

asserting that provision of a trade confirmation was not a depository function and therefore did not require the use of a depository registered with the Commission.¹⁹

The Commission believes that the issues raised by the Thomson letter need not be resolved prior to the approval of the NASD's proposed rule change. Discussions regarding Thomson's concern are underway among the Commission, Thomson, and DTC. DTC has submitted a rule filing that will establish a linkage between DTC and vendors such as Thomson.²⁰ The Commission intends to consider whether self-regulatory organization rules should continue to preclude use of private vendor systems for confirmation/affirmation services in DVP/RVP trades. However, if the NASD's proposed rule change being approved by this order is not approved prior to the June 7, 1995, effective date of the Commission's Rule 15c6-1, the NASD rules will conflict with the Commission Rule 15c6-1.

As discussed above, Thomson's letter suggests that approval of the proposed rule change without amendments to Section 64 raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that any anticompetitive effects pointed to by Thomson are not caused by the proposed rule change being approved by this order but rather by an existing NASD rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

IV. Conclusion

For the reasons stated above, the Commission finds that the portion of the proposed rule change relating to three day settlement of securities transactions is consistent with Section 15A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

¹⁹ Letter from P. Howard Edelstein, President, Electronic Settlements Group, Thomson, to Jonathan G. Katz, Secretary, Commission (February 1, 1995).

²⁰ Securities Exchange Act Release No. 35332 (February 3, 1995) 60 FR 8102 (notice of filing of proposed rule change).

portion of the rule change (File No. SR-NASD-94-56) containing the amendments to Sections 5, 6, 12, 46, and 64 of the UPC and Article III, Section 26(m)(1) and Article III, Section 1 of the RFP be and hereby is approved and will become effective on June 7, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35506; File No. SR-NYSE-94-40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Implementation of a Three-Day Settlement Standard

March 17, 1995.

On November 3, 1994, the New York Stock Exchange, Inc., ("NYSE") filed a proposed rule change (File No. SR-NYSE-94-40) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on December 23, 1994 to solicit comments from interested persons.² The Commission received one comment letter.³ As discussed below, this order approves the proposed rule change.

I. Description

In October 1993, the Commission adopted Rule 15c6-1 under the Act⁴ which establishes three business days after the trade date ("T+3"), instead of five business days ("T+5"), as the standard settlement cycle for most securities transactions. The rule will become effective June 7, 1995.⁵ Several of the current NYSE's rules are interrelated with a T+5 settlement time frame. The purpose of the rule change is to amend NYSE's rules to be

consistent with a T+3 settlement standard for securities transactions.

NYSE Rules 64(a)(3), 65(b), and 85(d)(3) specify the delivery date for securities sold in regular way transactions, odd lot sales, and cabinet sales, respectively. The time frames contained in each rule is being shortened to conform to a T+3 settlement cycle. Rule 64(a)(5) currently provides that on the second, third, fourth, and fifth business days preceding the final day for subscription, bids, and offers in rights to subscribe shall be made only for delivery next day. This section is being amended to eliminate references to the fourth and fifth business days. Rule 64(c) is being amended to provide that seller's option trades can settle on the third business day, rather than the fifth business day, after the trade date.

Rule 235 is being amended to provide that transactions in stocks shall be ex-dividend or ex-rights on the second business day preceding the record date rather than on the fourth business day. With regard to a record date on a day other than a business day, transactions in stocks shall be ex-dividend or ex-rights on the third preceding business day rather than on the fifth preceding business day. The time frame contained in Rule 257 for delivery of dividends or rights for securities sold before the "ex" date but delivered after the record date is being shortened to three days after record date.

Rule 236 prescribes when ex-warrant trading will begin. The ex-warrant period is being changed to the second business day preceding the date of expiration of the warrants instead of the fourth business day. When warrant expiration occurs on other than a business day, the ex-warrant period will begin on the third business day preceding the expiration date instead of on the fifth business day.

Rule 387(a)(4) requires a member to obtain an agreement from its customer to deliver instructions to its agent within certain time periods with respect to receipt and delivery of securities sold delivery versus payment ("DVP") or receipt versus payment ("RVP"). All the time frames contained in Rule 387(a)(4) are being shortened by two days. Rule 123A.³² currently states that the liability of a specialist shall not extend beyond the closing price on the third business day where it is deemed that the specialist did not send out a report. This time frame is being shortened by two business days. The proposal shortens the time frames contained in Rule 123B(b)(2) (A) and (B) for correcting

²¹ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b) (1988).

² Securities Exchange Act Release No. 35110 (December 16, 1994), 59 FR 35011.

³ Letter from Dr. Keith B. Jarrett, President, Thomson Trading Services, Inc., to Jonathan G. Katz, Secretary, Commission (January 12, 1995).

⁴ 17 CFR 240.15c6-1.

⁵ Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6-1) and 34952 (November 9, 1994), 59 FR 59137 (order changing the effective date from June 1, 1995, to June 7, 1995).

execution reports.⁶ Supplementary Material .10, .12, and .13 of Rule 128B are being amended to shorten the time frames for tape corrections and other errors.⁷

The NYSE has requested that the proposed rule change become effective on the same date as Rule 15c6-1. Rule 15c6-1 becomes effective on June 7, 1995.⁸

II. Written Comment

The Commission received one comment letter from Thomson Trading Services, Inc. ("Thomson") suggesting that additional regulatory changes may be necessary to implement T+3 settlement.⁹ Thomson believes that the NYSE should amend Rule 387(a)(5) which requires the use of the facilities of a securities depository for

⁶ Rule 123B(b)(2)(A) is being amended to require that for most transaction between brokers, if a purchase or sale has been reported in error and a transaction has appeared on the tape at the price of the erroneous report, the broker who made the error will be required to render a corrected report not later than noon on T+1 rather than one hour after the opening on T+2. Rule 123B(b)(2)(B) is being amended to require that for orders received by the specialist through the Designated Order Turnaround System or the Limit Order System, if the subscribing member organization requests a correction from the specialist prior to the opening of the second business day, rather than third business day, following the transaction, the specialist shall correct the report. Rule 123B(b)(2)(B) also is being amended to require that if the erroneous report is at a price more than one-half point away from the execution price, the specialist must render a corrected report not later than noon on T+1 rather than one hour after the opening on T+2.

⁷ Supplementary Material .10 is being amended to require that in the event that publication of a change, correction, or cancellation of a transaction which previously appeared on the tape or of a transaction omitted from the tape is not made on the tape on the day of the transaction, such change, correction, cancellation, or omission may be published in the "sales sheet" within three business days, rather than within seven calendar days, of the date of the transaction with the approval of both the buying and selling members and a floor official. Supplementary Rule .12 is being amended to require that erroneous publications made on the tape due to mechanical or system troubles or clerical errors may be corrected in the sales sheet within three business days, rather than within seven calendar days, of the date of the transaction under the direction of an authorized NYSE employee. Supplementary Material .13 will require that any other errors in the amount of a transaction reported erroneously to a reporter by a party to the transaction may be published on the sales sheet within three business days, rather than within seven calendar days, of the date of the transaction with the approval of a floor official.

⁸ The transition from five day settlement to three day settlement will occur over a four day period. Friday, June 2, will be the last trading day with five business day settlement. Monday, June 5, and Tuesday, June 6, will be trading days with four business day settlement. Wednesday, June 7, will be the first trading day with three business day settlement. As a result, trades from June 2 and June 5 will settle on Friday, June 9. Trades from June 6 and June 7 will settle on Monday, June 12.

⁹ Letter from Dr. Keith B. Jarrett, *supra* note 3.

confirmation and acknowledgement of all transactions in securities which are depository-eligible.

III. Discussion

The Commission believes the proposal is consistent with the requirements of Section 6 of the Act.¹⁰ Specifically, Section 6(b)(5) states that the rules of an exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information. NYSE rules and other self-regulatory organizations' rules currently establish the standard time frame for settlement of securities transactions. On June 7, 1995, the new settlement cycle of T+3 will be established as mandated by the Commission's Rule 15c6-1. As a result, the NYSE's current rules providing for a T+5 settlement cycle will be inconsistent with the Commission's rule. This proposal will amend the NYSE's rules to harmonize them with the Commission's rule 15c6-1 and a T+3 settlement cycle.

In addition, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it protects investors and the public interest by reducing risks to clearing corporations, their members, and public investors which are inherent in settling securities transactions. The reduction of the time period for settlement of most securities transactions will correspondingly decrease the number of unsettled trades in the clearance and settlement system at any given time. Thus, fewer unsettled trades will be subject to credit and market risk, and there will be less time between trade execution and settlement for the value of those trades to deteriorate.¹¹

While Thomson's letter supports the NYSE's efforts to shorten the settlement cycle for securities transactions, Thomson believes that the NYSE should amend Rule 387, which requires the use of the facilities of a securities depository for the confirmation and acknowledgement of all DVP or RVP transactions in depository-eligible securities. The Commission believes that the issue raised by the Thomson letter need not be resolved prior to the

¹⁰ 15 U.S.C. 78f (1988)

¹¹ The Commission release adopting Rule 15c6-1 stated that "the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user could trigger additional failures resulting in risk to the national clearance and settlement system." Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

approval of the NYSE's proposed rule change. Discussions regarding Thomson's concerns are underway among the Commission, Thomson, and DTC. DTC has submitted a rule filing that will establish a linkage between DTC and vendors such as Thomson.¹² The Commission intends to consider whether self-regulatory organization rules should continue to preclude use of private vendor systems for confirmation/affirmation services in DVP/RVP trades. However, if the NYSE's proposed rule change being approved by this order is not approved prior to the June 7, 1995, effective date of Rule 15c6-1, the NYSE rules will conflict with the Commission Rule 15c6-1.

The Thomson letter suggests that approval of the proposed rule change without amendments to Rules 387 raises competitive concerns. Under the Act, the Commission's responsibility is to balance the perceived anticompetitive effects of a regulatory policy or decision against the purpose of the Act that would be advanced by the policy or decisions and the costs associated therewith. The Commission notes that any anticompetitive effects pointed to by Thomson are not caused by the proposed rule change being approved by this order but rather by an existing NYSE rule. The Commission is reviewing Thomson's claim but does not believe that approval of this proposal will itself create any burdens on competition. Moreover, as discussed above, the rule advances fundamental purposes under the Act, namely the efficient clearance and settlement of securities.

IV. Conclusion

For the reasons stated above, the Commission finds that NYSE's proposal is consistent with Section 6 of the Act.¹³

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-NYSE-94-40) be and hereby is approved and will become effective on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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¹² Securities Exchange Act Release No. 35332 (February 3, 1995), 60 FR 8102 (notice of filing of proposed rule change).

¹³ 15 U.S.C. 78f (1988).

¹⁴ 15 U.S.C. 78s(b)(2) (1988)

¹⁵ 17 CFR 200.30(a)(12)(1994).