

participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with the Co-Investor. The term "Co-Investor" with respect to any Fund means any person who is (a) an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Fund; (b) the SZD Group; (c) a Principal, lawyer, or employee of the SZD Group; (d) an investment vehicle offered, sponsored, or managed by SZD or an affiliated person of SZD; or (e) an entity in which an SZD entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2-1 thereunder.

5. The General Partner of each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Fund Investor held Interests. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the General Partner of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the

preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund and the General Partner will maintain and preserve, for the life of each Series of that Fund and at least five years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Series to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

#### *Compliance With Rule 701*

7. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, SZD will make available at no charge to potential Fund Investors the services of a Financial Consultant qualified to provide advice concerning the appropriateness of investing in a Fund. Specifically, the Financial Consultant will hold one or more group meetings with potential Fund Investors at which the Financial Consultant will discuss the risks and other considerations relevant to determining whether to invest in a Fund. The Financial Consultant also will be available to the group of potential Fund Investors to answer general questions regarding an investment in the Fund. In addition, potential Fund Investors will be given the opportunity to submit relevant questions and issues to the Financial Consultant in advance of the group meetings, so that the Financial Consultant can address those questions and issues at the meetings. SZD will not need to reveal the specific investments made by any Fund to the Financial Consultant, as long as the investment objectives, risk characteristics and other material information about the Fund of the type that would be disclosed in the offering documents for the Fund is made available to the Financial Consultant.

8. SZD will at all times control each Fund, within the meaning of rule 405 under the Securities Act. In this regard, SZD will, either directly or through a wholly-owned subsidiary, be the General Partner of the Fund, own at least 95% of the voting Interests of the Fund, and make all investment and other operational decisions for the Fund.

9. SZD or a wholly-owned subsidiary will own not less than 5% of the economic Interests issued each year by the Fund, and (as discussed above) at least 95% of the voting Interests of the Fund. In addition, SZD and its Principals, directly or through Qualified Investment Vehicles, together will own at least 80% of the economic Interests of each Series.

10. SZD prepares its financial statements on a modified cash basis, and does not consolidate the Fund's financial statements with its own. If, however, SZD prepared its financial statements in accordance with GAAP, it would consolidate the Fund's financial statements with its own.

11. SZD, when offering Interests pursuant to rule 701 under the Securities Act, will issue Interests in each Series in compliance with rule 701(d)(2),<sup>4</sup> and will comply with all applicable requirements of rule 701(e).<sup>5</sup>

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[File No. 500-1]**

### **In the Matter of Cosmetic Center, Inc., Impax Laboratories, Inc., Phoenix Waste Services Company, Inc., and Telynx, Inc.; Order of Suspension of Trading**

December 29, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cosmetic Center, Inc., because it has not filed any periodic reports since the period ended September 26, 1998.

It appears to the Securities and Exchange Commission that there is a

<sup>4</sup> If SZD relies on rule 701(d)(2)(ii), it will not sell pursuant to rule 701, during any consecutive 12-month period, Interests in the Fund if the sales price of those Interests exceeds 15% of the total assets of the Fund.

<sup>5</sup> In order to comply with the requirements of rule 701, at the beginning of each Investment Period the Fund will accept capital contributions or irrevocable commitments from Regulation D Investors for the relevant Series, and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments, from Rule 701 Investors for that Series, which in the aggregate will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from Regulation D Investors.

lack of current and accurate information concerning the securities of Impax Laboratories, Inc., because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Phoenix Waste Services Company, Inc., because it has not filed any periodic reports since the period ended October 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telynx, Inc., because it has not filed any periodic reports since the period ended October 31, 2004.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in securities of the above-listed companies is suspended for the period from 9:30 a.m. est on December 29, 2006, through 11:59 p.m. est on January 16, 2007.

By the Commission.

Nancy M. Morris,  
Secretary.

[FR Doc. 06-9986 Filed 12-29-06; 11:32 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55008; File No. SR-Amex-2006-98]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the Codification of Exchange Policy Regarding Specialist Commissions

December 22, 2006.

#### I. Introduction

On October 4, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Amex Rule 154 to codify policies regarding specialist commissions. The proposed rule change was published for comment in the **Federal Register** on

October 25, 2006.<sup>3</sup> The Commission received two comment letters regarding the proposal.<sup>4</sup> On November 28, 2006, the Exchange submitted a response to the comments.<sup>5</sup> On December 5, 2006, one of the initial commenters submitted a response to the Amex Response.<sup>6</sup> This order approves the proposed rule change.

#### II. Description

The Exchange proposes to codify in new subparagraph (b) to Amex Rule 154 its policies regarding situations where specialists may charge a commission for trades that are executed in whole or in part. Specifically, proposed Amex Rule 154(b) would prohibit a specialist from: (i) Charging a commission on an off-floor order in equities that is electronically delivered to the specialist unless the order requires special handling by the specialist or the specialist provides a service, and (ii) billing for electronically delivered orders in equities that are executed automatically by the Exchange's order processing facilities upon receipt. In addition, proposed Amex Rule 154(b) would reference Amex Rule 152(c), which prohibits specialists from charging a commission where they act as principal in the execution of an order entrusted to them as agent. Lastly, proposed Amex Rule 154(b) sets forth the types of orders specialists would be allowed to bill a commission. In particular, these orders would include limit orders that remain on the book for more than two minutes, market on close or limit on close orders, tick sensitive orders, orders for non-regular way settlement, stop or stop limit orders, orders stopped at one price and executed at a better price, fill-or-kill, and immediate-or-cancel orders, and orders for the account of a competing market maker.

#### III. Summary of Comments

The Commission received three comment letters regarding the proposed rule change from two specialists. Two of these comment letters, submitted by Streicher, opposed the proposed rule

change for the three reasons discussed below.<sup>7</sup> The third comment letter, submitted by Weiskopf, supported the proposed rule change, because "the specialist's commission charges, if not competitive, have the potential to drive business away from the exchange and eliminate an important competitor from the market place."<sup>8</sup> Weiskopf also stated its view that the proposed rule change is "a very constructive step towards fostering greater competition in The National Market System."<sup>9</sup>

Streicher argued that the proposed rule change would "adversely impact investors by reducing the qualify [sic] of markets offered by the Amex." In particular, Streicher argued that Amex's proposed elimination of certain specialist commissions would harm investors by putting pressure on specialists to increase spreads to offset the lost commissions. Streicher stated that "[w]hile an increase in spreads may not be practical in highly competitive markets, many of the securities listed on the Amex are thinly traded with most of their trading volume taking place primarily on the Amex." According to Streicher, "there is often little effective competition from other markets" for these securities, and, thus, the resulting increased spreads will "have an adverse impact investors \* \* \*."<sup>10</sup>

In its response, the Exchange stated that the purpose of the proposed rule change "is to attract and maintain order flow to Amex specialists by providing transparency, clarity and consistency to the costs of doing business on the Exchange." The Exchange argued that Streicher's position that the elimination of certain specialist commissions would lead to specialists seeking higher spreads is flawed, because "it is against each specialist's own economic interest to widen its spreads and thereby risk losing order flow." Furthermore, the Exchange disagreed with Streicher's assertion that "there is often little effective competition from other markets" and noted that "[a]ll Amex listed securities trade in at least one additional market center" and that "[t]he large majority of Amex issues trade on multiple venues." The Exchange concluded that "[w]idening of the spreads in these securities will likely result in further market share erosion as order flow providers mindful of their best execution responsibilities direct their orders elsewhere."<sup>11</sup>

<sup>3</sup> See Securities Exchange Act Release No. 54618 (October 18, 2006), 71 FR 62492.

<sup>4</sup> See letter from Jonathan Q. Frey, Managing Partner, J. Streicher & Co. L.L.C., to Nancy M. Morris, Secretary, Commission, dated November 13, 2006 ("Streicher Letter I"), and Web comment from William Silver, Managing Partner, Weiskopf, Silver Co., dated November 6, 2006 ("Weiskopf Letter").

<sup>5</sup> See letter from Neal L. Wolkoff, Chairman & Chief Executive Officer, Amex, to Nancy M. Morris, Secretary, Commission, dated November 28, 2006 ("Amex Response").

<sup>6</sup> See letter from Jonathan Q. Frey, Managing Partner, J. Streicher & Co. L.L.C., to Nancy M. Morris, Secretary, Commission, dated December 5, 2006 ("Streicher Letter II").

<sup>7</sup> See Streicher Letter I and Streicher Letter II.

<sup>8</sup> See Weiskopf Letter.

<sup>9</sup> *Id.*

<sup>10</sup> Streicher Letter I at 2-3.

<sup>11</sup> Amex Response at 3-4.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.