

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, processing information with respect to, and facilitating transactions in securities.

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

CSE 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.*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CSE consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal

office of CSE. All submissions should refer to File No. SR-CSE-95-04 and should be submitted by May 8, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35589; File No. SR-NYSE-94-44]

### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Amendments to Market-at-the-Close Order Handling Requirements for Expiration and Non-Expiration Days**

April 10, 1995.

#### **I. Introduction**

On December 5, 1994, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its market-at-the close ("MOC") order<sup>3</sup> handling requirements for expiration days and non-expiration days.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35210 (January 10, 1995), 60 FR 3690 (January 18, 1995). On April 3, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.<sup>4</sup> No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

#### **II. Overview of Proposal**

##### *A. Background*

The NYSE currently utilizes two sets of procedures for handling MOC orders,

one for expirations days<sup>5</sup> and one for all other trading days. The Exchange's auxiliary closing procedures for expiration days have been approved on a pilot basis until October 31, 1995.<sup>6</sup> The pilot procedures establish a 3:40 p.m. deadline for (1) the entry of MOC orders related to a trading strategy involving an expiring index derivative product (*i.e.*, stock index options, stock index futures and options on stock index futures) and (2) the cancellation or reduction of any MOC order. Moreover, in the pilot stocks,<sup>7</sup> the specialist must, as soon as practicable after 3:40 p.m., disseminate any MOC order imbalance of 50,000 shares or more. Thereafter, MOC orders in the pilot stocks may be entered only to offset published imbalances; if there is no imbalance publication in a given pilot stock, no MOC orders may be entered in that stock.

The Exchange's closing procedures for non-expiration days have been approved on a permanent basis.<sup>8</sup> On those trading days, the specialist must, as soon as practicable after 3:45 p.m., disseminate any MOC order imbalance of 50,000 shares or more in (1) the pilot stocks and (2) any stock being added to or dropped from certain stock indexes (or, with Floor Official approval, from other stock indexes). A published imbalance (or the lack thereof) does not preclude the entry or cancellation of any MOC order on either side of the market.

##### *B. Proposed Amendments*

The Exchange proposes to amend its MOC order handling requirements for both expiration days and non-expiration days.<sup>9</sup> Under the NYSE proposal, on

<sup>5</sup> 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").

<sup>6</sup> See Securities and Exchange Act Release No. 34916 (October 31, 1994), 59 FR 55507 (November 7, 1994) (File No. SR-NYSE-94-32) ("1994 Pilot Approval Order").

<sup>7</sup> 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.

<sup>8</sup> See Securities Exchange Act Release No. 31291 (October 6, 1992), 57 FR 47149 (October 14, 1992) (File No. SR-NYSE-92-12).

<sup>9</sup> An Information Memo describing the amendments to the NYSE's auxiliary closing procedures will be issued before each expiration day. An Information Memo describing the amendments to the closing procedures for non-expiration days also will be issued upon approval of this proposal.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. See NYSE Rule 13.

<sup>4</sup> Letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated March 31, 1995. Amendment No. 1 is further described at note 10, *infra*.

expiration days, all MOC orders, including orders not related to a trading strategy involving an expiring index derivative product, must be entered by 3:40 p.m. The proposed rule change will not affect either (1) the deadline for cancellation or reduction of MOC orders or (2) the imbalance dissemination procedures. After 3:40 p.m., however, MOC order entry will be permitted only to offset published imbalances in the pilot stocks.

The Exchange also proposes to adopt requirements for handling MOC orders on non-expiration days that are substantially similar to those in place for expiration days. As proposed, imbalance disseminations on non-expiration days will no longer be solely for information purposes. Specifically, the proposed rule change will establish a 3:50 p.m. deadline for the entry of all MOC orders and for the cancellation or reduction of such orders. In the pilot stocks, stocks being added to or dropped from an index and, upon the request of a specialist, any other stock with the approval of a Floor Official, the specialist will, as soon as practicable after 3:50 p.m., disseminate MOC order imbalances of 50,000 shares or more.<sup>10</sup> Thereafter, MOC orders may be entered only to offset published imbalances in the above stocks.<sup>11</sup>

### III. Discussion

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, and, in particular, with the requirements of Section 6(b).<sup>12</sup> In particular, the Commission believes the proposal is consistent with the Section

<sup>10</sup> Amendment No. 1 amended the NYSE's proposal to provide for the publications of imbalances of 50,000 shares or more to be made in any stock upon the request of a specialist and the approval of a Floor Official.

<sup>11</sup> This proposal will not have a material effect on the NYSE's limit-at-the-close ("LOC") order pilot. A LOC order is a limited price order entered for execution at the closing price if the closing price is within the limit specified. The Commission has approved LOC order entry on a pilot basis until July 15, 1995. See Securities Exchange Act Release No. 33706 (March 3, 1994), 59 FR 11093 (March 9, 1994) (File No. SR-NYSE-92-37). Under that pilot program, LOC orders may be entered only to offset a published imbalance of MOC orders (which, as proposed herein, will take place at 3:40 p.m. on expiration days and 3:50 p.m. on other trading days). The deadline for LOC order entry is 3:55 p.m. LOC orders are irrevocable on expiration days; on non-expiration days, cancellation of LOC orders is prohibited after 3:55 p.m. Currently, the NYSE permits LOC order entry in five of the pilot stocks. The NYSE has recently filed a proposed rule change with the SEC to amend its LOC pilot program and to extend the program for an additional year. See File No. SR-NYSE-95-09.

<sup>12</sup> 15 U.S.C. 78f(b) (1988 and Supp. V 1993).

6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

In recent years, the self-regulatory organizations have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response. Based on the NYSE's experience,<sup>13</sup> the Commission believes that the MOC order handling requirements work relatively well and may result in more orderly markets at the close on expiration days.

The Commission acknowledges the NYSE's concern that a last-minute influx or disappearance of MOC orders, whether related to a trading strategy involving index derivative products or otherwise, potentially could add to volatility at the close. Due to the influx of orders at the close on expiration days, even MOC orders that are not derivatives-related could cause temporary liquidity strains. Thus, for the reasons set forth below, the Commission has concluded that the proposed rule change should help NYSE specialists to effectuate an orderly closing in stocks that are not covered by the existing pilot program.

In this regard, the Commission notes that the proposed rule change will standardize the Exchange's closing procedures on expiration days and apply them to all NYSE-listed stocks. Specifically, on expiration days, the NYSE proposal will impose a 3:40 p.m. deadline for entry of *all* MOC orders. In conjunction with the prohibition on cancellation or reduction of any MOC order after 3:40 p.m., this requirement should allow the specialist to make a timely and reliable assessment, for every NYSE-listed stock, or MOC order flow and its potential impact on the closing price. While the Commission recognizes that 3:40 p.m. is relatively near the

<sup>13</sup> The NYSE has submitted to the Commission several monitoring reports describing its experience with the auxiliary closing procedures. For further discussion of the NYSE's results, see 1994 Pilot Approval Order, *supra*, note 6.

close, the Commission previously has determined that such a deadline strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies.<sup>14</sup>

The amended procedures for expiration days will continue to require that, as soon as practicable after 3:40 p.m., NYSE specialists disseminate substantial imbalances in the pilot stocks. Thereafter, no MOC orders may be entered except to offset a published imbalance in a pilot stock. In this regard, the NYSE pilot program combines early submission of MOC orders with prompt dissemination of imbalances that reflect actual investor interest. As noted in prior Commission orders approving these procedures,<sup>15</sup> the NYSE should have sufficient opportunity to attract any contra-side interest necessary to alleviate substantial MOC order imbalances in the pilot stocks and to dampen their effect on the closing price.

Finally, under the proposed rule change, the NYSE will adopt MOC order handling requirements for non-expiration days that are substantially similar to those in place for expiration days. This will allow members and member organizations to follow comparable procedures at the close on all trading days.

Although there is less likelihood of an influx of MOC orders at the close on non-expiration days, certain trading and asset allocation strategies use NYSE closing prices and, accordingly, could employ MOC orders. The 3:50 p.m. deadline for MOC order entry and cancellation on non-expiration days should help the specialist make a timely and reliable assessment of MOC order flow and its potential impact on the closing price and also should ensure that any imbalance publications reflect actual investor interest. In the Commission's opinion, a 3:50 p.m. deadline strikes a more appropriate balance for non-expiration days (as opposed to the 3:40 p.m. deadline for expiration days) given the reduced likelihood of substantial MOC order imbalances due to derivatives-related trading strategies.

In the event of unusual market conditions, the Commission believes that the amended procedures for non-expiration days will offer benefits in terms of assessing volatility at the close of trading in the same manner as the

<sup>14</sup> See, e.g., Securities Exchange Act Release No. 33639 (February 17, 1994), 59 FR 9295 (February 25, 1994) (File No. SR-BSE-93-04) (approving BSE proposal to adopt MOC procedures substantially similar to the NYSE's current pilot program).

<sup>15</sup> See 1994 Pilot Approval Order, *supra*, note 6.

NYSE's procedures for expiration days. Additionally, the Commission notes that, by permitting a Floor Official to authorize the publication of substantial MOC order imbalances on non-expiration days in any stock, the proposal should increase the information available to market participants and provide NYSE specialists with a mechanism, if necessary, to attract contra-side interest in any NYSE-listed stock.<sup>16</sup>

The Commission is approving the amendments to the NYSE's auxiliary closing procedures for expiration days as part of the existing pilot program that lasts until October 31, 1995. The Commission is approving the amendments to the NYSE's closing procedures for non-expiration days on a permanent basis.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 merely clarifies the scope of the original filing. Finally, the commission did not receive any comments on the original proposal, which was published in the **Federal Register** for the full comment period.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-94-44 and should be submitted by May 8, 1995.

<sup>16</sup> The Commission encourages the NYSE to propose a corresponding provision for expiration days that would provide for the dissemination of substantial MOC order imbalances on expiration days in stock other than pilot stocks.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NYSE-94-44) is approved, including Amendment No. 1 on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. IC-20992; International Series Release No. 801; 812-9414]

#### Banco de Comercio Exterior de Colombia S.A.; Notice of Application

April 11, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Banco de Comercio Exterior de Colombia S.A.

**RELEVANT ACT SECTION:** Order requested under section 6(c) for an exemption from all provisions of the Act.

**SUMMARY OF THE APPLICATION:** Applicant seeks an exemption under section 6(c) from all provisions of the Act. Applicant is a commercial bank owned and controlled by the Republic of Colombia. Applicant provides long- and short-term financing and specialized financial products to financial intermediaries. Applicant discounts loans that such financial intermediaries have made to finance Colombian exports and foreign trade-related activities. Applicant is in the process of establishing a global program for the issuance of debt securities.

**FILING DATES:** The application was filed on January 5, 1995 and amended on March 15, 1995 and April 11, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 4, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

<sup>17</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>18</sup> 17 CFR 200.30-3(a)(12) (1994).

of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549; Applicant, c/o Thomas A. Curtis, Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York, NY 10006.

**FOR FURTHER INFORMATION CONTACT:** Marc Duffy, Senior Attorney, (202) 942-0565, or Barry D. Miller, Senior Special Counsel, (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### Applicant's Representations

1. Applicant is a commercial bank owned and controlled by the Republic of Colombia ("Colombia," or the "Republic"). Applicant provides long- and short-term financing and specialized financial products to support Colombian exports and foreign trade-related activities. Applicant was incorporated as the successor to the Export Promotion Fund, a fund formed in 1967 by the government of Colombia (the "Government") to promote Colombian exports.

2. The Republic owns 99.7% of applicant's share capital and controls the applicant within the meaning of section 2(a)(9) of the Act.<sup>1</sup> Applicant's Board of Directors consists of Government representatives, a representative of the private sector appointed by the President of the Republic, and a representative of the private sector appointed by the exporters' associations registered with the Ministry of Foreign Trade.

3. Applicant is authorized to operate under the same legal regime as a private commercial bank, without any limitation on the type of commercial banking activities in which it may engage. Applicant's activities, like those of other Colombian banks, are subject to extensive regulation by the principal

<sup>1</sup> The Government recently offered shares in applicant representing 11% of applicant's outstanding share capital to applicant's employees, pension funds, cooperatives, unemployment funds and other institutions. As a result of such offering, 0.28% of the Bank's outstanding share capital were purchased by such employees and institutions. The shares that were not subscribed for in such offering will eventually be offered by the Government to the public in Colombia. The Government does not intend to offer such shares in the United States. Even after such sale, the Government would continue to control applicant's operations within the meaning of section 2(a)(9) of the Act.