

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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[Release No. 34-35854; File No. SR-NYSE-95-09]

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

⁸ For 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.

¹⁰ The 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.

¹¹ Currently, 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

Continued

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.

Exchange intends to keep the 3:55 p.m. cutoff time for the entry of LOC orders, except to correct a bonafide error. On expiration days, LOC orders will continue to be irrevocable after 3:40 p.m., except to correct a bonafide error. For non-expiration days, cancellation of LOC orders would be prohibited after 3:55 p.m., except to correct errors.¹²

The Exchange believes that LOC orders may be a useful means to help address the prospect of excess market volatility that may be associated with an imbalance of MOC orders at the close. Therefore, the Exchange believes it is appropriate to replace the current pilot for LOC orders to a pilot including all stocks for which MOC imbalances are published that will last for one year from the date of approval of this proposed rule change.

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 Sections 6(b).¹³ The Commission believes the proposal is consistent with the Section 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.

As noted in approving the current pilot, 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.

approval of a Floor Official. See Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313.

¹² The NYSE modified its electronic display book, such that LOC orders are prioritized relative to other LOC orders by time of entry, but are required to yield priority to all conventional limit orders on the specialist's book at the same price. Telephone conversation between Donald Siemer, Director of Market Surveillance, NYSE, to Elisa Metzger, Senior Counsel, SEC, on June 16, 1995.

¹³ 15 U.S.C. 78f(b).

The NYSE auxiliary closing procedures have worked relatively well and may have resulted in more orderly markets on expiration days. Nevertheless, both the Commission and the NYSE remain concerned about the potential for excess market volatility, particularly at the close on expiration days. Although, to date, the NYSE has been able to attract sufficient contra-side interest to effectuate an orderly closing, adverse market conditions could converge on an expiration day to create a market dislocation which could make member firms and their customers unwilling to acquire significant positions.

The NYSE recently adopted auxiliary closing procedures for MOC orders on non-expiration days that are substantially similar to those in place for expiration days.¹⁴ This allows 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. In the event of unusual market conditions, the Commission believes that the MOC procedures for non-expiration days offer benefits in terms of assessing volatility at the close of trading in the same manner as the NYSE's procedures for expiration days.

The Commission continues to believe preliminarily that LOC orders should provided the NYSE with an additional means of attracting contra-side interest to help alleviate MOC order imbalances both on expiration and non-expiration days. As a practical matter, the Commission believes that LOC orders will appeal to certain market participants who otherwise might be reluctant to commit capital at the close. Specifically, unlike a MOC order, which results in significant exposure to adverse price movements, a LOC order will allow each investor to determine the maximum/minimum price at which he or she is willing to buy/sell. To the extent that such risk management benefits encourage NYSE member firms and their customers to enter orders to offset MOC order imbalances of 50,000 shares or more, thereby adding liquidity to the market, the Commission agrees with the NYSE that LOC orders could become a useful investment vehicle for curbing excess price volatility at the close.¹⁵

¹⁴ See *supra* note 11.

¹⁵ Furthermore, the Commission notes that LOC orders could allow the NYSE to accomplish this goal without diminishing any benefit to investors

The Commission also finds that the NYSE has established appropriate procedures for the handling of LOC orders and that the NYSE's existing surveillance should be adequate to monitor compliance with those procedures. Because LOC orders will be required to yield priority to conventional limit orders at the same price, the Commission is satisfied that public customer orders on the specialist's book will not be disadvantaged by this proposal. In addition, the Commission believes that the proposed 3:55 p.m. deadline for LOC order entry strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies. Similarly, in the Commission's opinion, the prohibition on cancelling LOC orders is consistent with the Exchange's auxiliary closing procedures and, like those procedures, should allow specialists to make a timely and reliable assessment of order flow and its potential impact on the closing price.

The Commission is approving LOC order entry for all stocks for which MOC order imbalances are published on a pilot basis contingent on the extension or permanent approval of the MOC procedures.¹⁶ During the pilot program, the Commission expects the NYSE to monitor the effectiveness of its LOC order procedures.

The Commission therefore requests that the NYSE submit a report to the Commission, by May 31, 1996, describing its experience with the expanded pilot program. At a minimum, this report should contain the following data for each expiration day during the 10-month period after the start-up date for LOC order entry for all stocks: (1) For all stocks which had a MOC order imbalance of 50,000 shares or more at 3:40 p.m., the names of those stocks and the size of the imbalance; (2) for each stock listed in (1) above, the size of the MOC order imbalance at 4:00 p.m. and an appropriate measure of the size of conventional limit order and LOC order interest, on the opposite side of the market from the imbalance, at 4:00 p.m.; (3) for each stock listed in (1) above, (i) the price of the transaction effected closest in time to 3:40 p.m., the price of the last regular way trade and the closing price, (ii) the change in price of the closing transaction, measured as a percentage, from the last regular way

from trading strategies that rely on MOC orders to guarantee a fill at the closing price.

¹⁶ The pilot program for MOC procedures expires on October 31, 1995. See Securities Exchange Act Release No. 34916 (October 31, 1994), 59 FR 55507.

trade and from the transaction effected closest in time to 3:40 p.m., (iii) historical data analyzing price volatility for the same stock on expiration days prior to the implementation of this pilot program; and (4) the average price volatility for all stocks listed in (1) above. The NYSE report also should contain, for one week per calendar quarter (including at least one week with no expiration days) the data described herein, as modified to reflect the MOC procedures for non-expiration days. Any requests to modify this pilot program, to extend its effectiveness or to seek permanent approval for the pilot procedures also should be submitted to the Commission, by May 31, 1996, as a proposed rule change pursuant to Section 19(b) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSE-95-09) is approved on a pilot basis to expire on July 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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listing of the Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for its LYONS. The Amex has informed the Company that it has no objections to the withdrawal of the Security from listing on the Amex.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Jonathan G. Katz,

Secretary.

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In making the decision to withdraw the Securities from listing on the Amex, the Company considered the direct and indirect costs and expenses in connection with maintaining the dual listing of the Securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Securities and believes that dual listing would fragment the market for the Securities.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Jonathan G. Katz,

Secretary.

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Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Elan International Finance, Ltd., Liquid Yield Option Notes Dues 2012) File No. 1-11378

June 19, 1995.

Elan International Finance, Ltd. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has listed the Security with the New York Stock Exchange, Inc. ("NYSE"). In making the decision to withdraw the LYONS from listing on the Amex, the Company considered the direct and indirect costs and expenses in connection with maintaining the dual

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Elan Corporation plc, American Depositary Shares Evidenced by American Depositary Receipts, Representing Ordinary Shares, Par Value 4 Irish Pence; Warrants To Purchase Ordinary Shares, par Value 4 Irish Pence, Represented by American Depositary Shares, Evidenced by American Depositary Receipts of Elan Corporation, plc) File No. 1-10416

June 19, 1995.

Elan Corporation, plc ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Securities are listed on the New York Stock Exchange, Inc. ("NYSE").

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Great Pines Water Company, Inc., Common Stock, \$0.01 Par Value) File No. 1-12130

June 19, 1995.

Great Pines Water Company, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the expense associated with the BSE listing can not be justified. The Security is currently a Nasdaq Stock Market SmallCap security.

Any interested person may, on or before July 11, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).