

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 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-98-39 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40721; File No. SR-NYSE-98-35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Specifications and Content Outline for the Trading Assistant Qualification Examination (Series 25)

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 10, 1998, 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.

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

The Exchange has filed the Content Outline and Specifications for the Trading Assistant Qualification Examination ("Series 25 Content Outline").

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 proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Currently, the registration process for Floor employees *i.e.*, Post Clerks and Booth Clerks, also known as Trading Assistants, consists of submission of a completed Form U-4 ("Uniform Application for Securities Industry Registration or Transfer") and fingerprints. The Exchange has proposed amendments to Rule 35 to require Trading Assistants to, in addition to the current requirements, take and pass appropriate qualification examinations and meet appropriate training requirement.³

The Series 25 and Series 25 Content Outline were developed by the Exchange, in conjunction with a Committee of Exchange Members and Trading Assistants, in order to qualify Floor Trading Assistants pursuant to proposed amendments to Rule 35.⁴ The Series 25 will ensure that Trading Assistants have the basic knowledge, skills, and abilities necessary to perform the functions and carry out the responsibilities of a Trading Assistant. The Series 25 Content Outline, which may be examined at the places specified in Item IV below, details the coverage of the examination.

The requirement to take and pass the Series 25 examination in order to qualify as a Trading Assistant will apply to all current and prospective Trading Assistants. A proposed new interpretation to Rule 35 will establish that new Trading Assistants will be required to undergo three months of training (including on-the-job and classroom instruction) prior to taking the examination.⁵ New Trading Assistants will not be permitted to perform their functions without supervision until passing the examination. Current Trading Assistants

would have one year from implementation of the qualification requirement to pass the examination.

2. Statutory Basis

The Exchange believes the statutory basis for the Series 25 Examination lies in Section 6(c)(3)(B) of the Act.⁶ Under that Section, the Exchange has the responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

In addition, pursuant to Section 6(c)(3)(B) of the Act,⁷ the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange believes it has developed an examination that will be administered to confirm that Trading Assistants have attained specified levels of competence and knowledge.

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

No written comments were solicited or received with respect to 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 the proposed rule change, or

³ On October 22, 1998, the Exchange filed with the Commission SR-NYSE-98-36 which proposes to amend Rule 35 to provide for the additional registration requirements for Trading Assistants. Securities Exchange Act Release No. 40720 (November 30, 1998).

⁴ Id.

⁵ Id.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78f(c)(3)(B).

⁷ Id.

(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 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. NYSE-98-35 and should be submitted by December 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40722; File No. SR-NYSE-97-09]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Specialists' Handling of Percentage Orders

November 30, 1998.

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 a proposed rule change to amend NYSE Rule 123A.30, relating to specialists' handling of percentage orders.

The proposed rule change was published for comment in the **Federal Register** on May 21, 1997.³ No comments were received on the proposal. On June 15, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change and approves Amendment No. 1 to the proposed rule change on an accelerated basis.

II. Background and Description of the Proposal

A. Background

A percentage order is a limited price order to buy or sell 50% of the volume of a specified stock after its entry. A percentage order is essentially a memorandum entry left with a specialist which becomes a "live" order capable of execution in one of two ways: (i) all or part of the order can be "elected" as a limit order on the specialist's book based on trades in the market; or (ii) all or part of the order can be "converted" into a limit order to make a bid or offer or to participate directly in a trade.

1. The Election Process

Under the election process, as trades occur at the percentage order's limit price or better, an equal number of shares of the percentage order are "elected" and become a limit order on the specialist's book. This limit order takes its place behind other limit orders on the specialist's book at the same price. The percentage order then is reduced by the number of elected shares until the entire order has been satisfied.

Currently, there are four types of percentage orders; last sale percentage orders, straight limit percentage orders,⁵

buy minus-sell percentage orders,⁶ and immediate execution or cancel election percentage orders.⁷ The Exchange has indicated that most percentage orders are entered as last sale percentage orders, meaning that they are elected to the book at the price of the electing sale and may be executed at that price, or at a better price.⁸

2. The Conversion Process

The second way that a percentage order can be activated into a limit order is through the conversion process. Most percentage orders contain the additional instruction, "CAP-D." "CAP" is an acronym meaning "convert and parity," which instructs the specialist that he or she may convert all or a portion of the order into a limit order, and allows the specialist to be on parity with the converted percentage order, either to participate directly in a trade or to make a bid or offer ("bettering the market"). The "D" notation instructs the specialist that, under certain circumstances, the order may be converted to participate in destabilizing transactions, as well as stabilizing transactions.

The Exchange has stated that, as a practical matter, it views CAP-D orders as a necessary adjunct to the standard election procedures because they allow the specialist greater flexibility to match the order with other buying and selling interest in the market. CAP-D orders are subject to a number of restrictions intended to minimize the specialist's discretion in handling such orders.⁹ Specifically, under the conversion process, the specialist may convert a percentage order into a "live" limit order on a destabilizing tick only where: (i) the transaction for which the order is being converted is for 10,000 shares or more; and (ii) the price at which the converted percentage order is to be

⁶ A buy minus-sell plus percentage order operates in the same fashion as a straight limit percentage order, except that it places the additional requirement that elected portions of buy (sell) percentage orders be elected at a price on minus or zero-minus ticks (plus or zero plus ticks) from the previous sale.

⁷ An immediate execution or cancel election percentage order instructs the specialist to execute the elected portion of the percentage order immediately in whole or in part at the price of the electing transactions. The remaining unexecuted elected portion of the percentage order, if any, reverts back to an unelected percentage order, subject to subsequent election or conversion. See Securities Exchange Act Release No. 39837 (April 8, 1998) 63 FR 18244 (April 14, 1998) (order approving File No. SR-NYSE-97-38).

⁸ The various types of percentage orders differ only in terms of execution, and not the process by which they are elected. See notes 5-7 *supra*.

⁹ See NYSE Rule 123A.30; Securities Exchange Act Release No. 24505 (May 22, 1987) 52 FR 20484 (June 1, 1987) (order approving File No. SR-NYSE-85-1 to permit conversion of percentage orders on destabilizing ticks under certain circumstances).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 38630 (May 13, 1997), 62 FR 27822.

⁴ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated June 12, 1998 ("Amendment No. 1"). In Amendment No. 1, the NYSE clarifies that its proposal to add the phrase "or converted" to the last paragraph of NYSE Rule 123A.30 would not change the existing rules governing the conversion of percentage orders. Instead, the Exchange believes that the issue of whether an executed percentage order was "elected" or "converted" to a limit order is irrelevant to its proposal to allow such execution to trigger the election of another percentage order on the opposite side of the market.

⁵ A straight limit percentage order carries a limit price equal to the percentage order limit price.

⁸ 17 CFR 200.30-3(a)(12).