

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41598; File No. SR-NYSE-98-41]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposal Amending Opening Imbalance Publication Procedures for Expiration Days

July 6, 1999.

#### I. Introduction

On November 25, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with 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 opening imbalance publication procedures for expiration days.<sup>3</sup> On March 22, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on May 11, 1999.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposal, as amended.

#### II. Description of the Proposal

The Exchange currently utilizes auxiliary opening procedures on expiration days.<sup>6</sup> Currently, the auxiliary procedures require, among other things, that market order imbalances of 50,000 shares or more in stocks on the Exchange's "special stock" list<sup>7</sup> be published as soon as practicable

after 9:00 a.m. on expiration days. The Exchange proposes to amend its auxiliary opening procedure requiring market order imbalance publication on expiration days by eliminating the use of the special stock list. The proposed rule change would require publication of market order imbalances for all stocks with imbalances of 50,000 shares or more. In addition, the proposal would permit the publication of market order imbalances of less than 50,000 shares upon floor official approval.<sup>8</sup>

#### III. Definition

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.<sup>9</sup> In particular, the Commission finds the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act<sup>10</sup> which requires, among other things, that the rules of an exchange be 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.

The proposed rule change expands the number of stocks for which opening market order imbalances must be published. The current procedures require that market order imbalances be published for stocks contained on the Exchange's special stock list. The proposal, however, requires that market order imbalances of 50,000 or more shares be published for all stocks. Moreover, market order imbalances of under 50,000 shares will be permitted to be published upon approval of a floor official.

The proposed rule change is consistent with the requirements of the Act because it should provide market participants with more complete information concerning market order imbalances in all stocks at the opening

See Securities Exchange Act Release No. 31732 (January 14, 1993), 58 FR 6036 (January 25, 1993).

<sup>8</sup>The Exchange submitted a similar proposal eliminating the use of the special stock list for order imbalances published at the close and mandating that market-at-the-close ("MOC") imbalances of 50,000 shares or more be published for all stocks on any trading day and permitting the publication of order imbalances under 50,000 shares upon floor official approval. See Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998); and NYSE Information Memo No. 98-20 (June 22, 1998).

<sup>9</sup>In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup>15 U.S.C. 78f(b)(5).

on expiration days. The expansion of the coverage of the market order imbalance publication procedure should help specialists attract order flow, which could minimize volatility and lead to more orderly openings on expiration days.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-98-41), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret M. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-18112 Filed 7-14-99; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Comments should be submitted on or before September 13, 1999.

**FOR FURTHER INFORMATION CONTACT:** Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202-205-7030.

#### SUPPLEMENTARY INFORMATION:

*Title:* "HUB Zone Empowerment Contracting Program Application.

*Form No:* 2103.

*Description of Respondents:* SBA Businesses Seeking Certification as a Qualified HUB Zone Small Business Concern.

*Annual Responses:* 20,000.

*Annual Burden:* 20,000.

*Comments:* Send all comments regarding this information collection to Michael McHale, Acting Associate Administrator, Office of HUB Zone, Small Business Administration, 409 3rd Street SW, Suite 8500, Washington, DC 20416. Phone No: 202-205-6731.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>3</sup> The term "expiration day" refers to the last business day prior to the expiration or settlement of derivative products.

<sup>4</sup> Letter from Donald Siemer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulations, SEC, dated March 18, 1999 ("Amendment No. 1"). Amendment No. 1 clarified the Exchange's opening procedures for stocks underlying derivative index-related products on expiration days.

<sup>5</sup> Securities Exchange Act Release No. 41359 (May 3, 1999), 64 FR 25387.

<sup>6</sup> Modified opening procedures were first used on a pilot basis for the quarterly expiration on June 19, 1987. See Securities Exchange Act Release No. 24596 (June 16, 1987), 52 FR 23618 (June 23, 1987). These procedures were approved permanently in Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23474 (June 22, 1988) (File Nos. SR-NYSE-87-11) and SR-NYSE-88-04).

<sup>7</sup> The special stock list consists of the 50 most highly capitalized stocks in the S&P 500 Stock Price Index, any stocks in the Major Market Index (XMI) that are not among the 50, and the 10 most highly capitalized stocks in the S&P 400 MidCap Index.