

Change in Specialist Capital Computation Method. The proposal would amend Amex rule 171, and indirectly Amex rule 950(h), to require that specialist units meet their capital requirements with “tentative net capital,” *i.e.*, net capital computed in accordance with Rule 15c3-1 of the Act,³ before haircut and undue concentration charges, rather than with cash or liquid assets. Use of a tentative net capital standard would provide a better measure of a specialist unit’s financial strength than the current “cash or liquid asset” requirement, since it would take into account all of the specialists’ assets and liabilities—not just those held in the clearing account. Moreover, since all specialists on the Amex are now subject to the net capital rule, use of such a standard should not present any computational or operational difficulties for our specialists. Indeed, those Amex specialists who also act as specialists on the NYSE are already calculating their capital in a similar manner.

Creation of an Early Warning Level. As currently drafted, the Exchange’s capital standards for specialists units suffer from an “all or nothing” approach. That is, a specialist either meets the financial requirements or it does not. The Exchange has little actual control or authority over a specialist that, although perhaps headed for financial difficulty, has not yet fallen below the minimum requirement.

Rather than the current “all or nothing” approach, the Exchange is proposing the creation of a so-called early warning level that, if triggered, would allow the Exchange to subject the breaching specialist unit to closer oversight and impose conditions on its operations. The proposed early warning level would be set at 125% of the actual financial requirement and would be calculated in a conservative manner by assuming that subordinated debt and other scheduled capital distributions coming due in less than 180 days have already been paid.

While the Exchange’s Financial Regulatory Services Department (“FRSD”) would monitor for compliance with the early warning level, specialist units would also be required to provide the Exchange with notice in the event they breach the early warning level. In the event of such a breach, the specialist unit would have five business days to reach a written agreement with FRSD on an action plan for raising its capital to an appropriate level. The plan would specify a timetable for bringing capital above the

early warning level or taking other appropriate actions.

In the event the specialist and FRSD are not able to reach agreement on a plan, FRSD would refer the specialist either to the Committee on Floor Member Performance or to the Market Quality Committee with respect to UTP securities. Either of these Committees would have the authority to impose a performance improvement plan on the specialist to increase the specialist’s capital or take other appropriate action. In no event could a written action plan provide for capital requirements below, or otherwise violate, the Exchange’s minimum requirements. A failure by the specialist to meet the conditions in the Committee’s plan could result in disciplinary action, the reallocation of securities, and/or other remedial action to the extent necessary to bring the breaching specialist within continued compliance.

The proposed rule change would not go into effect until one year after approval by the Commission to give firms an opportunity to adjust to the changes.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act⁴ in general, and furthers the objectives of section 6(b)(5) of the Act⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 believes that the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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 in response 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:

(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 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 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-2002-104 and should be submitted by April 4, 2003.

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

Margaret H. McFarland,
Deputy Secretary.

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³ 17 CFR 240.15c3-1.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).