

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

The subject matter of the closed meeting scheduled for Tuesday, October 9, 2001, will be:

Institution of an administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 2, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-25125 Filed 10-2-01; 4:10 pm]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [66 FR 49727, September 28, 2001].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, October 3, 2001 at 10 a.m.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered at the open meeting scheduled for Wednesday, October 3, 2001: Final Rule Amendments to Broker-Dealer Books and Records Rules 17a-3 and 17a-4 Under the Securities Exchange Act of 1934.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: October 2, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-25126 Filed 10-2-01; 4:31 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 44874/September 28, 2001]

Securities Exchange Act of 1934; Exemptive Order Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 Issuing Exemptive Relief To Respond to Market Developments

Section 36 of the Securities Exchange Act of 1934 (Exchange Act) authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Following the events of September 11, 2001, trading in the equity and options markets halted for four days. To facilitate the reopening of trading, the Commission, recognizing that purchases by registrants of their own securities can represent an important source of liquidity to maintain fair and orderly markets, used its authority under section 12(k)(2) of the Exchange Act to relax certain regulatory provisions to permit additional flexibility in making such purchases.¹ While there is no longer an emergency and the markets are functioning well, nonetheless, under the current highly unusual circumstances, it continues to be useful to facilitate issuers repurchases to enhance orderly markets. We believe that this exemption providing similar relief is appropriate in the public interest. This exemption, particularly in light of the other provisions of Rule 10b-18 that remain applicable and its limited duration, is consistent with the protection of investors.

Accordingly,
It is Ordered, pursuant to section 36 of the Exchange Act, that,

In connection with a Rule 10b-18 purchase² or with a Rule 10b-18 bid that is made during the period covered by this Order by the use of any means

or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, an issuer, or an affiliated purchaser of the issuer, shall not be deemed to have violated section 9(a)(2) of the Exchange Act or Rule 10b-5 under the Exchange Act, solely by reason of the time or price at which its Rule 10b-18 bids or Rule 10b-18 purchases are made or the amount of such bids or purchases or the number of brokers or dealers used in connection with such bids or purchases if the issuer or affiliated purchaser of the issuer meets all of the conditions in Rule 10b-18³ with the exception that:

1. The timing condition in paragraph (b)(2) may be satisfied by an issuer whose security has an average daily trading volume (ADTV) value of \$1,000,000 or more and a public float value of \$150 million or more if that issuer effects purchases that (a) do not constitute the opening transaction in the security, and (b) occur up to the ten minutes before the scheduled close of trading on the primary market for such security; and

2. The volume condition of paragraph (b)(4) may be satisfied if the issuer makes all Rule 10b-18 purchases other than block purchases of a reported or exchange traded security in an amount that, when added to the amount of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or an affiliated purchaser of the issuer on that day, does not exceed 100 percent of the trading volume (excluding the week of September 10, 2001 from the four week calculation) for that security;⁴ and

It is Further Ordered that,

Notwithstanding the pooling-of-interest provisions in the Accounting Principles Board Opinion No. 16, *Business Combinations*, and the related interpretations of the American Institute of Certified Public Accountants,

³ All other conditions of Rule 10b-18 remain in effect, including the timing condition with respect to issuers whose securities do not meet the \$1,000,000 average daily trading volume (ADTV) value and \$150 million public float test stated in paragraph 1 above. ADTV and public float shall be determined in a manner consistent with 17 CFR 242.100. This Order is separate from the Emergency Order issued on September 14, 2001 and extended on September 21, 2001. Securities Exchange Act Release No. 44791 (September 14, 2001); Securities Exchange Act Release No. 44827 (September 21, 2001).

⁴ The four-week trading volume calculation excludes the week of September 10, 2001. For example, if an issuer's Rule 10b-18 purchases occur on October 2, 2001, the four calendar week trading volume calculation should be determined using the calendar weeks beginning on August 27th, September 3rd, September 17th, and September 24th.

¹ Securities Exchange Act Release No. 44791 (September 14, 2001). Securities Exchange Act Release No. 44827 (September 21, 2001).

² Terms used in this order have the same meaning as those terms used in Exchange Act Rule 10b-18 unless stated otherwise.

consensuses of the Financial Accounting Standards Board's Emerging Issues Task Force, rules and regulations of the Commission and Interpretations by its staff, and other authoritative accounting guidance, acquisitions by registrants of their own equity securities during the period covered by this Order will not affect the availability of pooling-of-interests accounting and, accordingly, a registrant's financial statements will not be misleading or inaccurate solely because the registrant has engaged in such purchases and has accounted for its business combination transactions as a pooling of interests.⁵

This Order shall be effective beginning on October 1, 2001 through October 12, 2001.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24994 Filed 10-4-01; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 44871]

Order Regarding Government Securities Reconciliations

September 28, 2001.

Section 36 of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. In light of the events of September 11, 2001, the Commission has determined to provide broker-dealers with further relief under Exchange Act Rules 15c3-1 and 15c3-3 to facilitate the orderly reconciliation of transactions in government securities. Accordingly,

It is ordered, pursuant to Section 36 of the Exchange Act, that,

Broker-dealers need not consider the days September 24, 2001 through

October 5, 2001, inclusive, as business or calendar days for purposes of taking deductions, when computing net capital under Rule 15c3-1 or for purposes of determining the amount of cash and/or qualified securities required to be maintained in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" in accordance with the formula set forth in Exhibit A to Rule 15c3-3, arising from aged fail transactions in government securities and unresolved reconciliation differences with accounts or clearing corporations or depositories involving government securities.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-24980 Filed 10-4-01; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44861; File No. SR-Amex-2001-59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Proposed Rule 324

September 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 7, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 Amex proposes to adopt Exchange Rule 324 to require each member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor to maintain a detailed, written record of each type of compensation arrangement that it enters into with other members as well as customers.

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 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. 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, Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is implementing examination procedures similar to those previously adopted by the NYSE to review Floor broker activity to determine if a broker is sharing in the profits generated in customer accounts. In connection with these new examination procedures, the Amex is proposing to adopt a rule, similar to NYSE Rule 440I, that would require each member not associated with a member organization and each member organization primarily engaged as an agent in executing transactions on the Floor, to maintain a detailed, written record of each type of compensation arrangement that it enters into with other members as well as all other customers. The Exchange's financial examiners will use these records in conducting reviews to determine if there were possible violations of Section 11(a) of the Act³ or Exchange rules.

The proposed rule would apply to members and member organizations primarily engaged as agents in executing transactions on the Floor of the Exchange. It would specify a type of record, *i.e.*, a record of compensation arrangements, in addition to records to be maintained under Exchange Act Rules 17a-3 and 17a-4.⁴ The proposed rule would exclude the following compensation arrangements from the requirement to maintain a written record:

(1) Arrangements involving gross compensation of less than \$5,000 per year, and

(2) Arrangements involving order transmitted solely through the Exchange's electronic order routing system.

⁵ Our authority under Section 36 extends to any provision of the Exchange Act or any rule or regulation thereunder. Regulation S-X was promulgated, in part, under the authority of the Exchange Act. We acknowledge that our action, by necessity, also will affect filings under the other provisions of the securities laws that require filings to be in compliance with Regulation S-X.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78k(a).

⁴ 17 CFR 240.17a-3 and 17 CFR 240.17a-4.