1. 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 at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–10 and should be submitted by October 7, 1997.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASD–97–10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24542 Filed 9–15–97; 8:45 am]

BILLING CODE 8010–01–M

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

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39036; File No. SR–NYSE–97–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 104.10(5) Relating to Specialists Establishing a Position in Specialty Stocks

September 9. 1997.

I. Introduction

On March 25, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] the proposed rule change to permit specialists to engage in certain types of transactions by removing existing restrictions that currently limit the ability of specialists to engage in such transactions when establishing or increasing a position in their specialty stocks.[3] Notice of filing appeared in the **Federal Register** on May 12, 1997.[4] No comment letters were received concerning the proposed rule change. This order approves the NYSE's proposal.

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

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

The NYSE, pursuant to Rule 19b–4 of the Act, proposes to amend NYSE Rule 104.10(5)(i) to remove certain restrictions on specialists' ability to establish or increase their positions in their specialty stocks.

Purpose

NYSE Rule 104 governs specialists' dealings in their specialty stocks. In particular, NYSE Rule 104.10(5)(i) describes certain types of transactions to establish or increase a specialist's position which are not to be effected unless they are ''reasonably necessary to render the specialist's position adequate to'' the needs of the market. Additionally, these types of transactions require floor official approval unless they are conducted in ''less active markets'' where such transactions are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.[5] Currently, such restrictions apply equally to transactions that are beneficial to the market by being against the market trend. The Exchange is proposing to apply these restrictions only to those transactions that are disadvantageous to the market by being with the market trend.

Specifically, the revision to NYSE Rule 104.10(5)(i)(B) would continue to prohibit a specialist from establishing or increasing his or her long position by purchasing more than 50% of the stock offered for sale in the market on a zero-plus tick (i.e., at a price equal to the last sale and above the previous different price sale).[6] There would no longer, however, exist an express restriction on purchasing stock on a zero-minus tick to establish or increase a position. The NYSE believes that purchases on zero-minus ticks are against the market trend and are perceived as being beneficial to the market.[7]

[3] See Securities Exchange Act Release No. 38574 (May 5, 1997).

[4] 62 FR 25984 (May 12, 1997).

[5] See NYSE Rule 104.10(5)(i).

[6] A plus tick is a price above the price of the last preceding sale.

[7] A minus tick is a price below the price of the last preceding sale.

Paragraph (C) of NYSE Rule 104.10(5)(i) would be deleted to permit a specialist to establish or increase his or her short position by selling stock to the bid without restriction on a zero-plus tick. The NYSE believes that these transactions are beneficial to the market by being against the market trend in nature. Short sales on zero-minus ticks will continue to be prohibited pursuant to SEC Rule 10a–1 under the Act and Exchange Rule 440B.[8]

The proposed amendments are intended to enhance the specialist's ability to deal for his or her own account to provide support to the market. Under the proposed rule change, specialists will, to a greater degree, be able to counter the market trend in a stock through effecting proprietary transactions that are against the market trend. The NYSE believes that in today's markets, characterized by increased volatility and institutional activity, the use of dealer capital in this fashion can add liquidity in a manner beneficial to the market.

III. Commission Findings and Conclusions

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, and, in particular, with Section 6(b)(5) of the Act.[9] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principals of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest, promote efficiency, competition and capital formation.[10] The Commission also believes that the proposal is consistent with Section 11(b) of the Act and Rule 11b–1 thereunder,[11] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Both the Act and NYSE Rules reflect the crucial role played by specialists in

[8] Long sales on zero-minus ticks would not be deemed ''to establish or increase a position.'' Rather, such sales are deemed liquidating transactions and are addressed by NYSE Rule 104.10(6). See Securities Exchange Act Release No. 31797 (January 29, 1993) 58 FR 7277 (February 5, 1993) (approval order permitting specialists to ''reliquify'' a dealer position by selling long on a zero-minus tick or by purchasing to cover a short position on a zero-plus tick without Floor Official approval).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78(c).

[11] 15 U.S.C. 78k and 17 CFR 240.11b–1(a)(2).

providing stability, liquidity and continuity in the Exchange's auction market. Recognizing the importance of the specialist in the auction market, the Act and NYSE Rules impose stringent obligations upon specialists.[12] Primary among these obligations are the requirements to maintain fair and orderly markets and to restrict specialist dealings to those that are ''reasonably necessary'' in order to maintain a fair and orderly market.[13]

The importance of specialist performance to the quality of markets was highlighted during the 1987 and 1989 market breaks. In The October 1987 Market Break Report (''1987 Report''), the Division examined specialist performance on the NYSE on October 19 and 20, 1987.[14] The Division found that, during periods of the greatest volatility in 1987, particularly on October 19, 1987, NYSE specialists had to act as the primary, or sometimes the only, buyers for many of the specialty stocks because of the lack of buying interest by upstairs firms.[15] The increased volume of order flow, coupled with the lack of participation on the part of the upstairs firms, resulted in NYSE specialists having to take large dealer positions.[16] Although many NYSE specialists appeared to perform well under the adverse conditions, specialist performance during this period varied widely.

The Division also examined NYSE specialist performance during the volatile conditions of October 13 and 16, 1989. The Division found that specialist performance during that time was similar in many respects to specialist performance during the 1987 market break.[17] Specifically, the Division found that, during these two periods of extreme market volatility, specialists were confronted with extraordinary order imbalances that required unprecedented capital commitments.[18] As in October 1987, specialists as a whole on October 13, 1989 were substantial buyer in the face of heavy selling pressure, although performance varied among specialists.

Both the 1987 Report and the 1989 Analysis reaffirmed the importance of specialist participation in countering market trends during periods of market volatility. At the same time, the reports emphasized the importance the Commission placed on the NYSE's ability to ensure that all specialists comply with their affirmative and negative market making obligations during such periods.[19]

The Commission recognizes that market conditions may exist at times where it is necessary or desirable to provide specialists with additional flexibility in establishing or increasing a position in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. Accordingly, the Commission believes that it is appropriate for the NYSE to remove those provisions of Rule 104.10(5)(i) that require floor official approval for certain specialist purchases on zero-minus ticks and specialist sales on zero-plus ticks.[20] The proposed changes may allow specialists, during periods of market volatility, to keep any general price movements orderly, thereby furthering the maintenance of fair and orderly markets consistent with Sections 6 and 11 of the Act. The Commission emphasizes, however, that the expanded flexibility afforded to specialists by the proposal merely obviates the current required floor official approval for the affected transactions and does not reflect that all specialist purchases on zero-minus ticks and sales on zero-plus ticks are appropriate. Notably, specialists remain subject to their ''negative obligations,'' specifically, the requirement that specialists are precluded from trading for their own account unless such dealing is necessary for the maintenance of a fair and orderly market.[21]

Finally, the Commission believes that the NYSE's established surveillance procedures and criteria should allow the Exchange to monitor specialist compliance with NYSE Rule 104.10(5)(i). More specifically, the Commission expects the NYSE to monitor carefully compliance with the procedures of NYSE Rule 104 as required under Section 19(g) of the Act.[22]

For the foregoing reasons, the Commission finds that the NYSE's proposal to permit specialists to engage in certain types of transactions by removing existing restrictions that currently limit specialists when establishing or increasing a position in their specialty stocks is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24543 Filed 9–15–97; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #2965: State of Michigan, Amendment #2

In accordance with information received from the Federal Emergency Management Agency dated September 4, 1997, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to September 23, 1997.

All other information remains the same, i.e., the deadline for filing applications for economic injury is April 13, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

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[12] Rule 11b–1 under the Act, 17 CFR 240.11b–1 and NYSE Rule 104.

[13] 17 CFR 240.11b–1(a)(2).

[14] See 1987 Report, February 1988 at xvii, 4–1.

[15] See 1987 Report, 4–23 to 4–24 and 4–26, to 4–27. Generally, ''upstairs firms,'' or block trading desks of large broker dealers (as opposed to specialists and other traders on the NYSE Floor), can, at times, provide an additional source of liquidity for NYSE-listed issues through their trading activities. During the 1987 market break, however, particularly on October 19, 1987, very little buying was effected by upstairs firms, forcing specialists to be the contra-side to large blocks of stock.

[16] See 1987 Report at 4–58.

[17] See Market Analysis of October 13 and 16, 1989 (''1989 Analysis'') at 3–4 and 33–44.

[18] See 1987 Report at 4–8 and 1989 Report at 23–26.

[19] A specialist's dealer responsibilities consist of ''affirmative'' and ''negative'' obligations. In accordance with their affirmative obligations, specialists are obligated to trade for their own accounts to minimize order disparities and contribute to continuity and deputy in the market. Conversely, pursuant to their negative obligations, specialists are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. In view of these obligations, the price trend in a security should be determined not by specialist trading but by the movements of the incoming orders that initiate these trades.

[20] The Commission notes that Rule 104.10(5)(i) currently only requires floor official approval for purchases or sales at a price equal to the last sale price when all or substantially all the stock offered/bid on the limit order book represents all or substantially all the stock offered/bid in the market. Moreover, the rule currently does not require floor official approval of such transactions if they are effected in ''less active markets'' where they are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.

[21] In addition, NYSE Rule 104.10(5)(i) clearly requires that covered transactions must be reasonably necessary to render the specialist's position adequate to such needs.

[22] Section 19(g) of the Act requires every self-regulatory organization to comply with, and enforce compliance with, the Act, the rules thereunder and its own rules.

[23] 17 CFR 200.30–3(a)(12).