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SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34–41570; File No. SR–NYSE–99–11]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Definition of Volatile Days in the Specialist Capital Utilization Measure

June 28, 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 March 19, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change amending the definition of ''volatile days'' used in the NYSE's specialist capital utilization measure. The Exchange amended its proposal on May 4, 1999.[3] 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, on an accelerated basis.

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

The NYSE proposes to revise the definition of volatile days used in the NYSE's specialist capital utilization measure.[4] The specialist capital utilization measure is designed to measure specialist dealer participation to assist in cushioning price movements during days when there is general market volatility or significant price movements in individual stocks (''volatile days''), as well as during non-volatile periods. As discussed more fully below, the specialist capital utilization measure provides two definitions of volatile days: (1) days when the range between the highest and lowest values of the S&P 500 Stock Price Index (''S&P 500 Index'') equals or exceeds 1% of the previous closing value (''1% Days''); and (2) each stock's 10% most volatile days (a percentage calculated by comparing a day's high/low range to the opening price) (''10% Days''). The NYSE proposes to revise the 1% Days component of this definition by defining volatile days to include days when the range between the S&P 500 Index's highest and lowest values equals or exceeds 2%, rather than 1%, of the previous closing value. The 10% Days definition will remain the same.

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 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

Background. In December 1993, the NYSE developed the specialist capital utilization measure as an objective measure of specialist performance that recognizes the importance of dealer participation, particularly in volatile markets, when such participation contributes to maintaining liquid and orderly markets.[5] The specialist capital utilization measure derives two capital utilization percentages for each eligible stock[6] traded by a specialist unit: (1) a percentage calculated by dividing the average daily dollar value of the unit's stabilizing purchases and sales in a stock by the average daily total dollar value of shares traded in the unit's stocks; and (2) a percentage calculated by dividing the average daily dollar value of the unit's stabilizing plus reliquifying[7] trades by the average daily total dollar value of shares traded in the unit's stocks. These two percentages are calculated separately for base periods (*i.e.*, non-volatile periods) and volatile periods, so that the performance of a unit relative to other units can be compared as to volatile and non-volatile market conditions. As noted above, the NYSE currently defines volatile periods as (1) days when the range between the highest and lowest values of the S&P 500 Index equals or exceeds 1% of the previous closing value (''1% Days''); and (2) each stock's 10% most volatile days (a percentage calculated by comparing a day's high/low range to the opening price) (''10% Days'').

To compare a specialist unit's capital utilization with other units, the specialist capital utilization measure separates stocks into three broad groupings.[8] Specialist units are then placed into three tiers based on their capital utilization percentages for each of the three groupings of stocks. Within each grouping, a Floor-wide mean capital utilization percentage is calculated. A unit would be in Tier 1 if its capital utilization percentage is more

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

[2] 15 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director of Market Regulation (''Division''), Commission, dated May 4, 1999 (''Amendment No. 1''). Amendment No. 1 provides further details regarding the Exchange's specialist capital utilization measure and offers additional reasons to support approval of the proposal on an accelerated basis.

[4] The specialist capital utilization measure is contained in the NYSE's Allocation Policy and Procedures (''Allocation Policy''), which governs the allocation of equity securities to NYSE specialist units. The Allocation Committee renders decisions based upon the allocation criteria specified in the Allocation Policy, including the Specialist Performance Evaluation Questionnaire, objective performance measures (*e.g.*, the capital utilization measure), and the Allocation Committee's professional judgment. *See* Securities Exchange Act Release No. 34906 (October 27, 1994), 59 FR 55142 (November 3, 1994) (order approving revisions to the NYSE's Allocation Policy). The specialist capital utilization measure focuses on a specialist unit's use of its own capital in relation to the total dollar volume of trading activity in the unit's stocks. For a detailed discussion of the specialist capital utilization measure, *see* Securities Act Release Nos. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993) (''December 1993 Order''); and 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) (''June 1995 Order'').

[5] The Commission approved the capital utilization measure on a one-year pilot basis, and subsequently approved three extensions of the pilot program. *See* Securities Exchange Act Release Nos. 33369, *supra* note 4; 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995) (extending pilot through June 30, 1995); 35926, *supra* note 4 (extending pilot through September 10, 1996); and 37668 (September 11, 1996), 61 FR 49371 (September 19, 1996) (extending pilot through January 10, 1997). The Commission approved the pilot program on a permanent basis on January 10, 1997. *See* Securities Exchange Act Release No. 38158 (January 10, 1997), 62 FR 2704 (January 17, 1997) (''January 1997 Order'').

[6] The following stocks are not included: foreign stocks, preferred stocks, warrants, when issued stocks, IPOs (for the first 60 days), closed-end funds, stocks selling for $5 and under, stocks with less than 2,000 shares average daily trading volume and stocks with more than one class of stock. *See* June 1995 Order, *supra* note 4.

[7] A reliquifying transaction is one in which the specialist reduces a position in a specialty stock by selling part of a long position on a zero-minus tick, or purchasing to cover part of a short position on a zero-plus tick. *See* December 1993 Order, *supra* note 4.

[8] The three broad groupings are: (1) stocks included in the top 200 stocks in the S&P 500 Stock Index and other stocks that are at least as active (based on average daily dollar value of shares traded); (2) the remainder of the S&P 500 and any stocks among the 500 most active on the Exchange; and (3) all other stocks traded on the Exchange. *See* June 1995 Order, *supra* note 4.

than 1.1 standard deviations above the mean.[9] A unit would be in Tier 2 if its capital utilization percentage is within 1.1 standard deviations of the mean. A unit would be in Tier 3 if its capital utilization percentage is more than 1.1 standard deviations below the mean. The tiers are presented to the Allocation Committee for each specialist unit applying for a new listing and are a factor in allocating newly-listed stock.

The Tiers are presented to the Allocation Committee for each specialist unit applying for a new listing and are one factor among several in allocating newly-listed stock. Allocation decisions are based on the professional judgment of the Allocation Committee in applying specific criteria. A Tier I classification would indicate to the Committee that the unit's value-added dealer participation was well above the average for all specialist units, whereas a Tier III classification would indicate that the unit's value-added dealer participation was below the average for all specialist units.[10]

Proposal. According to the NYSE, market volatility has increased substantially since the capital utilization measure was introduced. For instance, the Exchange notes that while 1% Days occurred on 27% of the trading days in 1994, 1% Days occurred on 70% of the trading days in 1998. As a result, the NYSE believes that 1% Days are now more characteristic of usual market conditions.

The Exchange proposes to revise the 1% Day component of its definition of volatile days to better distinguish between volatile and base periods in light of increasing overall market volatility since the NYSE introduced the capital utilization measure. Specifically, the Exchange proposes to amend its definition of volatile days to include days when the range between the S&P 500 Index's highest and lowest values equals or exceeds 2% of the previous closing value. The NYSE believes that raising the percentage from 1% to 2% will bring the capital utilization measure's definition of volatile days back in line with the frequency of overall market volatility that existed in 1993. According to the NYSE, a 2% daily price movement in the S&P 500 Index will provide approximately the same number and percentage of volatile days in 1998 as the 1% daily price movement provided in 1994 (*i.e.*, 55 versus 67 days, or 22% versus 27%).

In addition, the NYSE believes that the revised definition of volatile days will reinforce the Exchange's expectation that specialists provide ''value-added'' dealer participation during periods of unusual price movements, and maintain the emphasis given to the capital utilization measurement in particularly volatile markets. The NYSE notes that the use of a 2% standard for volatile days also will coinside with the recent revision of NYSE Rule 80A, which limits the entry of index arbitrage orders in any component stock of the S&P 500 Index when there is a movement in the Dow Jones Industrial Average of an amount that approximates 2% of its value.[11]

The 10% Days definition will remain unchanged.

2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) [12] of the Act that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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. 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. 20549–0609. 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–99–11 and should be submitted by July 28, 1999.

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

The Commission finds 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)(5) [13] of the Act.[14] Specifically, the Commission finds the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to facilitate transactions in securities. Further, the Commission finds that the proposal is consistent with Section 11(b) [15] of the Act and Rule 11b-1 [16] under the Act, which allow securities exchanges to promulgate rules relating to specialists to ensure fair and orderly markets. Specifically, the Commission believes that amending the definition of volatile days in the capital utilization measure to include days when the range between the S&p 500 Index's highest and lowest values equals or exceeds 2% of the previous closing value will help to maintain the effectiveness of the capital utilization measure as an objective measure of specialist performance, thereby protecting investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. The NYSE implemented objective measures of specialist performance, like the capital utilization measure, to help ensure that specialists fulfill the obligations imposed on them by the NYSE and by the Act and rules thereunder to maintain fair and orderly markets in designated securities.[17] The Commission believes that performance-based stock allocation could provide an

[9] A standard deviation is a statistical measure of the distance from the mean.

[10] Telephone call between Don Siemer, Director, Market Surveillance, NYSE, and Anitra T. Cassas, Division, Commission, on June 21, 1999.

[11] *See* Securities Exchange Act Release No. 41041 (February 11, 1999), 64 FR 8424 (February 19, 1999).

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

[13] 15 U.S.C. 78f(b)(5).

[14] 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).

[15] 15 U.S.C. 78k(b).

[16] 17 CFR 240.11b–1.

[17] *See, e.g.*, 17 CFR 240.11b–1; NYSE Rule 104.

incentive for specialists to improve their performance or maintain superior performance.[18]

The Commission continues to believe, as it has concluded previously, that capital utilization is a relevant measure of specialist performance because if indicates the extent to which a specialist unit commits capital to and participates in the market for its securities, thereby contributing to market liquidity.[19] According to the NYSE, market volatility has increased substantially since the NYSE implemented the specialist capital utilization measure in 1993. The NYSE notes, for example, that 1% Days occurred on 27% of the trading days in 1994, and on 70% of the trading days in 1998. As a result, the NYSE believes that the 1% Days definition of volatility is now more characteristic of usual market conditions. The 2% Days definition is designed to better distinguish between volatile and non-volatile days in light of the increased overall market volatility since 1993. According to the NYSE, the 2% Days definition would have provided approximately the same number and percentage of volatile days in 1998 as the 1% Days definition provided in 1994 (*i.e.*, 55 days versus 67 days or 22% versus 27%).

The Commission believes that the proposed rule change will ensure that the definition of volatile days is meaningful in light of current market conditions. Accordingly, the Commission believes that the proposed rule change will make the definition of volatile day consistent with the spirit of the rule adopted in 1993, when the NYSE implemented the specialist capital utilization measure, and will ensure that the capital utilization measure continues to function effectively as an indication of specialist performance.

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 Commission believes accelerated approval should help maintain the relative proportion of volatile periods to base periods comparable to that which existed when the capital utilization measure was adopted, thereby preserving the original intent of the performance measure.

It is therefore ordered, pursuant to Section 19(b)(2)[20] of the Act, that the proposed rule change (SR–NYSE–99–11), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17151 Filed 7–6–99: 8:45 am]

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[18] *See* January 1997 Order, *supra* note 4.

[19] *See* December 1993 Order, *supra* note 4.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #3075]

Overseas Presence Advisory Panel (OPAP); Closed Meeting

The Department of State announces a meeting of the Overseas Presence Advisory Panel on Tuesday, July 20, 1999, from 9:00 a.m. to 1:00 p.m. at the U.S. Department of State. Pursuant to Section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b [c] [1], it has been determined that the meeting will be closed to the public. The Panel is charged with advising the Secretary of State with respect to the level and type of representation required overseas in light of new foreign policy priorities, a heightened security situation and extremely limited resources. The agenda includes a discussion of sensitive information relating to the Panel's final draft report of ongoing findings and recommendations concerning Embassies and Consulates overseas; this would include, but not be limited to, intelligence and operational policies, and security aspects of all the U.S. Government agencies the Department of State supports abroad.

FOR FURTHER INFORMATION CONTACT: Mrs. Marilyn Shapiro, Overseas Presence Advisory Panel, Department of State, Washington, DC 20520; phone: 202–647–6427.

Dated: June 29, 1999.

Ambassador William H. Itoh,

Executive Secretary, Overseas Presence Advisory Panel.

[FR Doc. 99–17181 Filed 7–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 25, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5869.
Date Filed: June 22, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0260 dated 22 June 1999; Mail Vote 010–Resolution 010p; TC2 Within Europe Special Passenger Amending Resolution from Belgium; Intended effective date: 1 July 1999.

Docket Number: OST–99–5870.
Date Filed: June 22, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR 0076 dated 18 June 1999; Expedited North Atlantic USA-Europe Expedited Resolutions 002kk 015n; PTC12 USA–EUR 0077 dated 22 June 1999; Correction to PTC12 USA–EUR 0076 dated 18 June 1999; Intended effective date: 1 August 1999.

Docket Number: OST–99–5874.
Date Filed: June 23, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0345 dated 25 June 1999; Mail Vote 014–Resolution 010r; TC3 Special Passenger Amending Resolution Within South Asian Subcontinent; Intended effective date: 8 July 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–17132 Filed 7–6–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 25, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5868.
Date Filed: June 21, 1999.