medicine technologist assigned to the patient failed to recognize that the number of counts obtained from the neck phantom used for the uptake scan baseline was unusually high for the quantity of radioactive material prescribed for the patient.

Actions Taken To Prevent Recurrence

Licensee—The licensee ceased purchasing radiopharmaceuticals from the radiopharmacy that provided the incorrect and mislabeled dose. The licensee set aside a designated area for receiving shipments of radiopharmaceuticals and posted a list of expected dose rates per shipment (based upon contents of the shipment). The licensee redesigned the patient administration log to serve as a check list for QA, instituted procedural changes to include a one-meter survey of each diagnostic capsule while it is being counted in the neck phantom prior to administration, and implemented updated training to acquaint all nuclear medicine technologists with these new policies.

State—The State radiation control agency conducted an investigation into this incident assisted by the State board of pharmacy. The licensee's actions to prevent recurrence will be inspected at their next regularly scheduled inspection.

AS07–05 Medical Event at University of Washington Harborview Gamma Knife of Seattle, Washington

Date and Place—November 16, 2006, Seattle, Washington.

Nature and Probable Consequences—University of Washington Harborview Gamma Knife (the licensee) reported that a patient who was prescribed to receive 18 Gy (1,800 rad) during a gamma knife treatment actually received 28 Gy (2,800 rad). The gamma knife contained 267.7 TBq (7,236 Ci) of cobalt-60. The patient and the referring physician were informed of this event. The licensee concluded that no significant adverse health effect to the patient is expected.

Cause(s)—The cause of the incident was determined to be human error. The prescribing physician prescribed 18 Gy (1,800 rad) and erroneously entered 28 Gy (2,800 rad). The physician entered the prescribed value into the computer treatment planning system, rather than having the medical physicist enter the value as is the usual procedure, resulting in a failure to follow an established procedure.

Actions Taken To Prevent Recurrence

Licensee—Corrective actions taken by the licensee included a verification process to ensure that the prescribed treatment value is transferred from the treatment planning computer to the gamma knife computer prior to patient therapy. Also, a treatment plan signed by the treating oncologist, physicist, and neurosurgeon is now required. In addition, the treating oncologist and physicist will verify and initial the prescribed dose and isodose treatment parameters prior to patient therapy.

State—The State reviewed the licensee's corrective actions and determined that the procedures were adequate to ensure that this type of event should not happen in the future.

AS07–06 Medical Event at Physician Reliance of Fort Worth, Texas

Date and Place—August 22, 2007, Fort Worth, Texas.

Nature and Probable Consequences—Physician Reliance (the licensee, dba Texas Oncology at Klabzuba) reported that a patient who was being treated for lung cancer, with a high dose-rate (HDR) afterloader and an iridium-192 source, received 2,500 cGy (2,500 rad) during the first fraction, instead of the prescribed dose of 500 cGy (500 rad). The patient was prescribed to receive five fractions with 500 cGy (500 rad) per fraction over five weeks. The incident was discovered following an independent physicist's review of the treatment plan. The patient and the referring physician were informed of this event. The patient's pulmonologist concluded that no significant adverse health effect to the patient is expected.

Cause(s)—The incident occurred as a result of the incorrect isodose line being chosen and entered into the treatment planning system. The oncologist signed and approved the treatment plan and the radiation safety office performed a second calculation to check the treatment plan. The treatment planning system then normalized the calculations to the incorrect isodose line and delivered the resulting treatment. The calculation error was identified by an independent physicist prior to administration of the second fraction.

Actions Taken To Prevent Recurrence

Licensee—The licensee's corrective action was to change their procedure to include a second check by a licensed medical physicist of all treatment plans.

State—The State issued two violations related to this event: (1) A violation of 25 Texas Administrative Code (TAC) 289.256(p)(4)(A) and (B) was cited because the procedure as implemented was insufficient to ensure that a second check of the printed output of the treatment plan was performed to verify the accuracy of the planned treatment factors prior to treatment; and (2) a violation of 25 TAC 289.256(o)(1) and 289.256(p)(1) was cited because the instructions of obtaining the authorized physician's signed and dated written directive for each therapeutic administration were not followed. In addition, the State reviewed the licensee's corrective action of changing their procedures to include a second check by a licensed medical physicist of all treatment plans.

Dated at Rockville, Maryland, this 19th day of May 2008.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–11666 Filed 5–22–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57829; File No. SR–Amex–2007–107]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 3 and 4 Thereto, Relating to Section 31 Related Fees

May 16, 2008.

On October 2, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to allow member firms to voluntarily submit, during a six-month period after the effective date of this proposal, funds previously accumulated by the member firms pursuant to Rule 393. In addition, the proposed rule change would allow the Exchange to use accumulated funds to pay its current section 31 fees or, to the extent of any surplus, offset other Exchange regulatory costs. The Amex filed Amendment No. 2 to the proposed rule change on March 19, 2008.[3] The Amex filed Amendment No. 3 to the proposed rule change on April 7, 2008.[4] The proposed rule change was published for comment in the **Federal**

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

[2] 17 CFR 240.19b–4.

[3] The Amex previously filed and withdrew Amendment No. 1 to the proposed rule change.

[4] Amendment No. 3 replaced all previous amendments in their entirety, added new effective dates of the proposed rule change, would eliminate non-substantive and extraneous text from proposed Commentary .01 to Rule 393.

Register on April 16, 2008.[5] The Amex filed Amendment No. 4 to the proposed rule change on May 15, 2008.[6] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change, as modified.

Pursuant to section 31 of the Act[7] and Rule 31 thereunder,[8] national securities exchanges and associations (collectively ''SROs'') are required to pay a transaction fee to the Commission that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, the Amex assesses its clearing and self-clearing members a regulatory fee in accordance with Rule 393, which mirrors section 31 in both scope and amount. Clearing members may in turn seek to charge a fee to their customers or correspondent firms. Any allocation of the fee between a clearing member and its correspondent firm or customer is the responsibility of the clearing member.

Reconciling the amounts reported to the Amex and the amounts collected from the customers historically had been difficult for member firms, causing surpluses to accumulate at some member firms (referred to as ''accumulated funds''). These accumulated funds were not remitted to the Amex by certain members, despite the fact that these charges may have been previously identified as ''Section 31 Fees'' or ''SEC Fees'' by the firms.[9] In addition, since the Amex uses a ''self-reporting'' methodology for its members to report and remit amounts payable pursuant to Rule 393, the Amex has and continues to accumulate amounts in excess of the amounts paid by the Amex to the Commission pursuant to section 31 and Rule 31 (''Exchange accumulated funds'').

The Exchange is proposing a new Commentary to Rule 393 that will allow firms, on a one-time-only basis, voluntarily to remit historically accumulated funds to the Exchange. These funds then would be used to pay the Exchange's current Section 31 fees in conformity with prior representations made by member firms. In addition, a member or member organization may designate all or part of the Exchange-accumulated excess held by the Exchange and allocated to such member be used by the Exchange in accordance with the new Commentary to Rule 393. Finally, to the extent the payment of these historically accumulated funds or Exchange accumulated funds is in excess of the Section 31 fees due the Commission from the Amex, such surplus shall be used by the Exchange to offset regulatory costs.

The Amex proposes that the effective date of the proposed rule change would be the date the Commission Order approving the proposed rule filing is published in the **Federal Register** and the effectiveness of Commentary .01 to Rule 393, once approved, would be for a period of six months.

After carefully considering the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] The Commission previously found a similar proposal from another SRO to be consistent with the Act.[11] The Commission is not aware of any issue that should cause it to revisit that finding or preclude the Commission from approving the Amex proposal on the same basis. The Commission notes that, because the program is voluntary, it imposes no obligation on any Amex member that believes that accumulated funds should be retained or disposed of in another manner.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–AMEX–2007–107), as modified by Amendment Nos. 3 and 4 thereto, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–11522 Filed 5–22–08; 8:45 am]

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[5] Securities Exchange Act Release No. 57641 (April 9, 2008), 73 FR 20724.

[6] Amendment No. 4 makes minor changes, discussed in Amendment No. 3, to the proposed rule text to reflect that the date of effectiveness of the proposed rule change would be the date the Commission order approving the proposed rule change is published in the **Federal Register** and that the effectiveness of Commentary .01 to Rule 393, once approved, would be for a period of six months. Amendment No. 4 is a technical amendment not subject to notice and comment.

[7] 15 U.S.C. 78ee.

[8] 17 CFR 240.31.

[9] The Commission stated in its release adopting new Rule 31 and Rule 31T that ''it is misleading to suggest that a customer or [SRO] member incurs an obligation to the Commission under section 31.'' Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). In response to this statement, the Exchange issued a notice to members regarding its Rule 393 Fee and the Commission's ''Section 31 Fee,'' and provided guidance for members and member organizations that choose to charge their customers fees. *See* Amex Notice REG 2004–42 Finance (October 29, 2004).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 55886 (June 8, 2007), 72 FR 32935 (SR–NASD–2007–027).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–57820; File No. SR–FINRA–2008–017]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Section 1(a) of Article III of the FINRA By-Laws

May 15, 2008.

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 May 7, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

FINRA is proposing to amend Section 1(a) of Article III of the FINRA By-Laws, to interpret the reference to a ''registered broker'' in Section 1(a) of Article III of the FINRA By-Laws to include any bank exempted from the definition of ''broker'' under Section 3(a)(4)(E) of the Act[3] as of the date of filing of the proposed rule change. The proposed rule change is submitted in furtherance of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (''NYSE Regulation''). There are no changes to the text of FINRA rules as a result of the proposed rule change.

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78c(a)(4)(E).