

being approved by the shareholders of the applicable Fund.

5. When a Portfolio Manager change is proposed for a Fund with an Affiliated Portfolio Manager, the Trust's Trustees, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Portfolio Manager, shareholders will be furnished relevant information about a new Portfolio Manager that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Portfolio Manager. The Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Portfolio Manager, an informal information statement meeting the requirements of Regulation 14C and Schedule 14C of the Securities Exchange Act of 1934 ("Exchange Act"). The information statement will also meet the relevant requirements of Schedule 14A of the Exchange Act.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's portfolio, and subject to review and approval by the Trustees, will: (i) Set the Fund's overall investment strategies; (ii) select Portfolio Managers; (iii) when appropriate, recommend to the Fund's Board of Trustees the allocation and reallocation of a Fund's assets among multiple Portfolio Managers; (iv) monitor and evaluate the performance of Portfolio Managers; and (v) ensure that the Portfolio Managers comply with the Board's investment objectives, policies, and restrictions.

8. No Trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that Trustee, director or officer) any interest in a Portfolio Manager except for (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1 percent of the outstanding securities of any class or debt or equity of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by or is under common control with a Portfolio Manager.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-25990 Filed 9-30-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39129; File No. SR-NYSE-97-16]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to NYSE Rule 79A

September 25, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 28, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The proposed rule change consists of amendments to Exchange rule 79A to conform with requirements for display of customer limit orders as contained in Rule 11Ac1-4 under the Exchange Act. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

\* \* \* \* \*

#### NYSE Rule 79A

##### *Miscellaneous Requirements on Stock and Bond Market Procedures*

.10 Request to make better bid or offer. When any [member] *Floor broker* does not bid or offer at the limit of an order which is better than the currently quoted price in the security and is requested by his principal to bid or offer at such limit, he shall do so.

.15 *With respect to limit orders received by specialists, each specialist shall publish immediately (i.e., as soon*

*as practicable, which under normal market conditions means no later than 30 seconds from time of receipt) a bid or offer that reflects:*

(i) *the price and full size of each customer limit order that is at a price that would improve the specialist's bid or offer in such security; and*  
(ii) *the full size of each limit order that*

(A) *is priced equal to the specialist's bid or offer for such security;*

(B) *is priced equal to the national best bid or offer; and*

(C) *represents more than a de minimis change (i.e., more than 10 percent) in relation to the size associated with the Exchange's bid or offer.*

*The requirements with respect to specialists' display of limit orders shall not apply to any customer limit order that is:*

(1) *executed upon receipt of the order;*

(2) *placed by a customer who expressly requests, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed;*

(3) *an odd-lot order;*

(4) *delivered immediately upon receipt to an exchange or association-sponsored system or an electronic communications network that complies with the requirements of Securities and Exchange Commission Rule 11Ac1-1 (c)(5)(ii) under the Securities Exchange Act with respect to that order;*

(5) *delivered immediately upon receipt to another exchange member or over-the-counter market maker that complies with the requirements of Securities and Exchange Commission Rule 11Ac1-4 under the Securities Exchange Act with respect to that order;*

(6) *an "all or none" order;*

(7) *a limit order to buy at a price significantly above the current offer or a limit order to sell at a price significantly below the current bid that is handled in compliance with Exchange procedures regarding such orders, ("too marketable limit orders"); or*

(8) *an order that is handled in compliance with Exchange procedures regarding block crosses at significant premiums or discounts from the last sale.*

\* \* \* \* \*

#### 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

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

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

proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B, and C below.

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

**1. Purpose**

The Commission has recently adopted requirements (the "Order Execution Rules") for specialists to display immediately the price and full size of customer limit orders that would improve the bid or offer in a security.<sup>3</sup> The term "immediately" means as soon as practicable, which under normal market conditions requires display no later than 30 seconds after receiving such orders. The proposed amendments to NYSE Rule 79A would make the rule consistent with the order execution requirements of Rule 11Ac1-4 under the Exchange Act, as well as incorporate certain Commission interpretations of the Rule.<sup>4</sup>

Rule 79A.10 would be amended to apply only to Floor brokers rather than to all members. This would require brokers to represent an order at its limit when requested to do so by the customer, while continuing to allow brokers to use brokerage judgment in representing an order for a customer. A new section would be added to Rule 79A which would apply only to specialists. Rule 79A.15 would provide that, upon receipt of a customer limit order, a specialist must "immediately" (i.e., as soon as practicable, which under normal market conditions means within 30 seconds from time to receipt) publish a bid or offer that reflects:

(i) The price and full size of the order, if it is at a price that would improve the bid or offer in the subject security;<sup>5</sup> and

(ii) The full size of the order, if it is priced at the same price as the current bid or offer in the subject security, and the current bid or offer is equal to the national best bid or offer. The specialist would not, however, be required to add size to the prevailing bid or offer if the size of the customer's limit order represents a *de minimis* increase (i.e., 10% or less) over the size of the prevailing bid or offer.

Requirements for specialists to display customer limit orders would *not* apply to the following:<sup>6</sup>

(i) An order that is executed upon receipt;

(ii) An order placed by a customer who has requested (either on an order-by-order basis or respectively) that the order not be displayed;

(iii) An odd-lot order;

(iv) An order that is immediately delivered to an exchange or association-sponsored system, or electronic communications network ("ECN") that complies with the ECN display alternative of the Quote Rule (Rule 11Ac1-1(c)(5)(ii));

(v) An order that is immediately delivered to another exchange member or OTC market maker that complies with the Limit Order Display Rule (Rule 11Ac1-4);

(vi) an "all or none" order;

(vii) a "too-marketable" limit order<sup>7</sup>; or,

(viii) an order that is handled in compliance with Exchange procedures regarding block crosses at significant premiums or discounts from the last sale.<sup>8</sup>

**2. Statutory Basis**

The basis under the Exchange Act for the proposed rule change is the requirement under Section 6(b)(5) of the Exchange Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that this rule change will accomplish these ends by facilitating

*available under Exchange procedures.* (Emphasis in original.)

<sup>6</sup> The Exchange is not including the exception for block orders contained in Rule 11Ac1-4(c)(4).

<sup>7</sup> A "too-marketable" limit order is an order to buy at a price much higher than the offer, or an order to sell at a price much lower than the bid. When such an order is received, the specialist may execute the order at the market or may seek price confirmation. (See memorandum from Market Surveillance Division, NYSE, to Specialists dated April 15, 1996.)

<sup>8</sup> Issued as NYSE Information Memo 94-32 (August 9, 1994). See Securities Exchange Act Release No. 34303 (July 1, 1994) and File No. SR-NYSE-93-48.

increased transparency in the market, thus providing the public with better information on which to base investment decisions.

*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 Exchange 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. 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 N.W., 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 Room in 450 Fifth Street, N.W., Washington, DC 20549.

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 number SR-NYSE-97-16 and should be submitted by [insert date 21 days from date of publication].

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act and the rules and regulations thereunder applicable to an exchange and with Section 11A of the Exchange Act. The proposal will make the NYSE's limit order display rule consistent with the Commission's Limit Order Display Rule ("Display Rule"),<sup>9</sup> thereby furthering the investor protection and market

<sup>3</sup> See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

<sup>4</sup> See letter from Richard Lindsey, Director, Division of Market Regulation, SEC to James E. Buck, Senior Vice President and Secretary, NYSE, dated January 17, 1997. The letter provided no-action relief for a specialist that does not display a limit order while complying with Exchange procedures for "too-marketable" limit orders or for block crosses at significant premiums or discounts from the last sale.

<sup>5</sup> In an August 28, 1997, letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Kathy England, Assistant Director, Market Regulation, the Exchange stated that Rule 79A.10 refers to "the limit of an order which is *better than* the currently quoted price" since the procedures for representing an order whose limit is *equal to* the currently quoted price are covered by Exchange Rules 70 and 123A.42. These rules provide that when a bid or offer is clearly established, no bid or offer at an inferior price shall be made, and require a broker to use due diligence to execute a limit order at its limit price, or at a better price, if

<sup>9</sup> 17 CFR 240.11Ac1-4.

transparency objectives of the Order handling Rules.<sup>10</sup> In adopting the Order Handling Rules, the Commission increased investor protection by ensuring that customer limit orders were immediately displayed in the markets and by providing investors information about and access to superior prices that specialists and market makers displayed in ECNs. Although the Order handling Rules supersede existing NYSE rules, the proposed rule change will help provide consistency among Commission and NYSE rules.<sup>11</sup> Consequently, the proposed changes submitted by the NYSE will help remove impediments to the operation of a free and open market and a national market system, enhance the protection of investors and the public interest, and produce fair and informative quotations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to ensure consistency between NYSE rules and the Order Handling Rules.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR—

<sup>10</sup> The Display Rule, which requires the display of customer limit orders priced better than a market maker or specialist's quote, and adopted amendments to the Quote Rule to enhance the quality of published quotations for securities, and competition and pricing efficiency in U.S. securities markets. These rules (collectively, "Order Handling Rules") were designed to address growing concerns about the handling of customer orders for securities. See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Adopting Release"). See also Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) (order revising the effective date of the Order Execution Rules to January 13, 1997); and 38139 (January 8, 1997) (order revising the effective date of the Order Execution Rules until January 20, 1997).

<sup>11</sup> The NYSE proposal requires that specialists publish certain bids or offers "immediately (i.e., as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt)." The Commission notes that some industry participants have developed automated systems to ensure that customer limit orders are displayed no later than 30 seconds from receipt. Users of such systems, however, should use caution when relying on these systems for compliance. While "default" systems that ensure display no later than 30 seconds after receipt in situations where a market maker or specialist cannot otherwise attend to an order are not inappropriate, market makers or specialists that routinely allow such a system to display customer limit orders at the 30th second after receipt would not be deemed to be in compliance with the Display Rule. The Display Rule requires *immediate* display. See Letter from Richard Lindsey, Director, Division of Market Regulation, SEC to James F. Duffy, Executive Vice President and General Counsel, American Stock Exchange, dated April 1, 1997.

NYSE-97-16) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-25991 Filed 9-30-97; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6¾ percent for the October–December quarter of FY 98.

Pursuant to 13 CFR 120.932, the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 120.801) shall be the greater of 6% over the New York prime rate of the limitation established by the constitution or laws of a given State. The initial rate for a fixed rate loan shall be the legal rate for the term of the loan.

**LeAnn Oliver,**

*Acting Associate Administrator for Financial Assistance.*

[FR Doc. 97-26027 Filed 9-30-97; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Fitness Determination of Austin Express, Inc.

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Commuter Air Carrier Fitness Determination—Order 97-9-25, Order to Show Cause.

**SUMMARY:** The Department of Transportation is proposing to find Austin Express, Inc., fit, willing, and able to provide commuter air service under 49 U.S.C. 41738.

**RESPONSES:** All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness

Division, X-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 8, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Carol Woods, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: September 23, 1997.

**Patrick V. Murphy,**

*Deputy Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 97-25906 Filed 9-30-97; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

[Docket 37554]

#### Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 97-7-32 established the currently effective two-month SFFL applicable through September 30, 1997.

In establishing the SFFL for the two-month period beginning October 1, 1997, we have projected non-fuel costs based on the year ended June 30, 1997 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 97-9-32 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.3355

Latin America—1.3927

Pacific—1.4779

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation:  
Dated September 25, 1997.

**Patrick V. Murphy,**

*Deputy Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 97-25979 Filed 9-30-97; 8:45 am]

BILLING CODE 4910-62-P

<sup>12</sup> 17 CFR 200.30-3(a)(12).