

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. 34-41234; File No. SR-NYSE-99-01]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. Relating to a Pilot for Adjusted Stabilization Measure of Specialist Performance

March 31, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 11, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change regarding "adjusted stabilization" as a measure of specialist performance. The Exchange filed an amendment to its proposal on March 25, 1999.<sup>3</sup> The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, until June 30, 2000, 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 a pilot program which would utilize a new measure of specialist performance that the NYSE refers to as an "adjusted stabilization" rate.

#### 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 text of these statements may be examined at the places specified in Item III 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

On November 21, 1997, the Commission approved a rule proposal to add, on a one-year pilot basis, a new measure of specialist performance that the NYSE refers to as an "adjusted stabilization" rate.<sup>4</sup> The pilot expired on November 21, 1998. The current rule filing clarifies the scope of the pilot and proposes to renew it through June 30, 2000.

The Exchange generally expects a specialist to stabilize stock price movements in the stocks traded by the specialist unit by buying and selling from its own account against the prevailing trend of the market. The rate at which the specialist performs such stabilizing function (*i.e.*, stabilization rate) is the percentage of shares purchased by specialists on minus and zero-minus ticks and the percentage of shares sold by specialists on plus and zero-plus ticks. This measurement focuses on the specialist's obligation as a dealer, which holds that a specialist must buy or sell securities as principal when such transactions are necessary to minimize an actual or reasonably anticipated short-term imbalance between supply and demand in the market.<sup>5</sup>

Under the proposal, the Exchange would adopt a new measure of specialist performance which it refers to as "adjusted stabilization." Adjusted stabilization would measure a specialist's proprietary purchases on

zero-plus ticks on the current bid (provided the current bid is below the offer at the time of the immediately preceding trade) and proprietary sales on zero-minus tickets on the current offer (provided the current offer is above the bid at the time of the immediately preceding trade).<sup>6</sup> These trades would be grouped with stabilizing trades to determine the adjusted stabilization rate.

The Exchange believes that "adjusted stabilization" could be a useful measure of specialist performance in that it might reflect depth added to the market by specialists. In the example provided by the Exchange in Amendment No. 1,<sup>7</sup> the specialist's sale has added depth to the current market by allowing Broker B to complete his order at a single price, and the trade was executed at a price set by the market, not by the specialist.

Programming to initiate collection and storage of the data necessary to calculate adjusted stabilization percentages was completed in mid-1998. The Exchange then began to accumulate data to produce percentages for "rolling" three-month performance review periods. A separate programming effort was completed in November 1998 to revise: (1) the monthly report to the Allocation Committee (covering the three most recent months) that would provide each specialist unit's adjusted stabilization percentage, and (2) the monthly report to each specialist unit (covering the most recent month) that provides, for each stock and the unit overall, its dealer participation percentage, stabilization percentage, and the new adjusted stabilization percentage. To date, the Exchange has not released adjusted stabilization information collected during the initial pilot to the specialists or the Allocation committee. However, the Exchange will begin including each specialist unit's adjusted stabilization percentage in the monthly reports as soon as practicable after approval of the new pilot.<sup>8</sup>

<sup>6</sup>In Amendment No. 1, the Exchange provided the following example of an adjusted stabilization transaction: The market in XYZ is 25 4/16-25 8/16. The last sale is 25 6/16 on minus tick. Broker A enters the crowd and offers to sell 1,000 shares at 25 6/16. The quotation becomes 25 4/16-25 6/16. Broker B then enters the crowd with an order to buy 2,500 shares at the market. Broker A sells the 1,000 shares at 25 6/16 to Broker B. The specialist, whose dealer position is long, then fills the remainder of Broker B's order by selling 1,500 shares at 25 6/16. Thus, the specialist's transaction would qualify as an adjusted stabilization transaction because the specialist is selling on a zero-minus tick on the current offer (*i.e.* 25 6/16) and that offer is above the bid at the time of the immediately preceding trade (*i.e.*, 25 4/16).

<sup>7</sup> See note 6.

<sup>8</sup> Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and

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

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

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

<sup>3</sup> See Letter from Donald Siemer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 25, 1999 ("Amendment No. 1"). Amendment No. 1 provides further details regarding use of the specialist performance measure under the Exchange's Allocation Policy and provides an example of an adjusted stabilization transaction.

<sup>4</sup> See Securities Exchange Act Release No. 39344 (November 21, 1997), 62 FR 63592 (December 1, 1997).

<sup>5</sup> NYSE Rule 104.10(3) states, in pertinent part, "[t]ransactions on the Exchange for his own account affected by a member acting as specialist must constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated."

Under the new pilot, the Allocation Committee will receive information on each specialist's stabilization and adjusted stabilization percentages, along with other objective performance measures under the Allocation Policy, such as capital utilization. The Exchange expects that this data will assist the Committee in assessing the value added by specialists to the depth and liquidity of stocks that they currently trade. The Committee will use this information in making new stock allocation decisions.<sup>9</sup>

The new pilot would run through June 30, 2000, which would allow the Exchange to gain experience with this new performance measure. The Exchange will submit to the Commission a proposed rule change, no later than three months prior to the expiration of the pilot, either to continue, modify or terminate the pilot, or request permanent approval of the proposal.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change will impose no inappropriate burden on competition.

### *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, 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, DC 20549-0609. 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 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-99-01 and should be submitted by April 29, 1999.

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

The Commission finds, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)<sup>12</sup> of the Act. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)<sup>13</sup> requirement that the rules of an exchange be designed to facilitate transaction in securities.<sup>14</sup> Further, the Commission believes that the proposal is consistent with Section 11(b)<sup>15</sup> of the Act and Rule 11b-1<sup>16</sup> under the Act, which allows securities exchanges to permit exchange members to register as specialists, provided that the exchange requires the specialist to assist in maintaining a fair and orderly market.

The Commission believes that, under certain circumstances, "adjusted stabilization" transactions could reflect depth and liquidity added to the market by specialists. Thus, the Commission believes that "adjusted stabilization" could be a relevant measure of specialist performance because it might help the Exchange determine whether a

specialist is assisting in maintaining a fair and orderly market.<sup>17</sup>

By providing for the performance measure on a pilot basis through June 30, 2000, the Exchange and the Commission will have the opportunity to study the effects of the use of the measure on the NYSE's allocation process. It is unclear to the Commission, at this point, whether adjusted stabilization transactions will, in practice, promote the maintenance of a fair and orderly market (e.g., by adding depth or liquidity) in the stocks the specialist's unit trades. Accordingly, the Commission has requested the Exchange to report on the following matters when the Exchange proposes to renew or modify the proposal or when it seeks permanent approval for the pilot: (1) the impact "adjusted stabilization" transactions have had on the depth and liquidity of the stocks at issue; (2) the number of allocations reviewed by the Committee and the number of applicants for each allocation; (3) the monthly adjusted stabilization percentage as presented to the Allocation Committee for each allocation applicant; and (4) the Committee's allocation decisions and the effect, if any, an applicant's "adjusted stabilization" rate had on the allocation decision.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. The Exchange will be able to continue to accumulate relevant data and provide such information to the specialists and the Allocation Committee for their use without further delay. The Commission also notes that the previous pilot was noticed for the full statutory period and the Commission received no comments on the proposal. Accordingly, the Commission does not believe that the current filing raises any regulatory issues not raised by the previous filing.

*It is therefore ordered*, pursuant to Section 19(b)(2)<sup>18</sup> of the Act, that the proposed rule change (SR-NYSE-99-01), as amended, is approved as a pilot through June 30, 2000, on an accelerated basis.

<sup>17</sup> The Commission notes that "adjusted stabilization" transactions would not constitute "stabilizing" as the Commission has defined that term under the Act. In particular, Regulation M under the Act defines "stabilizing" as "the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or maintaining the price of a security." 17 CFR 242.100(b).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>16</sup> 17 CFR 240.11b-1.

Anitra Cassas, Attorney, Division, Commission, on January 22, 1999.

<sup>9</sup> See Amendment No. 1.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF STATE

### Office of the Secretary

[Public Notice 3022]

#### Delegation of Authority 229

By virtue of the authority vested in me by the laws of the United States, including the Foreign Assistance Act of 1961, the Arms Export Control Act, and the State Department Basic Authorities Act, and relevant delegations of authority, including the memorandum delegation signed by the President on November 4, 1997, and to the extent permitted by the law, I hereby delegate—

(a) all authorities vested in the Secretary of State (including all authorities delegated by the President to the Secretary of State by an act, order, determination, delegation of authority, regulation or executive order heretofore or hereinafter enacted or issued) that have been or may be delegated or redelegated to the Under Secretary of State for Arms Control and International Security—

(1) to John Holum for such period as he serves in the Department of State, except that, to the extent that such an authority derives from a delegation of authority from the President, this paragraph shall apply only to the extent that there is a statutory basis for delegating an authority to an individual with respect to whom the Senate has not provided advice and consent; and

(2) to the Assistant Secretary of State for Political-Military Affairs, for such functions as are within his area of responsibility, to the extent that such an authority derives from a delegation of authority from the President and the Office of the Legal Adviser has not identified a statutory basis for delegating the authority to an individual with respect to whom the Senate has not provided advice and consent; and

(b) to the Under Secretary of State for Arms Control and International Security all authorities that, before the effective date described in section 1201 of the Foreign Affairs Agencies consolidation Act of 1998 (the "Act") were vested in the Director of the United States Arms Control and Disarmament Agency and

that, pursuant to amendments made by the Act, are now vested in the Secretary of State.

References in any previous delegations of authority to the Under Secretary for Arms Control and International Security Affairs shall hereinafter be deemed to be references to the Under Secretary for Arms Control and International Security except as specifically provided to the contrary.

This delegation of authority shall be without prejudice to the authority of any person to exercise any authority pursuant to any other applicable delegation of authority. Paragraph (a) of this delegation of authority shall cease to be effective upon the appointment by the President, with the advice and consent of the Senate, of an individual to the position of Under Secretary of State for Arms Control and International Security. The Secretary or the Deputy Secretary may at any time exercise any of the functions described above.

This delegation shall be published in the **Federal Register**.

Dated: March 30, 1999.

**Madeleine Albright,**

*Secretary of State.*

[FR Doc. 99-8644 Filed 4-7-99; 8:45 am]

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Status of Former Yugoslav Republic of Macedonia Under Section 701(b) of the Tariff Act of 1930, as Amended

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** Under Section 1-103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 and section 701(b) of the Tariff Act of 1930, as amended ("the Act"), are delegated to the United States Trade Representative ("USTR") who shall exercise such authority with the advice of the Trade Policy Committee. In accordance with these provisions, the USTR has confirmed that the former Yugoslav Republic of Macedonia ("Macedonia") is a "Subsidies Agreement country" for purposes of Title VII of the Act.

The text of the USTR's determination is contained in annex I to this notice.

#### FOR FURTHER INFORMATION CONTACT:

William D. Hunter, (202) 395-3582, Office of the General Counsel, Office of the United States Trade Representative, 600 17th Street NW, Washington, DC 20506.

Dated: April 1, 1999.

**Susan G. Esserman,**

*General Counsel.*

### Former Yugoslav Republic of Macedonia Confirmation of Status Under Section 701(b) of the Tariff Act of 1930, as Amended

Under Section 1-103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 and section 701(b) of the Tariff Act of 1930, as amended ("the Act"), are delegated to the United States Trade Representative who shall exercise such authority with the advice of the Trade Policy Committee.

I, Charlene Barshefsky, United States Trade Representative, in conformance with the provisions of section 2(b) of the Trade Agreements Act of 1979, section 701(b) of the Act, and section 1-103(b) of Executive Order 12188, do hereby determine that:

(1) There is an agreement in effect between the United States and the Former Yugoslav Republic of Macedonia which: (i) was in force on the date of the enactment of the Uruguay Round Agreements Act, and (ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States (Treaty of Commerce Between the United States of America and Serbia, October 3, 1946, 61 Stat. 2451); and

(2) The agreement does not expressly permit: (i) actions required or permitted by the GATT 1947 or GATT 1994, as defined in section 2(1) of the Uruguay Round Agreements Act, or required by the Congress, or (ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

Therefore, in accordance with section 701(b)(3) of the Act, I hereby confirm that the Former Yugoslav Republic of Macedonia is a "Subsidies Agreement country" for purposes of Title VII of the Act.

April 1, 1999.

Charlene Barshefsky,

*United States Trade Representative.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. 29088]

#### Airport Privatization Pilot Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

<sup>19</sup> 17 CFR 200.30-3(a)(12).