correspondent broker-dealer's transactions before the clearing firm has had a chance to review such transactions. This increases the possibility that a clearing firm will be responsible for problematic or risky transactions. In light of the higher risk presented by these firms, NSCC believes that they should be subject to higher minimum capital standards.

Currently, twenty-nine NSCC members do not meet the proposed $500,000 standard for full service members. For this reason, NSCC proposes that the new standard become effective on the later of (a) one year from the date of publication in the **Federal Register** of the notice of the filing of this rule change or (b) the date of Commission approval of this rule change. NSCC believes that this effective date will give those firms sufficient time to obtain appropriate capital infusions or make other clearing arrangements.

In addition, two NSCC members that clear for other broker-dealers do not meet the $1,000,000 standard. Therefore, NSCC proposes that this new standard become effective on the later of (a) six months from the date of publication in the **Federal Register** of the notice of the filing of this rule change or (b) the date of Commission approval of this rule change. NSCC believes that this effective date will give those firms sufficient time to obtain appropriate capital infusions.

During the interim period, if any, between Commission approval of this rule change and its effective date, NSCC will not consider applicants that do not meet the new minimum capital standards other than those firms applying for membership in connection with the agreement between NSCC and the Stock Clearing Corporation of Philadelphia (''SCCP'') under which SCCP has agreed to cease operations as a clearing corporation.

In view of the facts that: (i) The costs of surveillance and of collateral collection procedures in both time and resources falls on NSCC and all of its members and that these costs are disproportionately high relative to the size of the potential loss for members with less than $500,000 in excess net capital, (ii) the default or insolvency of any settling member potentially imposes burdens and costs on NSCC and all of its members, and (iii) the changes proposed by this filing are meant to reduce these burdens and costs, NSCC believes that this filing is consistent with Section 17A of the Act[8] and the rules and regulations thereunder.

[8] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose a burden on competition. In fact, NSCC believes that the proposed rule change will rectify a burden on competition that has slowly developed due to changing circumstances by having the costs of risk management more equitably borne by all NSCC members and by requiring all firms to have a meaningful amount of capital at risk. NSCC believes the increased capital requirements better reflect current marketplace realities.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

Within thirty-five 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 ninety 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 NSCC 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–97–07 and should be submitted by October 20, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25690 Filed 9–26–97; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39098; File No. SR–NYSE–97–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Shareholder Approval Policy

September 19, 1997.

I. Introduction

On May 16, 1997, the New York Stock Exchange, Inc., (''NYSE'' 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 proposed rule change relating to amendments to its Shareholder Approval Policy.[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 38716 (June 5, 1997), 62 FR 32135 (June 12, 1997). No comment letters were received, however, on August 8, 1997, the Exchange submitted a letter in support of its filing.[4]

II. Description of the Proposal

Currently, the Exchange's shareholder approval policy requires a listed company to obtain shareholder approval in four situations:

• Related-Party Transactions: when selling more than one percent of the company's stock, for either cash or other assets, to a ''related party,'' define to mean officers, directors and holders of five percent or more of the company's common stock (or stock with five

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

[2] 17 CFR 240.19b–4.

[3] The NYSE's Shareholder Approval Policy is contained in Paragraphs 312.03 through 312.05 of the Exchange's Listed Company Manual.

[4] Letter from Noreen M. Culhane, Senior Vice President, Listings and Client Service, NYSE, to Howard Kramer, Associate Director, Division of Market Regulation, Commission (August 7, 1997).

percent or more of the company's voting power);

- Private Sales: when selling 20 percent or more of the company's stock, other than in a public offering for cash;
- Stock Option Plans: when adopting stock option plans that are not ''broadly-based''; or
- Change of Control: with respect to any issuance of stock that results in the change of control of the company.

The Exchange is modifying the first two of these requirements to provide listed companies with flexibility in their financing plans. In addition, the rule change restructures the wording of the Policy in order to simplify the language. With the exception of the two changes to the shareholder approval policy described below, this restructuring does not substantially change the Exchange's shareholder approval policy.

Related-Party Transactions

Issuers sometimes seek cash financing from one or more of their ''substantial'' security holders (which the Exchange defines as a person holding either five percent of the company's stock or five percent of the company's voting power). The Exchange now requires shareholder approval if a sale to a substantial security holder results in a one percent dilution.

The Exchange is proposing that cash sales of stock to a substantial security holder be exempt from the Policy if the issuance is limited to five percent of the issuer's stock. Further, the exemption from the policy would apply only if the sale is at a price at least as high as each of the book and market value of the stock. Shareholder approval for issuances that result in a dilution of more than one percent of the issuer's stock would continue to be required under the policy for sales of stock to any related party (including substantial security holders) for assets other than cash and cash sales to officers and directors.

Private Sales

The Exchange requires approval of all issuances that result in a 20 percent dilution, except for public offerings for cash. The Exchange proposes to make a private cash sale of 20 percent or more of a company's stock exempt from the policy if (i) the sales is at a price at least as high as each of the book and market value of the stock and (ii) the sale is a ''bona fide financing.'' A bona fide financing is a cash sale either (i) in which a registered broker-dealer acts as an intermediary in the transaction or (ii) directly by an issuer to multiple purchases in which no one purchase, or group of related purchases, acquires more than five percent of the issuer's common stock or voting power. The five percent limit ensures that control persons do not disproportionately increase their ownership in a listed company through privately-negotiated sales, even if the sale price is at the market.[5]

The Exchange has consulted with several committees, including its Legal Advisory Committee, the Listed Company Advisory Committee, and the Individual Investor Advisory Committee, and represents that the committees have reviewed the proposal and encourage approval of the proposed change.

The Exchange believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, 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.

III. Discussion

The Commission believes NYSE's proposal is consistent with the requirements of Section 6(b)(5) of the Act.[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and in general, to further investor protection and the public interest.

NYSE is proposing to amend its Shareholder Approval Policy to exempt cash sales of stock to a substantial security holder if the issuance is limited to five percent of the issuer's stock. The exemption would apply only if the sale is at a price at least as high as each of the book and market value of the stock. The Commission believes the proposed amendment is reasonable and consistent with the Act. Specifically, the Commission believes that cash sales do not create the same valuation concerns as do sales of stock for non-cash assets, and that such an exemption offers issuers flexibility when selling a limited percentage of stock for cash to a substantial security holder. Furthermore, the Commission notes that the Exchange will continue to require shareholder approval for certain issuances resulting in a dilution of more than one percent of the issuer's common stock, including sales of stock to any related party for assets other than cash, and cash sales to officers and directors.

The Exchange is also proposing to make a private cash sale of 20 percent or more of a company's stock exempt from the Shareholder Approval Policy if the sale is at a price at least as high as each of the book and market value of the stock, and the sale is a ''bona fide financing.'' The Exchange defines a ''bona fide financing'' as a sale through a broker-dealer acting as an intermediary or a sale to multiple parties in which no one person acquires more than five percent of the issuer's stock. In its letter of support the Exchange states that it has historically exempted public cash offerings from Section 312.03(c) of the Manual because there is a certain amount of disclosure and pricing discipline in public offerings to protect stock holders from potential abuse. The Exchange states that it believes market practices and changes to the Commission's rules have blurred the differences between public and private sales. The Exchange further notes that companies now engage in broad-based sales of securities convertible into listed common stock under Commission Rule 144A. In these transactions, the NYSE states that registered broker-dealers perform functions similar to that of underwriters by conducting due diligence, buying the securities from the issuer, and reselling them to qualified institutional buyers. Similarly, companies can raise capital by selling securities privately in direct transactions with multiple parties. The NYSE believes that in both cases the offerings have characteristics similar to public offerings, noting that such sales can more closely resemble public offerings for cash than sales of stock pursuant to a shelf registration which are currently exempt from the shareholder approval policy.

While the Commission recognizes that certain types of private offerings, such as those structured to facilitate resales exclusively between and among institutional investors pursuant to Commission Rule 144A, have certain characteristics that may make them resemble public offerings, there are certain elements that sharply distinguish private offerings from public

[5] The rule change also clarifies that shareholder approval is required if any one of the four requirements is triggered, notwithstanding the fact that the other requirements of the Policy have not been triggered. For example, a direct sale by a company of more than 20 percent of its stock is a bona fide financing still would require shareholder approval as a related-party transaction if the company sells more than one percent of the stock to an officer or director.

[6] 15 U.S.C. § 78f(b)(5).

[7] 15 U.S.C. § 78f(b)(5).

offerings such as the ''restricted'' status of the privately placed securities,[8] and the absence of both a prescribed public disclosure document and a Section 11 remedy.[9] Nevertheless, the Commission believes that the limitations on price and the requirement that the sales be bona fide financing appropriately limit the availability of the exemption and should provide reasonable protections for shareholders.

In particular, requiring that private cash sales be made to multiple, unrelated purchasers in which no one purchaser or group of related purchasers can acquire more than five percent of the issuer's common stock or voting power should help to prevent the exemption from being used by issuers to avoid a shareholder vote when placing large blocks of stock with a particular purchaser. Moreover, as the NYSE states, this requirement should also help to impose pricing discipline on the transaction, as well as to ensure that control persons do not disproportionately increase their ownership in a company through private sales. Further, as the NYSE indicates, the alternative requirement that a broker dealer act as an intermediary to qualify for the private cash offering exemption is meant to cover Rule 144A sales. We agree with the NYSE that market practices in this area have developed involving both due diligence and pricing that could serve to protect shareholders from abuse of unfair stock placements. The Commission also believes that the existing disclosure requirements for private equity offerings also act as an effective safeguard against potential abuse of private cash offerings.[10] In summary, the Commission believes that the limitation of the exemption to only a ''bona fide private financing'', as defined above, coupled with the requirement that the sale be at a price at least as high as each of the book and market value of the stock provides sufficient safeguards for shareholders to support the exemption to the Policy in these limited circumstances.

VI. Conclusion

The Commission believes the proposed change should provide listed companies with flexibility in their financing plans, while still substantially preserving the significant shareholder rights afforded under the Policy. Finally, the Commission believes the restructuring of the wording of the Policy should simplify and clarify the Policy.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NYSE, and in particular Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–NYSE–97–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–25770 Filed 9–26–97; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* Preliminary note six, and Preliminary notes three and four to Securities Act Rule 144A (Reg. § 230.144A).

[9] 15 U.S.C. § 77k.

[10] *See* Exchange Act Form 10–Q, Item 2(c); and Exchange Act Form 8–K, Item 9.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 19, 1997

The following Applications for Certificate of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases, a final order without further proceedings.

Docket Number: OST–97–2913.
Date Filed: September 17, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1997.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102 and 41108, and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity authorizing Delta to engage in scheduled foreign air transportation of persons, property and mail between the following terminal points: (1) Atlanta, Georgia and Tokyo, Japan; (2) Portland, Oregon and Osaka, Japan; and (3) Portland, Oregon and Fukuoka, Japan.

Docket Number: OST–97–2914.
Date Filed: September 17, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1997.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 370 (segment 1) (Dallas/Ft. Worth-London/Amsterdam/Brussels), as reissued by Order 96–5–9, May 12, 1996.

Docket Number: OST–97–2918.
Date Filed: September 17, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1997.
Description: Application of Pan American World Airways, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for issuance of a certificate of public convenience and necessity authorizing foreign air transportation. Specifically, Pan Am is seeking authority to engage in scheduled foreign air transportation of persons, property and mail between: (1) The co-terminal points Miami, Florida, and New York, New York, on the one hand, and Santo Domingo, Dominican Republic, on the other; and (2) the co-terminal points Fort Lauderdale, and Miami, Florida, and New York, New York on the one hand, and Nassau, Bahamas, on the other.

Docket Number: OST–97–2919.
Date Filed: September 19, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 17, 1997.
Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for renewal of its Route 383 certificate authority to provide scheduled foreign air transportation of persons, property and mail between Newark, New Jersey, and London, U.K., and to integrate its Route 383 authority with Continental authority at other points.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–25764 Filed 9–26–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 165–30]

Designation of Acting Commissioner of Customs; Authority Delegation

Dated: September 17, 1997.

Pursuant to the authority vested in the Secretary of the Treasury, including the