

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The proposed rule change is also consistent with Section 11(b) of the Act which allows exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no 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 proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-95-19 and should be submitted by August 18, 1995.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed 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 Sections 6(b)(5) and 11 of the Act.<sup>4</sup> The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 11(b) of the Act and Rule 11b-1 thereunder,<sup>5</sup> which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Under the pilot program, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or a zero plus tick, which previously required Floor Official approval, can be effected under the pilot procedures without a Floor Official's approval, but continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, a specialist is required to re-enter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in a significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile market conditions or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In our 1994 Approval Order,<sup>6</sup> the Commission asked the Amex to submit a report setting forth the criteria developed by the Exchange to determine whether liquidating transactions effected by specialists pursuant to the pilot were necessary and appropriate in connection with fair and orderly markets. The Commission also asked the Amex to provide information regarding the Exchange's monitoring of

liquidating transactions effected by specialists on any destabilizing tick. In addition, the Commission asked the Amex to provide the following information in its report: (1) a review of all liquidating transactions effected by specialists on any destabilizing ticks; (2) a review of liquidating transactions by specialists to determine that the required Floor Official approval was obtained where necessary; and (3) a review of liquidating transactions in light of dealer participation levels and re-entry into the market in terms of timing and support.

In April 1995, the Commission extended the pilot program for three months to give the Exchange additional time to prepare the report discussed above and submit the data to the Commission for its consideration of whether the pilot program should be granted permanent approval.<sup>7</sup> The Exchange submitted the report in May 1995. After reviewing the data, the Commission agrees with the Exchange that the pilot generally is working well. In particular, the Commission believes the report indicates that specialist generally are entering the aftermarket after effecting liquifying transactions when appropriate and that the Exchange has developed surveillance procedures that enable it to monitor specialists' reliquifying activity.

The Commission believes, however, that further monitoring of the pilot is necessary before permanent approval can be granted. In this regard, the Exchange should continue to emphasize the requirements of the rule, including the necessity for floor official approval of specialists' purchases and sales on direct plus or minus ticks, and that such transactions can only be effected if reasonably necessary for the maintenance of fair and orderly markets. In addition, where proper procedures are not followed, the Amex should take appropriate disciplinary action.

The Commission has therefore decided to extend the pilot program for one year. During the one year extension, the Commission expects the Amex to continue to monitor compliance with the pilot program procedures and report any non-compliance with the rule and the action the Amex has taken as a result of such non-compliance. The Amex should prepare an additional report as described above and submit the data to the Commission for its consideration of whether the pilot

<sup>4</sup> 15 U.S.C. 78f and 78k (1988).

<sup>5</sup> 17 CFR 240.11b-1 (1994).

<sup>6</sup> See *supra* note 3.

<sup>7</sup> See *supra* note 3.