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–94–58 and should be submitted by January 25, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–35146; File No. SR–Amex– 94–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Proposed Commentary .02 to Rule 60

December 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 14, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The text of the proposed rule change is as follows: *italics* indicate words to be added.

Rule 60 Commentary

.01 Electronic Display Book—NYSE Disclaimer

No Change.

.02 On-Line Comparison System and Other NYSE Facilities

The Amex has entered into an agreement with the New York Stock Exchange under which Amex members and member organizations will be utilizing the NYSE's On-Line Comparison System ("OCS") for the comparison of Amex equity and bond transactions. The Amex may enter into

additional agreements with the NYSE in the future relating to the use of other NYSE systems, services, or facilities by Amex members and member organizations. In connection with member or member organization use of OCS or any such other NYSE system, service, or facility, the New York Stock Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment thereof by the member or member organization.

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 self-regulatory organization 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 self-regulatory organization 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 Amex has reached agreement with the New York Stock Exchange to integrate the Amex's Equity Intra-Day Comparison System ("IDC") into the NYSE's On-Line Comparison System ("OCS"), so that Amex equity and bond transactions can be compared through OCS. This will enable members to utilize the same computer terminal for the comparison of both Amex and NYSE securities and thus lessen the cost to the member firm community. The integration is being accomplished in two steps. Amex listed corporate bonds began to be compared through OCS on October 21, 1994 and equities are expected to be phased in by the end of the first quarter of 1995.

The Amex Constitution (Article IV, Section 1(e)) currently provides that the Exchange shall not be liable for any damages incurred by a member firm growing out of its use of the facilities afforded by the Exchange for the conduct of its business (which includes the use of the Exchange's trading systems), except as the Exchange may otherwise provide. The NYSE Constitution has a similar provision regarding use of its facilities by its members. These provisions reflect the common understanding that exchanges should not bear the risk and liability associated with member firm use of their systems. In connection with the

OCS agreement, the NYSE is requiring that, like the Amex, it be protected from liability with regard to Amex member firm use of OCS. This is similar to protection which the NYSE requested and obtained when the Amex licensed the NYSE's electronic equity display book for use on the Amex floor in 1992. At that time, the Exchange adopted a Commentary under Rule 60 providing the protection requested by the NYSE with respect to Amex member firm use of the display book.

As the Exchange may enter into additional agreements with the NYSE in the future relating to the use of other NYSE systems, services, or facilities by Amex member firms, it is proposed that the Exchange adopt a liability disclaimer provision that covers not only the current situation involving the use of OCS, but also all future situations where Amex member firms are using other NYSE facilities in accordance with similar agreements with the NYSE.¹ The new Commentary to Rule 60 will be disseminated to the membership, upon SEC approval.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposed rule change is also consistent with Section 17A of the Act in that is fosters the accurate clearance and settlement of securities transactions.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

¹The NYSE acknowledges that under New York State Common Law, a liability disclaimer such as the instant one does not insulate the NYSE from loss due to gross negligence or willful misconduct. Conversation between Steve Abrams and Michael Simon, Milbank, Tweed, Hadley & McCloy, Counsel to NYSE, and Amy Bilbija, Attorney, Commission, dated December 2, 1994.