

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act<sup>9</sup> that an exchange maintain rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

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

The Exchange believes the proposed rule change does not 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 not solicited, and does not intend to solicit, comments on the proposed rule change. Nor has the Exchange received any unsolicited written comments from members or other interested parties.

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

Within 35 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 90 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 the exchange consents, the Commission will:

(A) By order approved the 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, including whether the proposed rule change is consistent with the Act. The Commission generally solicits comment on the questions set forth below to facilitate its independent determination as to whether the new fee structure: (1) provides for the equitable allocation of

reasonable fees among NYSE-listed companies and NYSE member firms, consistent with Section 6(b)(4) of the Act; (2) conforms with Sections 6(b)(5) and 6(b)(8) of the Act by not unfairly discriminating among issuers and imposing a burden on competition that is not necessary under the Act; and (3) imposes fees that are "reasonable" within the meaning of Rules 14a-13, 14b-1, and 14b-2 under Sections 14(a) and 14(b) of the Act. The Commission notes that Rules 14a-13, 14b-1, and 14b-2 require registered broker-dealers, banks and other covered nominees to deliver proxy materials, annual reports and other corporate communications to street-name security holders. These rules are meant to ensure, among other things, that public companies reimburse these nominees, upon request, for "reasonable expenses" incurred in delivering such communications.

At stated in the Previous Filing, the Commission has reached no final resolution of the issues noted by commenters. The Commission will continue to closely examine the impact of the revised proxy fee reimbursement guidelines on NYSE-listed companies and NYSE member firms. Because the Audit did not analyze recent developments such as the shifting of proxy distribution activities to ADP from three of four self-distributing broker-dealers, and ADP's Internet proxy delivery and voting mechanism, the Commission solicits specific comment on the following questions: (1) ADP introduced its Internet delivery and voting services after the fee structure was approved on a pilot basis on March 14, 1997. Accordingly, the Commission solicits comment regarding the itemized fees that ADP charges issuers for Internet proxy delivery and voting services. In addition, should the processing fee that relates to the mailing of materials in paper format (which the Exchange recently reduced from \$0.55 to \$0.50 per basic proxy package) be modified to reflect the actual costs of electronic delivery? (2) Is the incentive fee (\$0.50 per mailing eliminated) necessary or appropriate, in whole or part, now that ADP is offering the Internet as a vehicle for delivery of proxy materials and other corporate communications to street-name holders? (3) Is the proposed thirty-five month extension of the pilot more appropriate than a longer or shorter period? (4) Are issuers with small but diffuse shareholder bases realizing the same benefits from ADP's nominee coordination activities as larger issuers whose securities are widely owned but more concentrated in the accounts of

nominees? (5) Does the \$20 nominee coordination fee have a disproportionate impact on smaller issuers?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, 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, N.W., Washington, D.C. 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 No. SR-NYSE-98-05 and should be submitted by April 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39770; File No. SR-NYSE-97-36]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to Exchange Policy for Entry of MOC/LOC Orders and Publication of Imbalances**

March 18, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 29, 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, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. § 78s(b)(1)

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

The proposed rule change consists of changes to the Exchange's policy for entry of market-on-close ("MOC") and limit-at-the-close ("LOC") orders and publication of imbalances, for both expiration and non-expiration days.<sup>2</sup>

## **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 NYSE 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 NYSE has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

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

#### **1. Purpose**

Special procedures regarding the entry of MOC and LOC orders have been in effect for more than ten years. These procedures are designed to alleviate excess volatility at the close by providing MOC imbalance information to market participants in a timely manner in order to attract contra-side interest. The procedures have been refined over the years based on the Exchange's experience and input from constituents. The Exchange is now proposing additional refinements to the procedures in order to enhance their usefulness.

The current procedures require the MOC and LOC orders in any stock be entered by 3:40 p.m. on expiration days, and by 3:50 p.m. on non-expiration days. No cancellation or reduction of any MOC or LOC order in any stock may take place after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days, (except in a case of legitimate error or to comply with the provisions of Exchange Rule 80A). In addition, Floor brokers representing any MOC orders must indicate their MOC interest

to the specialist by 3:40 p.m. or 3:50 p.m., for expiration and non-expiration days, respectively.

For the selected stocks identified by the Exchange (formerly known as "pilot stocks") and published in its "special stock list," a single publication of imbalances of 50,000 shares or more is required to be made as soon as practicable after 3:40 p.m. on expiration days or 3:50 p.m. on non-expiration days. On expiration days, stocks on the special stock list that do not have an imbalance of 50,000 shares or more at 3:40 p.m. must publish a "no imbalance" status. Imbalances of 50,000 shares or more must also be published for stocks going into or out of an index. For any other stock, an imbalance of 50,000 shares or more may be published at the request of the specialist, with Floor Official approval. After the 3:40 p.m. or 3:50 p.m. imbalance publication, MOC and LOC orders may be entered only to offset a published imbalance. No MOC or LOC orders may be entered if there is no imbalance publication. On expiration days, the entry of MOC or LOC orders after 3:40 p.m. to establish or liquidate positions related to a strategy involving derivative instruments is not permitted, even if such orders might offset published imbalances.

In July of 1997, the NYSE's Market Performance Committee appointed a subcommittee to review MOC procedures. The subcommittee made several recommendations to increase the effectiveness of the procedures. These changes, which the Exchange is proposing to implement, are:

- 3:40 p.m. deadline for entry of MOC and LOC orders and indication of MOC interest to specialists by Floor brokers representing any MOC orders, every day. This earlier deadline on non-expiration days would provide additional time to attract contra-side interest.

- Integration of marketable LOC orders in the imbalance publication. Currently, imbalance publications indicate MOC interest but not LOC interest. See Amendment No. 1. The Exchange is proposing to include both MOC and marketable LOC orders in the imbalance publication. The determination of whether a LOC order is "marketable" would be based upon the last sale price at 3:40 or 3:50 p.m. This means that LOC orders to buy at a higher price would be included with the buy MOC orders; LOC orders to sell at a lower price would be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the imbalance calculation. This would provide a more

complete picture to market participants of the potential size of the imbalance at the close.

- The Exchange is also proposing mandatory publication of all MOC/LOC imbalances of 50,000 shares or more in *all* stocks on *any* trading day as soon as practicable after 3:40 p.m. As discussed above and in Amendment No. 1, currently, the Exchange requires mandatory publication of imbalances of 50,000 shares or more only in stocks on special stock lists (formerly "pilot stocks") and stocks being added to or dropped from an index on expiration days as soon as practicable after 3:40 p.m. (or 3:50 p.m. for non-expiration days). Publication of an imbalance of *less than* 50,000 shares may be made at that time with the approval of a Floor Official. This proposed new provision would permit but not require the publication of an imbalance which, although less than 50,000 shares, may be significantly greater than average daily volume in a stock. This would enhance information available to market participants concerning stocks with significant imbalances.

- The Exchange also proposed a new procedure to permit non-mandatory publication of MOC/LOC imbalances of *any* size between 3:00 and 3:40 p.m., with Floor Official approval; these publications would be informational only, with no effect on MOC/LOC order entry. Imbalance information would be required to be updated at 3:40 p.m. for all stocks on all days, regardless of size, in order to provide timely imbalance information to market participants.

- An additional imbalance publication on both expiration and non-expiration days, must be made at 3:50 p.m. for any stock that had an imbalance publication at 3:40 p.m.<sup>3</sup> If the imbalance at 3:50 p.m. is less than 50,000 shares, a "no imbalance" status must be published, except that an imbalance of less than 50,000 shares may be published with Floor Official approval, provided there had been an imbalance publication at 3:40 p.m. If there were no imbalance publication at 3:40 p.m., there would not be a publication at 3:50 p.m., since MOC and LOC orders could not be entered during the interim to change the imbalance. If the 3:50 p.m. imbalance publication reversed the first imbalance publication, only MOC and LOC orders which offset the 3:50 p.m. imbalance would be permitted to be entered thereafter. This would present market participants with

<sup>2</sup> On March 18, 1998, at the Commission staff's request, the NYSE amended the filing by submitting a chart which clarifies the proposed procedures and contains the authority and sources for the NYSE's proposed policy change for entry of MOC and LOC orders and for the publication of imbalances, for both expiration and non-expiration days. See Letter from Donald Siemer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated March 13, 1998 ("Amendment No. 1"). The chart is provided in Exhibit A, below.

<sup>3</sup> Currently, the Exchange requires only a single imbalance publication at 3:40 p.m. on expiration days and at 3:50 p.m. on non-expiration days. See Amendment No. 1.

a more timely and more accurate picture of imbalances before the close.

- MOC/LOC order entry is precluded after 3:40 p.m. in all stocks on all days, unless an imbalance is published, in which case entry of MOC/LOC orders would be permitted only on the contra side of the published imbalance.

The Exchange believes that these revisions would provide more timely and more complete information to market participants concerning MOC/LOC order imbalances and improve the effectiveness of the procedures.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) 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 a national market system and, in general, to protect investors and the public interest. The proposed changes to MOC/LOC procedures are designed to respond to constituent advice that more timely and more complete information with respect to MOC/LOC imbalances would improve the Exchange's closing procedures.

### *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*

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

Within 35 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 90 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 the self-regulatory organization consents, the Commission will:

(A) By order approve the 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, including whether the proposed rule change to consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 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, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-97-36 and should be submitted by April 16, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

### EXHIBIT A.—MOC AND LOC CHANGES PROPOSED IN FILE NO. SR-NYSE-97-36

Proposed policy	Current policy	Sources for current policy
<ul style="list-style-type: none"> <li>• 3:40 p.m. deadline for entry of MOC and LOC orders on <i>expiration</i> days and <i>non-expiration</i> days.</li> </ul>	<ul style="list-style-type: none"> <li>• 3:40 p.m. deadline for entry of MOC and LOC orders on <i>expiration</i> days.</li> </ul>	<ul style="list-style-type: none"> <li>• Expiration day MOC procedures permanent approval (File No. SR-NYSE-96-31, Release No. 34-37894, October 30, 1996); Information Memo No. 96-34, November 8, 1996.</li> </ul>
<ul style="list-style-type: none"> <li>• Same as above .....</li> </ul>	<ul style="list-style-type: none"> <li>• 3:50 p.m. deadline for entry of MOC and LOC orders on <i>non-expiration</i> days.</li> </ul>	<ul style="list-style-type: none"> <li>• LOC order entry procedures pilot approval (File No. SR-NYSE-97-21, Release No. 34-37969, November 20, 1996 and File No. SR-NYSE-97-19, Release No. 34-38865, July 23, 1997); Information Member No. 97-25, May 13, 1997.</li> </ul>
<ul style="list-style-type: none"> <li>• Integration of marketable LOC orders in the imbalance publication, (i.e., include <i>both</i> MOC and <i>marketable</i> LOC orders in imbalance publication).</li> </ul>	<ul style="list-style-type: none"> <li>• Imbalance publication indicates <i>MOC</i> interest only.</li> </ul>	<ul style="list-style-type: none"> <li>• Non-expiration day MOC procedures permanent approval (File No. SR-NYSE-94-44, Release No. 34-35589, April 10, 1995); Information Memo No. 95-21, May 12, 1995.</li> <li>• LOC order entry procedures pilot approval (File No. SR-NYSE-96-21, Release No. 34-37969, November 20, 1996 and File No. SR-NYSE-97-19, Release 34-38865, July 23, 1997); Information Memo No. 97-25, May 13, 1997.</li> <li>• Expiration day MOC procedures permanent approval (File No. SR-NYSE-96-31, Release No. 34-37894, October 30, 1996); Information Memo No. 96-34, November 8, 1996.</li> </ul>

<sup>4</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT A.—MOC AND LOC CHANGES PROPOSED IN FILE NO. SR-NYSE-97-36—Continued

Proposed policy	Current policy	Sources for current policy
<ul style="list-style-type: none"> <li>• Mandatory publication of all <i>MOC/LOC</i> imbalances of 50,000 shares or more in <i>all stocks on any trading day</i> (i.e., expiration and non-expiration days) as soon as practicable after 3:40 p.m.</li> <li>• Same as above .....</li> <li>• Non-mandatory publication of <i>MOC/LOC</i> imbalances of <i>less than</i> 50,000 shares at 3:40 p.m. with Floor Official approval.</li> <li>• Non-mandatory publication of <i>MOC/LOC</i> imbalances of <i>any size between 3:00 and 3:40 p.m.</i>, with Floor Official approval. These would be informational only with no effect on <i>MOC/LOC</i> order entry. Imbalance information would be required to be updated at 3:40 p.m., regardless of size.</li> <li>• Additional imbalance publication on both expiration and non-expiration days, at 3:50 p.m. for any stock which had an imbalance publication at 3:40 p.m.</li> <li>• After 3:40 and 3:50 p.m. imbalance publications on <i>any trading day</i>, <i>MOC/LOC</i> orders may be entered only to offset a published imbalance.</li> <li>• If the imbalance at 3:50 p.m. is less than 50,000 shares, either (1) a "no imbalance" status must be published; or (2) Floor Official approval must be sought to publish an imbalance of less than 50,000 shares.</li> <li>• If there were no imbalance publication at 3:40 p.m., there would not be a publication at 3:50 p.m..</li> </ul>	<ul style="list-style-type: none"> <li>• Mandatory publication of <i>MOC</i> imbalances of 50,000 shares or more in <i>stocks on special stocks lists</i> (formerly known as pilot stocks) and <i>stocks being added to or dropped from an index</i>, on <i>expiration days</i> as soon as practicable after 3:40 p.m.</li> <li>• Mandatory publication of <i>MOC</i> imbalances of 50,000 shares or more in <i>stocks on special stock lists</i> (formerly—known as pilot stocks) and <i>stocks being added to or dropped from an index</i>, on <i>non-expiration days</i> as soon as practicable after 3:50 p.m.</li> <li>• New.</li> <li>• New.</li> <li>• <i>Single imbalance publication at 3:40 p.m.</i>, on <i>expiration days</i> and at 3:50 p.m. on <i>non-expiration days</i>.</li> <li>• After imbalance publications at 3:40 p.m. on <i>expiration days</i> and 3:50 p.m. on <i>non-expiration days</i>, <i>MOC/LOC</i> orders may be entered only to offset a published imbalance.</li> <li>• New.</li> </ul>	<ul style="list-style-type: none"> <li>• Expiration day of <i>MOC</i> procedures permanent approval (File No. SR-NYSE-96-31, Release No. 34-37894, October 30, 1996); Information Memo No. 96-34, November 8, 1996.</li> <li>• Non-expiration day <i>MOC</i> procedures permanent approval (File No. SR-NYSE-94-44, Release No. 34-35589, April 10, 1995); Information Memo No. 95-21, May 12, 1995.</li> </ul> <p>Expiration day <i>MOC</i> procedures permanent approval (File No. SR-NYSE-96-31, Release No. 34-37894, October 30, 1996); Information Memo No. 96-34, November 8, 1996.</p> <ul style="list-style-type: none"> <li>• Non-expiration day <i>MOC</i> procedures permanent approval (File No. SR-NYSE-94-44, Release No. 34-35589, April 10, 1995); Information Memo No. 95-21, May 12, 1995.</li> </ul> <p>Expiration day <i>MOC</i> procedures permanent approval (File No. SR-NYSE-96-31, Release No. 34-37894, October 30, 1996); Information Memo No. 96-34, November 8, 1996.</p> <ul style="list-style-type: none"> <li>• Non-expiration day <i>MOC</i> procedures permanent approval (File No. SR-NYSE-94-44, Release No. 34-35589, April 10, 1995); Information Memo No. 95-21, May 12, 1995.</li> <li>• <i>LOC</i> order entry procedures pilot approval (File No. SR-NYSE-96-21, Release No. 34-37969, November 20, 1996 and File No. SR-NYSE-97-19, Release No. 34-38865, July 23, 1997); Information Memo No. 97-25, May 13, 1997.</li> </ul>

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**DEPARTMENT OF THE TREASURY**

[Treasury Directive Number 12-04]

**Delegation of Authority for Budget Execution in the Departmental Offices**

March 20, 1998.

1. *Delegation.* Pursuant to sections 3. and 5. of Treasury Order (TO) 102-13,

this Directive delegates the authority for budget execution/control of funds in the Departmental Offices (DO).

2. For the purposes of paragraphs 3.a. and 3.c. of TO 102-13, the Deputy Assistant Secretary (Administration) shall perform those functions assigned there to the "head of bureau" with respect to the DO other than the Financial Crimes Enforcement Network (FinCEN).

3. The Director, FinCEN:

(a) Is delegated authority to incur obligations and make expenditures within the budgetary resources available to FinCEN consistent with applicable Office of Management and Budget apportionments and reappportionments and other authority to make funds available for obligation;

(b) Is delegated authority to issue sub-allotments or allocations of funds to components of FinCEN; and

(c) Shall maintain a system of administrative control of funds for