

Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² The proposed rule change amends the NASD's Rules of Fair Practice, Article III, Subsection 44(c)(6)(B)(xi) of the Corporate Financing Rule to raise the permissible level of non-cash incentives to \$100 per person per issuer annually.

Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 35712, May 12, 1995) and by publication in the **Federal Register** (60 FR 26753, May 18, 1995). No comment letters were received. The Commission is approving the proposed rule change.

I. The Terms of Substance of the Proposed Rule Change

Subsection 44(c)(6)(B)(xi) of the Corporate Financing Rule (the "Rule") currently prohibits NASD members from receiving non-cash sales incentives from an issuer or its affiliates valued in excess of \$50 per person per issuer annually. Such non-cash sales incentives are typically de minimis in nature, such as small souvenir or gift items, provided by issuers to a member or associated persons of a member. The sole purpose of this rule is to raise the permissible level of non-cash sales incentives to \$100 per person, annually.

II. Commission Findings

The Commission believes that a dollar amount of \$100 is still relatively low and will neither compromise the intent, nor reduce the ability, of the rule to prevent fraudulent acts and practices that might arise in connection with the giving of gifts or payments by issuers and their affiliates as non-cash compensation to members or persons associated with members.

Additionally, the amendment will make the value-limitation provisions of the Rule consistent with similar provisions in Article III, Sections 10 and 34 of the Rules of Fair Practice, with proposed amendments to Sections 26 and 29 now pending SEC approval, and with Rule 350(a) of the New York Stock Exchange ("NYSE"). The amendment to the Rule would provide regulatory consistency and simplify compliance for member firms that are also members of the NYSE.

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³ which require that the rules of the association be designed to prevent fraudulent and manipulative acts and

promote just and equitable principles of trade in that the proposed rule change allows for an increase in the dollar limit to a level that is still reasonably de minimis and provides for regulatory consistency with other rules of the NASD and the NYSE.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-18 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to Proposed Rule Change Relating to Entry of Limit-at-the-Close Orders

June 16, 1995.

I. Introduction

On March 3, 1995, 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 and Exchange Commission of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to replace its current pilot³ for the entry of limit-at-the-close ("LOC") orders⁴ to offset a published market-at-the-close ("MOC") order⁵ imbalance of 50,000 shares or more in stocks selected from expiration day⁶ pilot stocks with a pilot including all stocks for which MOC order imbalances are published. On April 18, 1995, the NYSE submitted Amendment No. 1 to the proposed rule change.⁷

The proposed rule change, including Amendment No. 1, was published for comment in Securities Exchange Act Release No. 35653 (April 27, 1995), 60

FR 21839. No comments were received on the proposal.

II. Description of the Proposal

The proposed rule change proposes to expand the universe of stocks in which LOC orders may be entered to all stocks for which MOC imbalances are published pursuant to such procedures regarding time of order entry and order cancellation as the Exchange may establish from time to time.

Currently, the NYSE allows entry of LOC orders to offset published imbalances of MOC orders of 50,000 shares or more in five of the so-called "pilot stocks."⁸ The Commission approved the current LOC order entry procedures on a 15-month pilot basis through July 15, 1995.⁹ Thus far, LOC orders been entered rarely. Members cite the limited number of stocks for which LOC orders may be entered as a primary reason for not committing resources to effect system program changes necessary to support the pilot program.

The Exchange believes that by expanding the universe of eligible LOC stocks, it will make it more feasible for member firms to effect the systems changes required to use LOC orders.¹⁰ The Exchange is therefore proposing to replace the current pilot to permit the entry of LOC orders to offset a MOC order imbalance of 50,000 shares or more in all stocks for which MOC order imbalances are published.¹¹ The

⁸For purposes of LOC order entry, the term "pilot stocks" refers to the Expiration Friday pilot stocks plus any additional QIX Expiration Day pilot stocks. Specifically, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included therein. The QIX Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

⁹ See Release No. 33706, *supra*, note 3.

¹⁰The NYSE has represented that, before initiating the expanded pilot program, it will submit to the Commission a letter (1) stating that the NYSE is operationally ready to accept LOC orders and (2) informing the Commission of the start-up date for this pilot. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, to Elisa Metzger, Senior Counsel, SEC, on June 7, 1995.

¹¹Currently, MOC imbalances are published for pilot stocks on expiration days and non-expiration days. The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

In addition, on non-expiration days, MOC imbalances are published for stocks that are being added to or dropped from an index and, upon the request of a specialist, any other stock with the

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¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78o-3.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 33706 (March 3, 1994), 59 FR 11093.

⁴ A LOC order is a limited price order entered for execution at the closing price if the closing price is within the limit specified. See NYSE Rule 13.

⁵ A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. *Id.*

⁶ See *infra* note 11.

⁷ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Team Leader, SEC dated April 17, 1995.