SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41497; File No. SR–NYSE–98–42]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposal Amending MOC/LOC Order Entry and Cancellation Procedures During Regulatory Halts

June 9, 1999.

I. Introduction

On November 25, 1998, 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 market-on-close (''MOC'') and limit-on-close (''LOC'') order entry and cancellation procedures during regulatory halts. On March 19, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on April 29, 1999.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange utilizes special order entry and cancellation procedures for MOC/LOC orders.[5] This proposed rule change amends the Exchange's MOC/LOC order entry and cancellation procedures during regulatory halts.[6]

1. Cancellation of MOC/LOC Orders During Regulatory Halts

Current MOC/LOC procedures product Exchange members from canceling MOC and LOC orders after 3:40 p.m., except when a member entering an order has made a legitimate error or a member must cancel an order to comply with NYSE Rule 80A(c).[7] Therefore, if a stock is subject to a regulatory halt at 3:40 p.m. or if a regulatory halt is instituted after that time, market participants are prohobited from canceling their MOC or LOC coders in such stock, regardless of whether the stock reopens at a price substantially different from the last sale.

The proposed rule change amends this policy by allowing market participants to cancel MOC or LOC orders if a regulatory halt [8] is in effect at 3:40 p.m. or later. Exchange members will be permitted to cancel MOC or LOC orders until 3:50 p.m. or the reopening of the stock, whichever occurs first.

2. Entry of MOC/LOC Orders During Regulatory Halts

Currently, Exchange procedures only allow members to enter MOC and LOC orders after 3:40 p.m. to offset a published imbalance. If any type of trading halt is in effect at 3:40 p.m., however, MOC/LOC imbalances are not published.[9] Accordingly, no MOC or LOC orders could be entered after 3:40 p.m. during a trading halt. In addition, if a regulatory halt occurs after an imbalance has been published at 3:40 p.m., market conditions may differ substantially from those that existed at the time the imbalance was published.

The proposed rule change amends the Exchange's MOC/LOC order entry procedures when a regulatory halt is in effect at 3:40 p.m. or later. If a regulatory halt is in effect at 3:40 p.m. or later, market participants would be permitted to enter MOC and LOC orders on either side of the market until 3:50 p.m. or until the stock reopens, whichever occurs first. If an order imbalance is published following a regulatory halt, however, MOC and LOC orders may only be entered to offset any imbalance.

3. Order Imbalance Publication After any Trading Halt

Current Exchange policy requires that if a stock reopens at or before 3:50 p.m. following any type of trading halt, the specialist will publish imbalances of 50,000 shares or more (or less than 50,000 shares with the approval of a Floor Official) as soon as practicable after 3:50 p.m. The proposed rule change amends this policy to provide that a specialist must publish imbalances of 50,000 shares or more (or less than 50,000 with Floor Official approval) for stocks opening after 3:50 p.m., if practicable.[10] If a halt occurs after 3:50 p.m., the stock will not reopen on that day and MOC and LOC orders will not be executed.

III. Discussion

After careful review, 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.[11] In particular, the Commission finds the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [12] which requires, among other thigns, that the rules of an exchange be 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 the Exchange's MOC/LOC order cancellation procedures should allow market participants to make informed trading decisions in response to information disseminated during regulatory halts. Current Exchange

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

[2] 17 CFR 240.19b–4.

[3] Letter from Donald Seimer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated March 15, 1999 (''Amendment No. 1''). In Amendment No. 1, the Exchange provided information regarding the Exchange's regulatory trading halt policy and clarified that the Exchange does not seek to amend its regulatory trading halt policy in the current proposed rule change.

[4] Securities Exchange Act Release No. 41315 (April 20, 1999), 64 FR 23142.

[5] A description of the Exchange's current procedures can be found in Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 38230 (July 15, 1998); and Exchange Information Memo No. 98–20 (June 22, 1998).

[6] A regulatory condition may exist if news is pending about the stock or if time is needed for news dissemination about a stock. The exchange follows procedures contained in the section on Trading Halt and Suspension Procedures of the Consolidated Tape Association Plan. *See* Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799; and Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414 (July 24, 1980).

[7] Exchange Rule 80A(c) requires index arbitrage orders in any stock in the Standard & Poor's 500 Stock Price Index entered on the Exchange to be stabilizing (*i.e.*, the order must be marked either buy minus or sell plus) when the Dow Jones Industrial Average advances or declines by the 2% point level determined by the Exchange each quarter. Securities Exchange Act Release No. 41041 (February 11, 1999), 64 FR 8424 (February 19, 1999). When Rule 80A(c) goes into effect, a MOC index arbitrage order without the appropriate tick restriction must be canceled unless it is related to an expiring derivative index product.

[8] The proposed rule change does not amend existing MOC/LOC procedures with respect to *non*-regulatory halts.

[9] Specialists are required to publish tape indications to reopen a stock after a trading halt. Current Exchange policy concerning tape indications requires a minimum of ten minutes to elapse between the first indication and the reopening of a stock, and a minimum of five minutes to elapse between the last indication and the reopening of a stock, provided that a minimum of ten minutes has elapsed since the first indication. *See* Securities Exchange Act Release No. 38225 (January 31, 1997), 62 FR 5875 (February 7, 1997); and Exchange Information Memo No. 97–23 (May 8, 1997).

[10] The decision of whether an imbalance shall be published for a stock opening after 3:50 p.m. will be made by an Exchange Floor Director or other Exchange Floor Official. Telephone call between Betsy Lampert Minkin, Senior Project Specialist, NYSE, and Kelly McCormick, Attorney, Division, SEC, on January 13, 1999.

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

policy prohibits market participants from canceling MOC or LOC orders after 3:40 p.m. unless a legitimate error was made or the member had to comply with Rule 80A(c). This policy, by precluding market participants from canceling MOC/LOC orders based on information generated during a regulatory halt even if the stock reopened at a price substantially different from the last sale could unnecessarily expose market participants' positions to market risk.

The proposed rule change will allow market participants with pending MOC or LOC orders to react to news generated during a regulatory halt put into effect at 3:40 p.m. or later by enabling them to cancel such orders. A member's ability to cancel a MOC/LOC order after a regulatory halt put into effect at 3:40 p.m. or later is limited, however, to only allow cancellations to be made by 3:50 p.m. or when the stock reopens, whichever is first.

The proposed rule change also amends the Exchange's policy concerning MOC/LOC order entry after 3:40 p.m. Currently, market participants are only permitted to enter MOC or LOC orders after 3:40 p.m. to offset a published imbalance. If any type of trading halt is in effect at 3:40 p.m., no MOC or LOC orders could be entered because imbalances are not published. Moreover, market participants are prohibited from entering orders if a regulatory halt occurs after 3:40 p.m. even if an imbalance has been published. Again, these provisions could unnecessarily expose market participants to market risk.

The proposal would allow market participants to enter MOC or LOC orders after 3:40 p.m. if a regulatory halt has been put into effect at 3:40 p.m. or later. Market participants may enter orders on either side of the market until 3:50 p.m. or until the stock reopens, whichever occurs first. If an imbalance is published following a regulatory halt, however, market participants will only be permitted to enter MOC or LOC orders to offset the published imbalance. The imbalance publication procedure also has been amended to provide that if a stock reopens after 3:50 p.m., the specialist must publish an imbalance of 50,000 shares or more (or less than 50,000 shares with approval of a Floor Official), if practicable. This provision recognizes that from a practical standpoint it may not always be feasible for specialist to publish an imbalance late in the trading day after a trading halt. The proposal will provide specialists with the flexibility to consult with Exchange officials to determine whether such a post trading halt imbalance must be published.

The proposed changes to MOC/LOC order entry and cancellation procedures should promote just and equitable principles of trade because they enable market participants to respond to news disseminated during regulatory halts. The proposed policy should enable market participants to make informed order entry and cancellation decisions based on current, disseminated information. The proposed rule changes, however, limit the ability of market participants to enter or cancel MOC or LOC orders to specific times. The Commission believes that these limitations should provide specialists with adequate time to expedite the orderly closing of their stocks.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–98–42), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41500; File No. SR–NYSE–99–18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 97, ''Limitation on Members' Trading Because of Block Positioning,'' To Permit Member Firms to Net Proprietary Positions Within Aggregation Units and To Except Transactions Offsetting Market Risk That Resulted From Facilitating a Customer's Order

June 9, 1999.

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 May 4, 1999, the New York Stock Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items 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.

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

The proposed rule change consists of amendments to Exchange Rule 97, ''Limitation on Members' Trading Because of Block Positioning.'' First, the Exchange proposes to permit member organizations to determine whether they are long for purposes of Rule 97 by netting their long facilitation position with their other stock positions within the same ''Aggregation Unit.''[3] Second, the proposed rule change would add an exception to Rule 97 for purchases to offset all or part of the market risk of a position, established previously or contemporaneously, that is economically equivalent to a short position in a stock, provided that such position was established as the result of facilitating a customer order. Third, the Exchange proposes to replace the term ''trading account'' with ''proprietary account'' to clarify that the restrictions of Rule 97 may apply regardless of where the long facilitation position is placed. Finally, the proposed rule change would delete subparagraph (a)(i), the substance of which is included within the meaning of subparagraph (a)(iii).

The following is the text of Exchange Rule 97 marked to reflect the proposed rule change. Additions to the current text appear in italic and 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] *a proprietary* 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;]

(i)[(ii)] a purchase on a ''plus'' tick within one-half hour of the close;

(ii)[(iii)] a purchase on a ''plus'' tick at a higher than the lowest price at which any block was acquired in a previous transaction on that day; or

(iii)[(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 *(ii)* [(iii)] and *(iii)*[(iv)] above, in the case where more than one block was

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* note 6 and accompanying text.