

*Additional Information or Comments:* Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and the OMB reviewer, Laurie Schack 202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

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## RAILROAD RETIREMENT BOARD

### Sunshine Act Meeting; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 20, 1999, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

- (1) Continued Payment of Vested Dual Benefit Project
- (2) Occupational Disability (FCE Protocols)
- (3) SES Position for Planning, Procedures & Systems
- (4) Year 2000 Issues

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312-751-4920.

Dated: May 10, 1999.

**Beatrice Ezerski,**

*Secretary to the Board.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41362; File No. 10-100]

### Exempted Exchanges; AZX, Inc.; Order Amending Exemption Order Under Section 5 of the Securities Exchange Act of 1934; Final Order

May 3, 1999.

#### I. Introduction

AZX, Inc. has requested that the Securities and Exchange Commission ("Commission") amend the Exemption Order pursuant to which AZX, Inc.

operates the Arizona Stock Exchange ("AZX") without registration as a national securities exchange.<sup>1</sup> The amended Exemption Order would permit AZX to trade exchange-listed securities during regular trading hours, conduct two additional regular hours auctions, and consolidate its evening auctions. The proposal was published for comment in the **Federal Register** on February 1, 1999.<sup>2</sup> No comment letters were received. After evaluating the proposal, the Commission concludes that AZX will continue to meet the statutory standard for an exchange operating pursuant to the limited volume exemption from registration under Section 5 of the Securities Exchange Act of 1934 ("Act").<sup>3</sup> Accordingly, the Commission hereby amends AZX's Exemption Order as requested by AZX, Inc., subject to the terms and conditions described below.

#### II. AZX

AZX, Inc. operates AZX, a computerized, single-price auction system that facilitates trading of registered equity securities by broker-dealers and institutions. AZX operates three off-hours auctions in Nasdaq National Market ("NNM") and exchange-listed securities, at 9:15 a.m., 4:20 p.m., and 5:00 p.m. (ET), each trading day. AZX also operates one auction during regular trading hours,<sup>4</sup> at 10:30 a.m. (ET). As described in its Exemption Order, AZX trades only NNM securities during the 10:30 a.m. auction.

#### III. The Proposal

On July 30, 1998, AZX, Inc. filed with the Commission pursuant to Rule 6a-1 under the Act,<sup>5</sup> an amendment to its application for exemption from registration as a national securities exchange. In its amendment, AZX proposes to operate two additional auctions during regular trading hours, at 12:30 p.m. and 2:30 p.m. (ET) each

<sup>1</sup> Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377 (February 28, 1991), amended by Securities Exchange Act Release No. 37272 (June 3, 1996), 61 FR 29145 (June 7, 1996) (collectively "Exemption Order"). AZX also operates without registering as a broker-dealer, clearing agency, transfer agent, or exclusive securities information processor pursuant to a staff no-action letter. Letter from Richard G. Ketchum, Director, Commission, to Daniel T. Brooks, Esq., Cadwalader, Wickersham & Taft, regarding Wunsch Auction Systems, Inc., dated February 28, 1991.

<sup>2</sup> Securities Exchange Act Release No. 40961 (January 22, 1999), 64 FR 4908.

<sup>3</sup> 15 U.S.C. 78e.

<sup>4</sup> "Regular trading hours" refers to the time period in which the New York Stock Exchange, Inc. permits trading, which is 9:30 a.m. to 4:00 p.m. (ET) each trading day.

<sup>5</sup> 17 CFR 240.6a-1.

trading day. AZX also proposes to trade exchange-listed and NNM securities during all three regular hours auctions. In addition, AZX proposes to consolidate its two evening after-hours actions into one after-hours auction ending at 4:30 p.m. (ET). Under the proposal, there would be five AZX auctions—two off-hours and three regulator hours. All five auctions would be permitted to trade both exchange-listed and NNM securities, and will be subject to real-time transaction reporting under National Association of Securities Dealers, Inc. ("NASD") rules.

#### IV. Discussion

##### A. Volume Level

The Commission believes that the changes proposed by AZX should not change AZX's status as an exempted exchange. The limited volume exemption continues to be premised on AZX's average daily volume (including both regular and after-hours auctions) remaining below the average daily volume of the lowest volume national securities exchange.<sup>6</sup> AZX's current average daily volume is well below that of the lowest volume national securities exchange.<sup>7</sup> Moreover, given the wide range of alternatives available to investors during regular trading hours, AZX's proposal to trade listed securities during its regular hours auctions (including two additional auctions) does not seem likely to result in AZX's volume exceeding the volume of any national securities exchange. Should AZX's volume exceed the limited volume threshold, however, the Commission may rescind the exemption.<sup>8</sup>

<sup>6</sup> The Exemption Order states that the Commission would be concerned if the volume of an exempted exchange "exceeded that of any of the fully regulated national securities exchanges." Securities Exchange Act Release No. 28899, *supra* note 1 at 8380.

<sup>7</sup> The Philadelphia Stock Exchange ("Phlx") is currently the lowest volume national securities exchange. For calendar year 1998, the average daily volume of the Phlx was approximately 6,262,127 shares. For calendar year 1998, the average daily volume of AZX was approximately 95,168 shares—less than 2% of the volume of the Phlx.

<sup>8</sup> The Exemption Order states that "[s]hould the Commission learn that any of the conditions set forth in this Order or otherwise imposed upon the granting of this exemption have been breached \* \* \* the Commission will commence a review to determine whether to rescind the exemption." Securities Exchange Act Release No. 28899, *supra* note 1 at 8383. In the event the Commission rescinds the exemption because AZX's volume exceeds the limited volume threshold, AZX would have the option to continue operating by registering as a national securities exchange, or registering as a broker-dealer and complying with Regulation ATS. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).