

would make all such persons subject to OPRA fees.

OPRA still has not made a final decision concerning the permanent application of subscriber fees to floor-based members of participants or to their counterparts on electronic exchanges or facilities. Accordingly, in order to continue to provide equal treatment to floor-based and electronic options markets and their members, OPRA has determined to continue this temporary exemption from OPRA fees for an additional two years, expiring on May 31, 2004, or on such later date as OPRA may subsequently determine. The effect of this is also to extend for an additional two years the fee exemption applicable to parties to the OPRA Plan that is provided for in Section V(f) of the OPRA Plan, because that exemption applies by its terms for the duration of the pilot period described in Section VII(d)(vi) of the OPRA Plan. The determination by OPRA reflected in this filing makes no change to any of the terms of these fee exemptions; it only extends the pilot period during which they apply.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3-2,⁴ OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2),⁵ if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549—

0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-2002-02 and should be submitted by July 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-14776 Filed 6-11-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46036; File No. SR-Amex-2002-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3 and 4 Thereto by the American Stock Exchange LLC Amending Exchange Rule 175(c) to Permit Limited Side-by-Side Trading and Integrated Market Making

June 5, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 18, 2002, 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 the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on March 22, 2002.³ The Exchange filed Amendment

No. 2 to the proposed rule change on March 27, 2002.⁴ The Exchange filed Amendment No. 3 to the proposed rule change on April 5, 2002.⁵ The Exchange filed Amendment No. 4 to the proposed rule change on June 3, 2002.⁶ The Commission is publishing this notice, as amended, 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 amend Exchange Rules 174, 175, 193, 900, and 958 to (1) permit affiliates of Amex specialists in securities admitted to dealings on an unlisted basis to be a specialist, ROT or other registered market maker in the related options provided there are Exchange-approved information barriers between the stock specialist and the options specialist, ROT or other registered options market maker pursuant to Exchange Rule 193 and (2) provide that specified ETFs or TIRs and their related options may be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without

⁴ On March 27, 2002, the Exchange filed an amended Form 19b-4 ("Amendment No. 2"). In Amendment No. 2, the Exchange deleted paragraph (l) to the "Guidelines for Specialists' Specialty Stock Options Transactions Pursuant to Rule 175," because it is redundant with Amex Rule 175(c). In addition, the Exchange corrected a typographical error in the proposed rule text, and amended its statutory basis for the proposed rule change.

⁵ On April 5, 2002, the Exchange filed a third amended Form 19b-4 ("Amendment No. 3"). In Amendment No. 3, the Exchange proposed to amend Exchange Rule 193 to clarify that, if an exemption is available under proposed Exchange Rule 175(c): (1) A person associated with an Amex options specialist may act as a Registered Equity Trader or Registered Equity Market Maker in the underlying stock, and (2) a person associated with an Amex stock specialist may act as a ROT in the related stock.

⁶ On June 3, 2002, the Exchange filed a fourth amended Form 19b-4 ("Amendment No. 4"). In Amendment No. 4, the Exchange amended the proposed rule change to specify that Exchange-Traded Fund Shares ("ETFs") and Trust Issued Receipts ("TIRs") and their related options may be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without information or physical barriers. Accordingly, Amendment No. 4 proposes to permit integrated market making and side-by-side trading in specified ETFs, TIRs, and their related options. In Amendment No. 4 the Exchange also proposed to permit ETF/TIR specialists and their approved persons to trade the overlying options without reference to the requirements of Amex Rule 175(b) or the Guidelines to Amex Rule 175. The Exchange also proposed to amend Amex Rule 174 to require specialists registered in a stock and overlying option to disclose on request to all participants in the stock or options trading crowd information regarding limit orders in either the stock or options limit order book. The Exchange also proposed to amend Amex Rules 900 and 958 to permit side-by-side trading and integrated market making of ETFs and TIRs and their related options.

⁶ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 22, 2002, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the Exchange made certain clarifications to the rule text. In particular, the Exchange removed the language "on another exchange" from the proposed rule text of Amex Rule 175(c) to clarify that a specialist registered in a stock admitted to dealings on an unlisted basis may act as a specialist, Registered Options Trader ("ROT"), or registered market maker on the Amex as well as on another exchange.

⁴ 17 CFR 240.11Aa3-2(c)(3)(i).

⁵ 17 CFR 240.11Aa3-2(c)(2).

information or physical barriers or other restrictions.

The text of the proposed rule change appears below. New text is in *italics*; deletions are in [brackets].

Disclosures by Specialists

Rule 174. (a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) *A stock specialist or specialist member organization that is also registered as the option specialist in the overlying option in a side-by-side trading environment is required to disclose on request to all participants in the option or stock trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the option or stock books.*

Commentary

.01 No change.

.02 No change.

Specialist Prohibitions

Rule 175. (a) No specialist or his member organization, or any member, limited partner, officer, employee or approved person thereof shall, directly or indirectly:

(1) Acquire, hold or grant an interest in any option to purchase or sell or to receive or deliver shares of a stock in which such specialist is registered, except as provided in this Rule; or

(2) Acquire or hold any interest or participation in any joint-account for buying or selling on the Exchange, or through ITS or any other application of the System, any security in which such specialist is registered, except a joint-account with a partner of such specialist or a regular member or regular member organization of the Exchange, which joint-account has been reported to the Exchange pursuant to Rule 360 and not disapproved; or

(3) Acquire or hold any interest or participation in any finder's fee payable in cash, stock, or otherwise, which finder's fee is paid or to be paid by any person in connection with a transaction effected or to be effected by or with the issuer, or in any security of the issuer, of the stock in which such specialist is registered.

(b) With respect to the stock position in a specialist's account, any specialist or member organization having an interest in such account may hold, acquire or grant an interest in listed options to purchase or sell or to receive or deliver shares of such stock only where appropriate to permit such specialist to offset the risk of making a market in the underlying specialty

stock. No specialist or member organization having an interest in the specialist's account shall establish or maintain any listed option position which is (i) excessive in terms of the specialist's existing position in the underlying specialty stock or (ii) excessive in terms of a reasonable estimate of potential loss that might be incurred in relation to any such equity position. Any options transactions effected pursuant to this Paragraph (b) shall be made in accordance with the "Guidelines for Specialists' Specialty Stock Options Transactions Pursuant to Rule 175" as promulgated by the Exchange and as may be amended from time to time. Any opening transaction that does not conform to the requirements specified in such "Guidelines," and any failure to take required action to liquidate any option position within the time periods specified in such Guidelines," shall be deemed to be a violation of this Rule 175. Notwithstanding the fact that a specialist's options transactions may be in conformity with the "Guidelines," such specialist shall nonetheless be deemed to be in violation of Rule 175 if he has engaged in such options transactions for manipulative or other purposes not related to offsetting the risk of making a market in the underlying specialty stock.

A member, approved person in the member organization of a specialist and any limited partner, officer or employee thereof who has a position in any specialty stock of such specialist in any account (other than the specialist's account) may grant or hold an interest in listed options to purchase or sell or to receive or deliver shares of such specialty stock but only to the extent and in the manner, that both as to acquisitions and liquidations, the "Guidelines for Specialists' Specialty Stock Options Transactions Pursuant to Rule 175," as promulgated by the Exchange and as may be amended from time to time, would permit any such stock position, were it in a specialist's account, to be offset by such listed options by the interested persons in such account.

For purposes of this Paragraph (b), the term "listed option" shall mean an option issued by the Options Clearing Corporation or Trans Canada Options Inc., and the term "specialist's account" shall mean the account (whether the individual account of the specialist, the account of his member organization or a joint-account as permitted by Rule 360) in which the ordinary trading business of the specialist is conducted.

(c) No specialist or his member organization or any member, limited

partner, officer, or approved person thereof shall act as an options specialist or function in any capacity involving marketmaking responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such.

Notwithstanding the foregoing:

(1) *A specialist member organization or an approved person of a specialist registered in a stock admitted to dealings on an unlisted basis may act as a specialist, Registered Options Trader or other registered market maker in the related option provided that such persons have established and obtained Exchange approval for procedures restricting the flow of material, non-public corporate or market information between them pursuant to Exchange Rule 193, and*

(2) *A specialist, specialist member organization or approved person of a specialist or specialist member organization registered in an Exchange-Traded Fund Share or Trust Issued Receipt that meets the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A may act as a specialist, Registered Options Trader or other registered market maker in the related option without implementing procedures to restrict the flow of information between them and without any physical separation between the underlying Exchange-Traded Fund Share or Trust Issued Receipt and the related option. In addition, paragraph (b) of this Rule and the Guidelines to this Rule are inapplicable to a specialist or specialist member organization registered in an Exchange-Traded Fund Share or Trust Issued Receipt that meets the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A and the approved persons of such specialist or specialist member organization.⁷*

Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 175

(a) through (k) No change.

(l) *Rescinded.* [Specialist Shall Not Be Options Market Maker]

No equity specialist, his member organization, other member, approved person in such member organization or limited partner, officer or employee

⁷ The Commission, with the consent of the Exchange, changed "Exchange Traded" to "Exchange-Traded" in the proposed rule text. Telephone conversation between William Floyd-Jones, Assistant General Counsel, Amex, and Christopher Solgan, Law Clerk, Division of Market Regulation ("Division"), Commission, on June 5, 2002.

thereof shall act as an options market maker or options specialist, or function in any capacity involving market making responsibilities, in any option as to which the underlying security is a stock in which the specialist is registered as such.]

Affiliated Persons of Specialists

Rule 193. (a) through (c) No change.
* * * Commentary

Guidelines for Exemptive Relief Under Rule 193 for Approved Persons or Member Organizations Affiliated With a Specialist Member Organization

(a) & (b) No change.

(c) An affiliated upstairs firm seeking the Rule 193 exemption shall submit to the Exchange a written statement which shall set forth:

(i) through (vii) No change.

(viii) *Except as provided in Rule 175(c)*, that no individual associated with it may trade as a Registered Trader, Registered Equity Market Maker, or a Registered Options Trader in any stock or option in which the associated specialist organization specializes.

(d) through (f) No change.

Applicability, Definitions and References

Rule 900. (a) No change.

(b) Definitions—The following terms as used in the Rules of this Chapter shall, unless the context otherwise indicates, have the meanings herein specified:

(1) through (37) No change.

(38) Paired Security—The term “Paired Security” means a security which is the subject of securities trading on the Exchange and Exchange option trading, *provided, however, that the term “Paired Security” shall not mean an Exchange-Traded Fund Share or Trust Issued Receipt which is the subject of securities trading on the Exchange and Exchange option trading if the Exchange-Traded Fund Share or Trust Issued Receipt meet the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A.*

(39) through end. No change.

Options Transactions of Registered Traders

Rule 958. No Registered Trader shall initiate an Exchange options transaction on the Floor for any account in which he has an interest except in accordance with the following provisions:

(a) through (d). No change.

(e) No equity specialist, odd-lot dealer or NASDAQ market maker may act as a registered trader in a class of stock options on a stock in which he is

registered in the primary market therefor, *provided, however, that an equity specialist may act as a registered trader in a class of stock options on an Exchange-Traded Fund Share or a Trust Issued Receipt in which he is registered in the primary market therefor if the Exchange-Traded Fund Share or Trust Issued Receipt meets the criteria set forth in Commentary .03(a) to Amex Rule 1000 or Commentary .02(a) to Amex Rule 1000A.*

(f) through end. No change.

* * * * *

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. The Exchange 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, Proposed Rule Change

1. Purpose

The Exchange filed this proposed rule change in connection with its proposal to trade Nasdaq securities on an unlisted basis.⁸ This proposed rule change would permit affiliated entities to act as a specialist in a Nasdaq security traded on the Amex and as a specialist, ROT or a registered market maker in options on that Nasdaq security, provided (1) there are Exchange-approved information barriers between the affiliated stock and options operations, and (2) the specialist posts for the stock and options are physically separated so that side-by-side trading⁹ is not possible.

Exchange rules impose certain restrictions on the approved persons¹⁰

and other persons that are affiliated with a specialist or specialist unit (collectively “specialist affiliates”). Among these rules, Amex Rule 175(c) prohibits specialist affiliates of an Amex equity specialist from acting as an options specialist or functioning in any capacity involving market making responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such. The Exchange notes that the New York Stock Exchange, Inc. (“NYSE”) has a similar rule.¹¹ Both the Amex and NYSE rules were adopted in connection with applications by the respective exchanges to list options on their listed equities.¹²

The Amex recently filed proposed rule changes with the Commission to trade Nasdaq securities on an unlisted basis.¹³ Additionally, on September 6, 2001, the Exchange filed with the Commission a proposed rule change that would allow the trading, on a pilot program basis, of specified Nasdaq stocks, ETFs and TIRs and their related options at the same location on the Amex trading floor and by the same specialist units and registered traders.¹⁴

On February 15, 2002, the Commission approved a NYSE proposed rule change, which amended NYSE Rule 105 Guideline (I), to permit approved persons of NYSE specialists to act as a specialist or primary market maker with respect to options on specialty stocks provided there were NYSE-approved internal controls and information barriers in place pursuant to NYSE Rule 98.¹⁵ In light of the Commission's recent approval of the NYSE's filing and the proximity of the expected commencement date of trading in Nasdaq stocks on the Exchange, the Amex proposes to amend Exchange

entity which controls a member or member organization, or which is engaged in the securities business and is under common control with, or controlled by, a member or member organization or which is the owner of a membership held subject to a special transfer agreement. *See* Article I, Section 3(g) of the Exchange Constitution. The term “control” is defined in Exchange Definitional Rule 13.

¹¹ *See* NYSE Rule 105, Guideline (I). *But see* Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567 (February 25, 2002) (order approving amendments to NYSE Rule 105 Guideline (I)).

¹² *See* Securities Exchange Act Release No. 21759 (February 14, 1985), 50 FR 7250 (February 21, 1985) (approving SR-NYSE-84-3 and SR-NYSE-84-10); Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988) (approving SR-Amex-88-16).

¹³ *See supra* note 8.

¹⁴ *See* SR-Amex-2001-75 (“Proposed Integrated Market Making Pilot”). The Exchange states that this current filing neither amends nor withdraws Amex-2001-75.

¹⁵ *See supra* note 11.

⁸ *See* Securities Exchange Act Release Nos. 45365 (January 30, 2002), 67 FR 5626 (February 6, 2002) (proposing to admit trading on the Amex of Nasdaq National Market Securities pursuant to unlisted trading privileges); and 45698 (April 5, 2002), 67 FR 10851 (April 12, 2002) (approving Amex Rule 28, which establishes allocation procedures for securities admitted to dealing on an unlisted trading privilege basis).

⁹ “Side-by-side trading” refers to the trading of options and the underlying stocks at the same location, though not necessarily by the same specialist.

¹⁰ The Exchange defines an “approved person” as an individual or corporation, partnership or other

Rule 175 to permit Amex specialists in stocks admitted to dealings on an unlisted basis to act as options specialists, ROTs and registered market makers with respect to the related options provided there are Exchange-approved procedures restricting the flow of material, non-public corporate or market information pursuant to Amex Rule 193. The Amex proposes to implement the proposed rule change on an interim basis while the Commission considers the Exchange's Proposed Integrated Market Making Pilot.¹⁶

The Exchange also proposes to amend Exchange Rules 174, 175, 900, and 958 to allow integrated market making¹⁷ and side-by-side trading of certain ETFs and TIRs that meet the criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A.¹⁸ In connection with this proposal, the Exchange proposes to amend Amex Rule 174 to require an ETF or TIR specialist that is also the specialist in the related option in a side-by-side environment to disclose on request to participants in the ETF, TIR, and option trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the ETF, TIR or option limit order books. The Exchange also proposes to amend Amex Rule 175 to provide that specified ETF and TIR specialists, their member organizations, and their approved persons may trade the related options without reference to the limitations of Amex Rule 175(b) and the Guidelines to Amex Rule 175. The Exchange believes that options specialists could not function as specialists in an integrated market making environment if they were held to the requirements of Amex Rule 175(b) and the Guidelines to Amex Rule 175 that narrowly circumscribe

when an equity specialist may trade the related option. The Exchange also believes that there is no regulatory purpose to limiting the options transactions of the approved persons of an ETF or TIR specialist to the standards imposed by Amex Rule 175(b) and the Guidelines to Amex Rule 175 if trading is permitted in ETFs, TIRs and their related options on a fully integrated and side-by-side basis.

The Exchange also proposes to amend the definition of "Paired Security" in Amex Rule 900 to provide that ETFs and TIRs that meet the criteria of Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A may trade side-by-side.

Amex Rule 193, like NYSE Rule 98, provides an exemption to various restrictions applicable to specialist affiliates provided the specialist and its affiliates establish procedures to prevent the passage of material, non-public corporate or market information between them. The Commission approved the rules in one order,¹⁹ and, according to the Amex, the Amex and NYSE rules were intended to facilitate the entry of large, well-capitalized firms into the specialist business on primary exchange markets.²⁰

Amex Rule 193 requires firms to establish information barriers and internal controls to prevent and/or detect the passage of material, non-public corporate or market information between the specialist and its affiliates. The Exchange states that its surveillance staff routinely reviews trading by specialists and specialist affiliates that have approved Amex Rule 193 procedures to detect possible breaches of the internal information barriers, and its examinations staff annually conducts on-site oversight reviews of firms with Amex Rule 193 exemptions to ensure the adequacy of the firms' procedures.

The Exchange states that Nasdaq stocks and their related options would be traded in areas of the Exchange Floor that are separated from each other.²¹ As previously noted, the Amex currently has a filing pending with the Commission that would allow side-by-side trading and integrated market making of securities admitted to trading on an unlisted basis and their related

options.²² Currently, the following areas are considered separate for purposes of stocks and the related options: (1) The Red Room, (2) the Main Trading Floor, (3) the Mezzanine trading level which is located above the Main Trading Floor (except that options on Amex-listed stocks may not trade on that part of the Mezzanine that is visible from the Main Trading Floor),²³ and (4) the back row of the west side of the Exchange's Main Trading Floor.²⁴ The Exchange notes that it has filed proposals with the Commission to expand the areas where Paired Securities may trade.²⁵

2. Statutory Basis

The Exchange believes the basis for the proposed rule change, as amended, is the requirement under section 6(b)(5) of the Act²⁶ that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

²² See Proposed Integrated Market Making Pilot, note *supra*.

²³ The Exchange clarified that options on Amex-listed stocks may not trade on that part of the Mezzanine that is visible from the Main Trading Floor. Telephone conversation between William Floyd-Jones, Assistant General Counsel, Amex, and Christopher Solgan, Law Clerk, Division, on June 5, 2002.

²⁴ See Securities Exchange Act Release No. 39631 (February 9, 1998), 63 FR 8229 (February 18, 1998) (approving SR-Amex-97-37).

²⁵ See File Nos. SR-Amex-2002-37 and SR-Amex-2002-38.

²⁶ 15 U.S.C. 78f(b)(5).

¹⁶ See *supra* note 14.

¹⁷ "Integrated market making" refers to the trading of options and their underlying securities by the same specialist and/or specialist firm.

¹⁸ The criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A is as follows:

- Component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least \$75 million.

- The component securities representing 90% of the weight of the portfolio each have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

- The most heavily weighted component security cannot exceed 25% of the weight of the portfolio and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio.

- The underlying portfolio must include a minimum of 13 securities.

- All securities in the portfolio must be listed on a national securities exchange or the Nasdaq Stock Market.

¹⁹ Securities Exchange Act Release No. 23786 (November 3, 1986), 51 FR 41183 (November 13, 1986) (approving SR-Amex-85-01 and SR-NYSE-85-25).

²⁰ The Exchange notes that it would not be the primary market for securities admitted to dealings on an unlisted basis.

²¹ See Amex Rules 900(b)(38), (40) and (41). See also Amex Rule 958(f), which prohibits an ROT from executing a trade in an option if he or she has been in the "Designated Stock Area" for the related option within the previous 60 minutes.

- A. By order approve such proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-21 and should be submitted by July 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14778 Filed 6-11-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46042; File No. SR-NASD-2002-74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amendment to Correct Research Analyst Rule Language

June 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 5, 2002, the National Association of Securities Dealers, Inc. ("NASD"),

through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASDR"), 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 NASDR. The proposed rule change is effective upon filing pursuant to section 19(b)(3)(A)³ of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,⁴ in that the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until more than 30 days from the date on which it was filed. 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

NASDR is amending NASD Rule 2711 to correct certain language that was inadvertently included in NASD Rule 2711 when it was submitted for Commission approval. Proposed new language is in italics; proposed deletions are in brackets.

Rule 2711. Research Analysts and Research Reports

Paragraphs (a) through (g): No change.

(h) Disclosure Requirements

(1) Ownership and Conflicts of Interest

A member must disclose in research reports and a research analyst must disclose in public appearances:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);

(B) if, as of the end of the month immediately preceding the date of publication of the research report or the public appearance (or the end of the second most recent month if the publication date is less than 10 calendar days after the end of the most recent month), the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under

Section 13(d) of the Securities Exchange Act of 1934; and

(C) any other actual, material conflict of interest of the research analyst or member of which the research analyst [or member] knows or has reason to know at the time of publication of the research report[,] or [of which the research analyst knows or has reason to know] at the time of the public appearance.; and] [(D) any other actual, material conflict of interest of the member of which the member knows or has reason to know at the time of publication of the research report, or of which the research analyst knows or has reason to know at the time of the public appearance.]

Paragraphs (h)(2) through (h)(11) and paragraph (i): No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR 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. NASDR 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

On May 10, 2002, the Commission approved NASD Rule 2711, which is a new NASD rule intended to address research analyst conflicts of interest ("Rule 2711").⁵ The provisions of Rule 2711 become effective on a staggered basis, beginning on July 9, 2002. Among other things, Rule 2711 imposes a number of disclosure requirements on members that issue research reports concerning equity securities and on research analysts that make public appearances in which they recommend or offer an opinion concerning an equity security.

Rule 2711(h)(1)(A) requires members to disclose in research reports and research analysts to disclose in public appearances if the research analyst or a member of the analyst's household has a financial interest in the securities of the subject company and the nature of the financial interest. Rule 2711(h)(1)(B) requires disclosure if the member or its

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).