

Items I, II, and III below, which Items have been prepared by the Exchange. On April 23, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.³ On June 3, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.⁴ On October 3, 2003, the Exchange submitted Amendment No. 3 to the proposed rule change.⁵ On October 22, 2003, the Exchange submitted Amendment No. 4 to the proposed rule change.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Amex Rules 170, 1000(a), and 1000 A(a) to: (1) Eliminate specialist stabilization requirements and other technical requirements for "derivative products;" and (2) correct erroneous cross references in the Exchange's rules to the definition of the term "derivative product." Below is the text of the proposed rule change. Proposed deleted language is bracketed. Proposed new language is *italicized*.

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Registration and Functions of Specialists

Rule 170. (a) through (e). No change.

³ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 22, 2003 ("Amendment No. 1"). Amendment No. 1 removed proposed language that would have allowed approved persons to trade the same derivatives as an affiliated specialist and replaced the proposed rule change in its entirety.

⁴ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 2, 2003 ("Amendment No. 2"). Amendment No. 2 provided further details on the description of the proposed exemption of derivative products from the requirements of Commentaries .05, .06 and .07 to Amex Rule 170 and also replaced the proposed rule change in its entirety.

⁵ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 2, 2003 ("Amendment No. 3"). Amendment No. 3 made technical corrections to the proposed rule text and replaced the proposed rule change in its entirety.

⁶ See letter from William Floyd-Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 21, 2003 ("Amendment No. 4"). Amendment No. 4 explained why the Exchange believes that the maximum quote spread rules for options should not be applicable to transactions in derivative products. In addition, Amendment No. 4 proposes to continue to apply Commentary .05 to Rule 170 to specialist transactions in derivative products. Amendment No. 4 also replaced the proposed rule change, as amended, in its entirety.

Commentary

.01 through .11 No change.

.12 The following provisions of this Rule shall not apply to the trading of derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution): *Commentary .01, .02, .06 (to the extent that the SEC has granted "no action" relief or otherwise exempted the security from the "Short Sale Rule"), and .07.*

Portfolio Depositary Receipts

Rule 1000 (a) Applicability. The Rules in this Chapter (Trading of Certain Equity Derivatives) are applicable only to Portfolio Depositary Receipts. Except to the extent that specific Rules in this Chapter govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article 1, Section 3(lj) of the Constitution, Portfolio Depositary Receipts are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange. In addition, pursuant to the provisions of *Article I, Section 3(d)* [Article IV, Section 1(b)(4)] of the Constitution, Portfolio Depositary Receipts are included within the definition of "derivative products" as that term is used in the Constitution and Rules of the Exchange.

Index Fund Shares

Rule 1000A. (a) Applicability. The Rules in this Section are applicable only to Index Fund Shares. Except to the extent specific Rules in this Section govern or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(lj) of the Constitution, Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange. In addition, pursuant to the provisions of *Article I, Section 3(d)* [Article IV, Section 1(b)(4)] of the Constitution, Index Fund Shares are included within the definition of "derivative products" as that term is used in the Constitution and Rules of the Exchange.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Since the 1930s,⁷ specialists on the Amex and New York Stock Exchange, Inc. ("NYSE") have been subject to requirements that generally prohibit them from buying on plus ticks or selling on minus ticks except with the permission of a Floor Official. The Exchange believes that while these rules may have made sense in the 1930s or in the 1960s (when they were formally enacted by the Amex and NYSE), changes in market structure and technology in the succeeding decades, such as the shift to trading in penny increments, dispersion of order flow to multiple competing market centers, consolidation and availability of market data, and enhancements in trading, communications, and surveillance technology, have made these stabilization rules anticompetitive anachronisms. In addition, the Exchange believes that the policy considerations behind the implementation of stabilization rules for common stocks do not apply in the context of derivatively priced securities.⁸ In this regard, the Commission previously approved an Amex rule change that eliminated stabilization rules and other technical requirements of Rule 170 related to stabilization requirements as applied to

⁷ See Saperstein Interpretation, Securities Exchange Act Release No. 1117 (March 30, 1937).

⁸ The Exchange notes that stabilization rules, which limit the ability of Amex and NYSE specialists to buy on plus ticks or sell on minus ticks, are an objective expression of a specialist's "negative" obligation to refrain from trading except in connection with transactions that assist in maintaining a fair and orderly market. According to the Exchange, these rules were intended to prevent Amex and NYSE specialists from "leading the market" in their specialty stocks.