help to ensure that Traders will be physically present in their appointed classes to respond to public orders and to improve the price and size of the markets made on the Amex floor. In addition, the proposal will have the effect of reducing the extent to which Amex Traders can effectively function as privileged investors by entering the Amex floor only long enough to drop off orders with a floor broker, without ever actually making competitive quotations or otherwise affirmatively functioning as market makers. Thus, the Commission believes the Amex proposal will serve to maintain fair and orderly markets and generally promote the protection of investors and the public interest.17

In summary, the Commission believes that the introduction of an in person trading requirement, an increase in the required percentage of trades in assigned classes, and the availability of market maker treatment for a limited number of off-floor transactions, as described above, should help to ensure the stability and orderliness of the Amex's markets.

The Commission expects the Amex to closely monitor those Traders electing to receive market maker treatment for off-floor orders as provided under the proposal to ensure that they are meeting the in person trading requirements in addition to their other market making obligations required under Rule 958, as amended. The Amex has represented that market makers who choose to receive favorable margin and capital treatment under the proposal but fail to satisfy the proposal's requirements will be referred to the Exchange's Committee on Specialist and Registered Trader Performance and subject to the sections available under Article V of the Exchange's Constitution. 18 The Commission expects the Exchange to impose strict sanctions for violations of the rule, particularly in cases of egregious or repeated failures to comply with the rule's requiremets. 19

Finally, the Commission notes that the staff of the Board of Governors of the Federal Reserve System ("Board") has previously issued a letter raising no objection to the Commission's approval of a substantively similar proposal by the CBOE based on the Commission's belief that the off-floor transactions of market makers for which they can receive market maker treatment will be designed to contribute to the maintenance of a fair and orderly market and would be consistent with the obligations of a specialist under Section 11 of the Act.²⁰

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission notes that Amendment

¹⁴ *Id*.

^{15 15} U.S.C. 78f(b)(5)(1988).

¹⁶ 15 U.S.C. 78k (1982) and 17 CFR 240.11b–1.

¹⁷ See Securities Exchange Act Release No. 21008 (June 1, 1984), 49 FR 23721 (June 7, 1984), (order approving proposed rule change by the Chicago Board Options Exchange ("CBOE") establishing minimum in person and assigned class trading requirements for market makers).

¹⁸ See Amendment No. 2, supra note 7.

¹⁹ The Amex plans to issue a circular to its membership describing the rule change and emphasizing the importance of monitoring off-floor trading activity. Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on January 10, 1995.

²⁰ See Securities Exchange Act Release No. 34104 (May 25, 1994), 59 FR 28438 (June 1, 1994), note 13 (citing letter from Scott Holz, Senior Attorney, Board, to Howard Kramer, Associate Director, Division, Commission, dated March 9, 1994) ("Exchange Act Release No. 34104").