

Commissions Settlement systems, Mutual Fund Services only members will no longer have to settle UIT transactions through exception processing or ex-clearing. As a result, this change should further perfect the mechanism of a national clearance and settlement system. At the same time, because NSCC does not apply its trade guarantee to transactions processed through Mutual Fund Services, processing and settling UIT transactions through Mutual Fund Services should not pose any significant additional risk to NSCC and therefore should not effect NSCC's ability to safeguard securities and funds.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-97-02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38630; File No. SR-NYSE-97-09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Percentage Order Rule 123A.30

May 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 25, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to Exchange Rule 123A.30 ("Rule"). The filing proposes to amend the Rule to provide that the percentage orders held by a specialist may be elected by the execution of a previously elected portion of a percentage order that is on the opposite side of the market. The filing also proposes to amend the Rule to permit the specialist to convert a percentage order on a destabilizing tick, as otherwise permitted by the Rule, when the transaction is 10,000 shares or more or represents a quantity of stock having a market value of \$500,000 or more (whichever is less).¹

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 self-regulatory organization 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 IV below. The self-regulatory organization 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

A percentage order is a limited price order to buy or sell fifty percent (50%) of the volume of a specified stock after its entry. A percentage order is essentially a memorandum entry left with a specialist which becomes a "live" order capable of execution in one of two ways: (i) All or part of the order can be "elected" as a limit order on the specialist's book based on trades in the market; or (ii) all or part of the order can be "converted" into a limit order to make a bid or offer or to participate directly in a trade. Percentage orders were first adopted in 1972 to permit

¹ The Exchange previously filed a proposed change to Rule 123A.30 which would provide that a converted percentage order retains its status on the specialist's book unless the transaction is effected on a higher bid, or a new higher bid is made, or the percentage order was not converted at its maximum limit price. That proposed rule change is still pending with the Commission. See Securities Exchange Act Release No. 37495 (July 30, 1996), 61 FR 40699 (August 5, 1996) (File No. SR-NYSE-96-16).

large size orders to trade along with the trend of the market.

The election process. Under the election process, as trades occur at the percentage order's limit price or better, an equal number of shares of the percentage order are "elected" and become a limit order on the specialist's book at the price of the electing sale. Most percentage orders are entered as "last sale percentage orders," meaning that they may be executed at the price at which they were elected, or at a better price. These orders may not, however, be executed at an inferior price to the electing sale even if that inferior price is still within the limit price on the order.

The Rule provides that percentage orders shall not be elected by any portion of volume which results from the execution of a previously elected portion of a percentage order. The intent of this restriction is to prevent "chain reaction" executions of percentage order whereby executions of elected portions of percentage orders trigger additional elections. Such a result would usually be contrary to the objectives of those entering percentage orders, who generally want to go along with the overall trend of the market as reflected by other market interest, without necessarily leading that trend.

As currently drafted, the Rule does not distinguish between election of percentage orders on the same side of the market and percentage orders on opposite sides of the market. The Exchange believes that the rationale of the Rule, however, suggests that the restriction should be applied only to percentage orders on the same side of the market, as "same side" orders are the ones to be executed along with the market trend (*i.e.*, buy percentage orders would be executed along with other buying interest, and sell percentage orders would be executed along with other selling interest).

Proposed change to the election process. The Exchange is proposing to amend the Rule to provide that the percentage orders held by a specialist may be elected by the execution of a previously elected portion of a percentage order that is on the opposite side of the market.

For example, assume that the market is 20 to 20¹/₄, 2,000 by 2,000, with the 2,000 share offer representing 2,000 "elected" shares of a percentage order to sell. The specialist then receives a percentage order to buy 10,000 shares at a limit price of 20⁵/₈ after which he receives through SuperDOT an order to buy 1,000 shares at the market. After bidding 20¹/₈ on behalf of the SuperDOT order, the specialist executes that order

⁶ 17 CFR 200.30-3(a)(12).

against the 2,000 share offer at 20¹/₄. Under the current rule, no portion of the buy percentage order would be elected, and no additional portion of the sell percentage order would be elected. Under the proposed rule change, 1,000 shares of the buy percentage order would be elected at 20¹/₄, and would then trade with the remaining 1,000 share balance of the offer at 20¹/₄. No portion of the sell percentage order would be elected.

The conversion process. Under the Rule, the specialist may convert a percentage order into a "live" limit order on a destabilizing tick where: (i) The transaction for which the order is being converted is for 10,000 shares or more; and (ii) the price at which the converted percentage order is to be executed is no more than ¹/₄ point away from the last sale price; provided, however, that this price parameter may be modified, in appropriate cases, with the prior approval of a Floor Official and the written consent of the broker who entered the order.²

Proposed change to the conversion process. The Exchange is proposing to amend the Rule to permit the specialist to convert a percentage order on a destabilizing tick, as otherwise permitted by the rule, when the transaction is 10,000 shares or more or represents a quantity of stock having a market value of \$500,000 or more (whichever is less).

This amendment will make the size of permitted transactions consistent with the definition of a block in NYSE Rule 97, and thus facilitate conversion of percentage orders in stocks where the size of the trade has the appropriate market value to qualify as a block transaction, but may not have a share size of 10,000 or more.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)³ 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 a national market system and, in general, to protect investors and the public interest. This proposed rule change will remove impediments to and perfect the mechanism of a free and

² For a more detailed description of the procedures under which a percentage order may be converted on a destabilizing tick, see Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (order approving amendment to Rule 123A.30 to permit the conversion of percentage orders on destabilizing ticks).

³ 15 U.S.C. 78f(b)(5).

open market by increasing opportunities for percentage orders' participation in the Exchange's auction when a percentage order may be elected by the execution of a previously elected portion of a percentage order on the opposite side of the market. In addition, increasing the opportunity for percentage orders to be converted based on a transaction size or market value will promote liquidity and depth in the market place.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 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 the self-regulatory organization consents, the Commission will:

(A) By order approve the 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 at the Commission's Public Reference

Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-97-09 and should be submitted by June 11, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38638; File No. SR-NYSE-97-07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 440A ("Telephone Solicitation-Recordkeeping") and an Interpretation to Rule 472 ("Communications with the Public")

May 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ Notice is hereby given that on March 18, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

The Exchange has filed an amendment to Rule 440A ("Telephone Solicitation-Recordkeeping") which is substantially similar to applicable provisions of the Federal Trade Commission rules adopted pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"),² together with an interpretation of Rule 472 ("Communications with the Public")

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 6101-08.