''drive time'' standard); and a preference for surface transportation had emerged in the face of less dependable air transportation for 2-day mail. Id. at 10–13.

Mr. Gannon acknowledges that as a result, ''more western and Pacific area origin-destination First Class Mail shifted from 2-day to 3-day service, than occurred throughout the remainder of the country'' and that within certain states (California, Nevada, Texas, Wyoming and Alaska) there are home state pairs that have a 3-day standard. Id. at 13. Moreover, in response to Mr. Carlson's comments about a certain non-reciprocal origin-destination pair, Mr. Gannon suggests: ''If we had included overnight standards as part of our recent adjustments, the originating service standards would, very likely, have ended up as being 3-days in both directions between Ashland, Oregon and Yreka, California, based on our processing network design.'' Id. at 15. Overall, the net effect of the Service's actions involve 48 states; affect service standards for more than 76,440 origin-destination three-digit ZIP Code pairs in all postal areas; and shift more than 3.4 billion pieces of mail annually to a three-day service standard from a two-day standard. Postal Service answer at 15–16.

Relief

The statute provides for a public hearing and if the complaint is found justified, for the Commission to issue a recommended decision or public report, as appropriate. Carlson seeks these remedies, as well as a change in service standards. In addition, the OCA suggests that cost data and information should be provided. It is reasonable to assume that if warranted, at least some of the relief Mr. Carlson has requested can be provided. This clearly constitutes a major, national service change. The issue of whether First-Class service continues to meet the policies established in the Act is important, and the Commission will hold hearings on this complaint.

Further Action

Information procedures do not appear likely to resolve these issues. The Commission hereby denies the Postal Service motion to dismiss and institutes a formal docket. The Commission therefore directs Mr. Carlson to provide, no later than September 24, 2001, an estimate of the amount of time he anticipates needing for discovery, the earliest date by which he could present evidence, and identification of any other procedural requests. Responses to Mr. Carlson's filing will be due on October 1, 2001. Ted P. Gerarden, the director of the Commission's office of the consumer advocate, is directed to represent the interests of the public in any further proceedings in this case. Others who believe they may be affected by this proceeding are invited to intervene. Notices of intervention shall be filed with the Commission no later than October 1, 2001. It is ordered:

1. The Douglas F. Carlson motion for leave to amend complaint, August 11, 2001, is granted.
2. The motion of the United States Postal Service for leave to reply to answers in opposition to Postal Service motion to dismiss, August 21, 2001, is granted.
3. The motion of the United States Postal Service to dismiss complaint, July 30, 2001, is denied.
4. The Commission institutes a formal service complaint proceeding to address the allegations raised in the captioned proceeding.
5. Complainant is directed to inform the Commission, no later than September 24, 2001, of the amount of time he believes is necessary to prepare his case.
6. Responses to Mr. Carlson's filing are due October 1, 2001.
7. Ted P. Gerarden, director of the Commission's office of the consumer advocate, is appointed to represent the interests of the general public.
8. Interested persons shall intervene no later than October 1, 2001.
9. The Secretary is directed to arrange for publication of this order in the **Federal Register.**

By the Commission.

Dated: September 12, 2001.

Steven W. Williams.

Acting Secretary.

[FR Doc. 02–1413 Filed 1–25–02; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45320: File No. SR–AMEX–2001 79]

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

January 18, 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 December 14, 2001, the American Stock Exchange LLC (''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 Exchange. The proposed rule change was filed by the Exchange as a ''non-controversial'' rule change under Rule 19b–4(f)(6)[3] under the Act, which renders the proposal effective upon receipt of the filing by the Commission.[4] 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 correct Amex Rules 3(c) (Commentary .04), 7 (Commentary .01), 21(b), 22 (Commentary .03), 25(a), 60(h), 103(b), 111 (Commentary .12), 114 (Commentary .14), 154 (Commentary .15), 177(c), 235, 323, 950(f), 958(g) (Commentary .10), and 1202(d). The Exchange also proposes to correct Sections 101 (Commentary .01), 901(d), and 1203(a) of the Amex Listing Guidelines, and to relocate the section of the Exchange's rule titled ''Admission of Members and Member Organizations; Regular and Options Principal Memberships'' to Section 4 of the Exchange's ''Office Rules.'' The text of the proposed rule change is available from the Amex and from 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The proposed rule change was originally filed on September 28, 2001 pursuant to Section 19(b)(2) of the Act. *See* 15 U.S.C. 78s(b)(2). The Amex filed an amendment on December 14, 2001, requesting that the proposed rule change be considered as filed pursuant to Section 19(b)(3)(A) of the Act. *See* 15 U.S.C. 78s(b)(3)(A). The Amex requested that the Commission waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii).

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

1. Purpose

From time to time, the Exchange reviews its rules to ensure their accuracy. As the result of one of these reviews, the Amex is proposing a number of revisions to its rules. All of the proposed rule changes are technical rather than substantive in nature. The proposed amendments would (1) Clarify the Exchange's rules by making conforming changes to rules that were previously amended (with SEC approval) elsewhere in the Amex Constitution and Rules; and (2) revise language that might tend to mislead or confuse. The changes are described below:

(1) The proposed amendment to Amex Rule 3(c) reflects organizational restructuring;

(2) The proposed amendment to Amex Rule 7, Commentary .01 reflects revisions to SEC Rule 10a–1;

(3) The proposed amendment to Amex Rule 22, Commentary .03 reflects organizational restructuring;

(4) The proposed amendment to Amex Rule 25(a) reflects organizational restructuring;

(5) The proposed amendment to Amex Rule 60(h) reflects organizational restructuring;

(6) The proposed amendment to Amex Rule 103(b) reflects clarifying language;

(7) The proposed amendment to Amex Rule 111, Commentary .12 corrects a cross reference that had become inaccurate due to a revision to the Amex Constitution;

(8) The proposed amendment to Amex Rule 114, Commentary .14 corrects a cross reference that had become inaccurate due to a revision to the Amex Constitution;

(9) With respect to the proposed revisions to Amex Rule 154: (a) the amendment to Commentary .01 reflects appropriate cross references to Amex Rules 153, 180 an 181; (b) the amendment to Commentary .06 reflects the use of the Electronic Display Book for all good-'til-canceled orders which eliminated the need for paper receipts; and (c) the amendment to Commentary .15 corrects a typographical error that was corrected in a similar New York Stock Exchange (''NYSE'') rule change (NYSE Rule 123A.30) in 1999;

(10) The proposed amendment to Amex Rule 177(c) reflects a prior revision to Amex Rule 103(a);

(11) The proposed amendment to Amex Rule 235(e) reflects organizational restructuring;

(12) The proposed amendment to Amex Rule 323 permits electronic access to the Amex Constitution and Ames Rules at member firm offices;

(13) The proposed amendment to Amex Rule 950(f) reflects a prior revision to the Commentary to Amex Rule 154 and corrects a cross reference;

(14) The proposed amendment to Amex Rule 958, Commentary .10 corrects a cross reference that had become inaccurate due to a revision to the Amex Constitution;

(15) The proposed amendment to Amex Rule 1202(d) contains language from (rather than a cite to) rescinded Amex Listing Guidelines Section 811;

(16) The proposed amendment to Amex Listing Guidelines Section 101 reflects organizational restructuring;

(17) With respect to the proposed revision to Amex Listing Guidelines Section 910: (a) the proposed amendment to (d)(i) reflects a revision to Amex Rule 174; (b) the proposed amendment to (d)(iii) reflects language conforming to that of Amex Rule 175; and (c) the proposed amendment to the second (d)(iii) reflects a prior revision to Amex Rule 103(a);

(18) The proposed amendment to Amex Listing Guidelines Section 1203 reflects organizational restructuring;

(19) The proposed renumbering of paragraphs 9174 through 9181 of the Amex Rules to become Amex Rules 350 through 358 reflects clarifying references; and

(20) The proposed renaming of Amex Office Rules, Section 4 reflects the addition of Amex Rules 350 through 358 to that Section of the Amex Rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and the provisions of Section 6(b)(5) of the Act,[6] in particular, which requires, among other things, that the rules of an exchange be 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The Amex has filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and (4) was discussed by the Commission and the Exchange at least five days before filing of the same, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

The Amex has asked the Commission to designate that the proposed rule change become operative immediately. Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In this regard, the Amex believes that it would be consistent with the protection of investors and the public interest to institute immediately the technical changes that are contemplated in the proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately so that Amex can

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

implement the technical changes that are contemplated in the proposed rule change.[12] The Commission finds that permitting the proposal to become effective immediately is consistent with the protection of investors and the public interest because it will make Amex's rules more comprehensible.

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 Exchange. All submissions should refer to File No. SR–AMEX–2001–79 and should be submitted by February 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

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[12] For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45319; File No. SR–NASD–2001–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Amending NASD Rule 4720 Relating to the Inclusion of UTP Exchanges in the Nasdaq National Market Execution System

January 18, 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 October 5, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), 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 NASD. On December 19, 2001, the NASD submitted Amendment No. 1 to the proposed rule change.[3] On January 16, 2002, the NASD submitted Amendment No. 2 to the proposed rule change.[4] 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 NASD proposes to amend NASD Rule 4720 to delineate the use of SelectNet by UTP Exchanges. Proposed new language is in italics; proposed deletions are in brackets.[5]

4720. SelectNet Service

(a)–(b) No Change.

(c) Prohibition Regarding the Entry of Certain Preferenced Orders to Nasdaq National Market Execution System Market [Makers] *Participants*

(i) For purposes of this rule the term ''Participating UTP Exchange'' shall mean any registered national securities exchange that elects to participate in the Nasdaq National Market Execution System (''NNMS'') and that has unlisted trading privileges in Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing The Collection, Consolidation And Dissemination Of Quotation And Transaction Information For Nasdaq-Listed Securities Traded On Exchanges On An Unlisted Trading Privileges Basis; and

(ii) Non-Participating UTP Exchanges are prohibited from sending SelectNet preferenced orders. No member or Participating UTP Exchange shall direct a SelectNet preferenced order to a Non-Participating UTP Exchange.

(*iii*) *Participating UTP Exchanges must participate in SelectNet and the NNMS under the same conditions that apply to Nasdaq market makers, as set forth herein.*

(*iv*) No member *or Participating UTP Exchange* shall direct a SelectNet preferenced order to *an NNMS* [Nasdaq National Market Execution System (''NNMS'')] market maker (as defined in NASD Rule 4701) [(including that market maker's Agency Quote (as defined in NASD Rule 4613)]*, to an ECN that provides automatic execution against its quote through the NNMS, or to a Participating UTP Exchange,* unless that order is designated as:

(A) A non-liability order that is entered as an ''All-or-None'' order (''AON'') and is at least one normal unit of trading (i.e. 100 shares) in excess of the displayed quote to which the preferenced order is directed; or

(B) A non-liability order that is entered as a ''Minimum Acceptable Quantity'' order (''MAQ''), with a MAQ value of at least one normal unit of trading in excess of the displayed quote to which the preferenced order is directed; or

(C) A non-liability order that is entered at a price that is inferior to the displayed quote to which the preferenced order is directed.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated December 18, 2001 (''Amendment No. 1''). In Amendment No. 1, the NASD removed from the proposed rule change language related to NASDAQ National Market Execution System (''NNMS'') trading through the quotes of UTP exchanges that do not participate in the NNMS.

[4] *See* letter from Mary M. Dunbar, Vice President, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated January 16, 2002 (''Amendment No. 2''). In Amendment No. 2, the NASD amended language that: (1) Incorrectly described SelectNet as being included within the rubric of the NNMS; (2) defined the term ''Non-Participating UTP Exchange;'' and (3) ambiguously referenced the ''Nasdaq system.''

[5] The NASD requested that the Commission alter the originally proposed rule language of Rule 4720(c)(i) to reflect the current name of the Nasdaq OTC/UTP Plan. Telephone message left by Katherine England, Assistant Director, Division of Market Regulation, Commission (January 18, 2002) for Jeffrey S. Davis, Assistant General Counsel, Office of General Counsel, Nasdaq (January 18, 2002), and response telephone message left by Jeffrey S. Davis for Katherine England (January 22, 2002).