

equities. As part of that licensing agreement, the NYSE required that it be protected from liability for damages sustained by Amex members and member organizations using the display book on the Amex floor. Consequently, the Amex adopted a policy statement disclaiming NYSE liability for such damages.<sup>3</sup>

Most recently, the Amex entered into an agreement with the NYSE 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.

As 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 member firms, this proposal would codify a liability disclaimer provision to cover 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.<sup>4</sup> The Amex plans to disseminate proposed Commentary .02 to its Rule 60 to the membership, upon SEC approval.

The Commission notes that the Amex Constitution (Article IV, Section 2(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. Further, the NYSE Constitution has a similar provision regarding use of its facilities by its members. Finally, the Commission notes that the terms of the proposed Commentary are merely a codification of the contractual agreements between the Amex and the

NYSE wherein the Amex has agreed to disclaim NYSE's liability under the specified circumstances referred to herein.

The Commission believes that it is reasonable for the NYSE to be released from liability for injuries sustained by Amex members and member organizations using the NYSE's OCS. As noted above, the proposed rule change is similar to existing Amex and NSE rules that limit exchange liability. In addition, under similar circumstances, the Commission has allowed licensee exchanges to release licensors from certain liability for damages resulting from use of their product.<sup>5</sup> Finally, the Commission wishes to emphasize that this disclaimer only affects NYSE liability for losses sustained by Amex members and member organizations using OCS and does not extend to customer-related losses.

### III. Conclusion

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 the requirements of Section 6(b).<sup>6</sup> In particular, 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, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The Commission also finds that the proposal is consistent with Section 17A<sup>7</sup> in that it furthers the use of new data processing and communications techniques that should result in more accurate clearance and settlement of securities transactions.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-94-50) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

<sup>5</sup> For example, the Commission has approved limited disclaimers of liability for licensors of the indexes underlying index options. See, e.g., Securities Exchange Act Release Nos. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (regarding options on Russell 2000 Index); and 19908 (June 24, 1983), 48 FR 30815 (July 5, 1983) (regarding options on Standard & Poor's 500 Stock Price Index).

<sup>6</sup> 15 U.S.C. § 78f(b) (1988).

<sup>7</sup> 15 U.S.C. 78q-1 (1988).

<sup>8</sup> 15 U.S.C. § 78s(b)(2) (1988).

<sup>9</sup> 17 CFR 200.30-3(a)(12) 1994.

Margaret H. McFarland,

Deputy Secretary.

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### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Warrants Based on the Value of the U.S. Dollar in Relation to the Mexican Peso

February 13, 1995.

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 February 8, 1995, 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 Amex. 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 Exchange proposes to approve for listing and trading under section 106 of the Amex Company Guide ("Guide") warrants based on the value of the U.S. dollar in relation to the Mexican peso ("Mexican Peso Warrants"). The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

#### 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 discuss 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

Under section 106 (Currency and Index Warrants) of the Guide, the Exchange may approve for listing warrants based on the relation of the

<sup>3</sup> See Securities Exchange Act Release No. 32140 (April 14, 1993), 58 FR 21327 (April 20, 1993).

<sup>4</sup> The 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 the 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.