

reports as that term is defined in NYSE Rule 472, by the signature or initial of a supervisory analyst approved pursuant to NYSE Rule 344. Any other material requiring supervisory approval would continue to require approval by an NASD registered principal.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)⁴ of the Act, which require that the rules of the Association be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that the proposed rule change, by permitting approval of research reports by a supervisory analyst to satisfy NASD principal approval requirements of such reports according to standards comparable to the NASD requirements, preserves the investor protection goals of the NASD rules and eliminates duplicative regulatory requirements.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

NASD Regulation has neither solicited nor received comments on the proposed rule change.

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 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, including whether the proposed rule

change is consistent with the Act. Persons making written submissions should file a 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 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 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-98-28 and should be submitted by June 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-13183 Filed 5-18-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39981; File No. SR-NYSE-98-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 97, "Limitation on Members' Trading Because of Block Positioning," To Except Transactions That Facilitate Certain Customer Stock Transactions, and To Except Certain Transactions Made To Rebalance an Index Portfolio

May 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 30, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Item I, II, and III 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.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

The proposed rule change would amend Exchange Rule 97, "Limitation on Members' Trading Because of Block Positioning," to except transactions that facilitate certain customer transactions in: (i) basket of stock; (ii) blocks of stock; (iii) specific stocks within a basket of stocks; and (iv) index component stocks. The proposal would also would except certain transactions made to rebalance an index portfolio.

The following is the text of Exchange Rule 97 marked to reflect the proposed rule change. Additions to the current text appear in *italics* while deletions appear in *brackets*.

Limitation on Members' Trading Because of Block Positioning

Rule 97 (a) When a member organization holds any part of a long position in a stock in its trading account resulting from a block transaction it effected with a customer, such member organization may not effect the following transactions for any account in which it has a direct or indirect interest for the remainder of the trading day on which it acquired such position:

- (i) a purchase on a "plus" tick if such purchase would result in a new daily high;
- (ii) a purchase on a "plus" tick within one-half hour of the close;
- (iii) a purchase on a "plus" tick at a price higher than the lowest price at which any block was acquired in a previous transaction on that day; or
- (iv) a purchase on a "zero plus" tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day.

For purposes of the restrictions in subparagraph (iii) and (iv) above, in the case where more than one block was acquired during the day, the lowest price of any such block will be the governing price.

(b) The provisions of paragraph (a) shall not apply to transactions made:

- (1) For bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.;
- (2) To offset a transaction made in error;
- (3) To facilitate the conversion of options;
- (4) By specialists in the stocks in which they are registered; [or]
- (5) To facilitate the sale of a block of stock *or a basket of stocks* by a customer[.];

⁴ 15 U.S.C. 78o-3.

(6) To facilitate an existing customer's order for the purchase of a block of stock, or a specific stock within a basket of stocks, or a stock which is being added to or reweighed in an index, at or after the close of trading on the Exchange, provided that the facilitating transactions are recorded as such and the transactions in the aggregate do not exceed the number of shares required to facilitate the customer's order for such stock; or

(7) Due to a stock's addition to an index or an increase in a stock's weight in an index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the index portfolio.

Supplementary Material

.10 Definitions. A block positioner is a member organization which engages, either regularly or on an intermittent basis, in a course of business of acquiring positions to facilitate the handling of customers' orders on the Floor of the Exchange. For the purposes of this Rule, a block shall mean a quantity of stock having a market value of \$500,000 or more which is acquired by a member organization on its own behalf and/or others from one or more buyers or sellers in a single transaction.

For purposes of this Rule, a "basket of stocks" shall mean a group of 15 or more stocks having a total market value of \$1 million or more.

For purposes of this Rule, an "index" shall mean a publicly disseminated statistical composite measure based on the price of market value of the component stocks in a group of stocks.

.20-.50 No change.

II. Self-Regulatory Organizations'; 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 purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

Exchange Rule 97 currently prohibits a member organization that holds any

part of a long stock position in its trading account, which position resulted from a block transaction it effected with a customer, from purchasing for an account in which it (i.e., the block positioning member organization) has a direct or indirect interest, additional shares of each stock on a "plus" or "zero plus" tick under certain conditions for the remainder of the trading day on which the member organization acquired the long position. Under Exchange Rule 97, the term "block" is defined as a quantity of stock having a market value of \$500,000 or more that was acquired in a single transaction.

The restrictions in Exchange Rule 97 presently do not apply to transactions that: (i) involve bona fide arbitrage or the purchase and sale (or sale and purchase) of securities of companies involved in a publicly announced merger, acquisition, consolidation or tender offer; (ii) offset transaction made in error; (iii) facilitate the conversion of options; (iv) are engaged in by specialists in their specialty stocks; or (v) facilitate the sale of a block of stock by a customer.

Exchange Rule 97 was adopted to address concerns that a member organization might engage in manipulative practices by attempting to "mark-up" the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired. The "tick" restrictions of Exchange Rule 97 are designed to address these specific concerns. The current exceptions under Exchange Rule 97 permit certain types of purchases that are effected for a permitted purpose, but do not include transactions solely effected to increase the block positioner's position.

The Exchange seeks to amend Exchange Rule 97 to provide certain additional exceptions. The proposed additional exceptions would apply to purchases by the block positioning member organization that increase a position in order to: (i) facilitate the sale of a basket of stocks by a customer; and (ii) facilitate an existing customer's order for the purchase of a block of stock, a specific stock within a basket of stocks, or a stock being added to or reweighed in an index, at or after the close of trading on the Exchange. The proposal requires that these facilitating transactions be recorded as such and the transactions in the aggregate may not exceed the number of shares required to facilitate the customer's order for such stock. Finally, the proposal would add an exception for transactions made due

to a stock's addition to an index or an increase in a stock's weight in an index provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the index portfolio.

With respect to revised paragraph (b)(5), the proposal would extend the exception, which currently applies to a subsequent facilitation trade of block size, to a facilitation trade of less than block size provided that the stock was part of a "basket" of stocks being sold by a customer. Proposed Supplementary Material .10, "Definitions," defines the term "basket" as a group of 15 or more stocks having a market value of one million dollars or more.

As to proposed paragraph (b)(6), the proposal would permit a block positioner to purchase stock to increase its position up to the amount required to facilitate a customer's purchase at the close or after-hours of a block of stock, a specific stock within a basket of stocks, or a stock being added to or reweighed in an index, provided the firm has an existing customer's order for the at-the-close or after-hours purchase. This provision will permit a member organization to position stock to effect a cross with a customer at or after the close. The proprietary purchase would be required to be recorded in a manner which identifies them as transactions entered into for the purpose of facilitating the customer buy transaction. Also, the transactions in the aggregate could not exceed the number of shares required to facilitate the customer's order.

The block positioner's purchases exempted under proposed paragraph (b)(6) would, however, remain subject to the limitations on positioning to facilitate customer orders as discussed in Exchange Information Memorandum No. 95-28, "Positioning to Facilitate Customer Orders."² These limitations generally preclude a block positioner, that has committed to sell securities after the close to a customer at the closing price, from being in the market on a proprietary basis after 3:40 p.m. when it has left a portion of its positioning to be executed at the close, and such at-the-close proprietary order can be reasonably expected to impact the closing price.

Finally, with regard to proposed paragraph (b)(7), the proposal would allow a block positioner to increase its proprietary portion in a stock where such stock is being added to an index or its weight in an index is being increased. However, purchases in the

² See Securities Exchange Act Release No. 35837 (June 12, 1995), 60 FR 31749 (June 16, 1995).

aggregate may not exceed the number of shares required to rebalance an index portfolio.

The Exchange believes the proposed exceptions in paragraphs (b)(5) and (b)(6) to facilitate certain customer transactions are appropriate because these types of transactions are effected to accommodate a customer. The Exchange further believes the proposed exception in paragraph (b)(7) for additions to, or increased weight in, an index is appropriate because such purchases are usually made at the close of trading to obtain the closing price of the index and therefore are indifferent to the price level so long as it represents the closing valuation.

The proposal also would expand the Rule's Supplementary Material, Section .10, "Definitions," to provide definitions for the terms "basket" and "index," which terms are used in proposed paragraphs (b)(5), (b)(6), and (b)(7). The term "basket" would be defined as a group of 15 or more stocks having a total market value of \$1 million or more. The Exchange has represented that this definition is consistent with the use of "basket" in the definition of program trading that appears in Exchange Rule 80A. The proposal would define "index" as a publicly disseminated statistical composite measure based on the price or market value of the component stocks in a group of stocks. The Exchange believes this definition would preclude the possibility of a firm creating an "index" for the purpose of circumventing the restrictions of the Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act³ in that it is designed to facilitate transactions in securities, and remove impediment to and perfect the mechanism of a free and open market. The Exchange believes the proposed rule change would permit trading by member organizations, when appropriate, to facilitate customer trading, and would thereby add depth, liquidity, and quality to the market for Exchange-traded securities.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 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 is 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 submissions, 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 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 Exchange. All submissions should refer to File No. SR-NYSE-98-11 and should be submitted by June 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-13182 Filed 5-18-98; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Servant Air, Inc. for New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 98-5-21) Docket OST-97-3022.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Servant Air, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail, using aircraft with no more than nine passenger seats.

DATES: Persons wishing to file objections should do so no later than June 2, 1998.

ADDRESSES: Objections and answers to objections should be filed in Docket OST-97-3022 and addressed to the Department of Transportation Dockets SVC-124.1, Room PL-401, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: May 13, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98-13181 Filed 5-18-98; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program and Determination on Revised Noise Exposure Maps

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on a new noise compatibility program for Charlotte/Douglas International Airport submitted by the City of Charlotte, North Carolina, under the provisions of Title I of the Aviation Safety and Noise Abatement act of 1979

³ 15 U.S.C. 78f(b)(5).

⁴ 17 CFR 200.30-3(a)(12).