

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-00-10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-5798 Filed 3-8-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44033; File No. SR-NYSE-00-30]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending NYSE Rule 104

March 2, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 29, 2000, the New York Stock Exchange, Inc. ("NYSE") or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On February 21, 2000, the Exchange filed Amendment No. 1 ("Amendment No. 1") to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the

amended 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 an amendment to NYSE Rule 104 to permit specialists to make certain destabilizing transactions for his or her own account without Floor Official approval to bring the price of a listed foreign security into parity with the price of the foreign ordinary security.

The text of the proposed rule change is available at the NYSE and at the Commission.

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 Exchange 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 NYSE 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

The Exchange is proposing to amend NYSE Rule 104 to facilitate specialist market making in foreign securities traded on the Exchange. Currently, NYSE Rule 104 requires specialists to obtain Floor Official approval when purchasing on a direct plus tick or selling on a direct minus tick, or when purchasing on a zero plus tick more than 50% of the stock offered. These transactions are seen as destabilizing, and may be effected by the specialist only with Floor Official approval. The Exchange is proposing to amend NYSE Rule 104 to provide that, without first obtaining Floor Official approval, specialists may engage in these destabilizing transactions, under certain circumstances to be discussed below, to bring a listed foreign security into parity with the price of the foreign ordinary security.⁴

With respect to a listed foreign security, the price of the transaction to

bring the security into parity (a) must be based on the last sale price in the home country market, if that market is open, or (b) if the home country market is not open, the parity price must be between the then current bid and offer in the London (UK) market, *i.e.*, the London Stock Exchange, or (c) must be based at any time on changes in the home country-U.S. dollar exchange rate.⁵ The transactions described above to bring a listed foreign security into parity with the price of the foreign ordinary security in any other market would continue to require Floor Official approval.

NYSE Rule 104.10(7), as amended, also clarifies specialists' responsibilities with respect to consecutive direct tick destabilizing parity transactions in foreign securities.⁶ The Exchange proposes that a specialist must not effect consecutive direct tick destabilizing trades unless these transactions are effected to bring a listed foreign security into parity with the price of the foreign ordinary security and a Floor Official has approved the transaction. For example, a specialist may want to trade on consecutive direct tick destabilizing transactions for his or her own account to bring the security into parity when a stock is not actively traded on the Exchange, but is active in its home country. The NYSE believes that the specialist's transactions in this situation could benefit the market and public investors by maintaining parity if there is an absence of public orders. Such consecutive direct tick destabilizing transactions would require Floor Official approval. Floor Officials would look at all circumstances surrounding the request.

The main change being effected by the proposal is that non-consecutive destabilizing transactions as described above, which are effected to achieve parity, would not require Floor Official approval as currently mandated by NYSE Rule 104. The Exchange represents that this proposal is analogous to the provisions currently in NYSE Rule 104 with respect to transactions effected to bring the price of an investment company unit into parity with the value of the index on which it is based or with the net asset

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange proposed to: (1) Revise the proposed rule text to clarify that the relief afforded from obtaining Floor Official approval for destabilizing transactions to bring a listed foreign security into parity with the price of a foreign ordinary security is available only where the Exchange is not the principal market for the security; (2) add language to the proposed rule text that affirmatively states that specialists must not effect consecutive direct tick destabilizing trades unless the transaction is effected to bring a foreign listed security into parity with the price of a foreign ordinary security and a Floor Official has approved the transaction; (3) clarify that it will consider the home country market as the principal market for a foreign security, unless a significant volume of the shares traded in that security take place otherwise than in that market; (4) require that specialists keep a record of the source of exchange rate information they utilize; and (5) issue a memorandum to all specialists and Floor Officials to explain the relief afforded by the proposed rule change and to provide specific reference to the interaction between specialists destabilizing parity transactions and certain Exchange rules, upon receiving Commission approval of the proposed rule change.

⁴ The proposed rule defines a listed foreign security as a security traded on the Exchange, which is a foreign ordinary security, or a depositary receipt that represents a foreign company's publicly traded security.

⁵ Currency exchange rate information is displayed on the Floor of the Exchange utilizing information from Reuters. Specialists may also utilize other sources of vendor-supplied exchange rate information. Specialists must keep a record of the source of the exchange rate information they utilize. See Amendment No. 1, *supra* note 3.

⁶ See Amendment No. 1, *supra* note 3.

value of the securities comprising the unit.⁷

Proposed NYSE Rule 104.10(7), as amended, also clarifies that the relief afforded from obtaining Floor Official approval for destabilizing transactions to bring a listed foreign security into parity with the price of the foreign ordinary security is available only where the Exchange is not the principal market for the foreign security. The Exchange will consider the home country market as the principal market for a foreign security, unless a significant volume of the shares traded in that security take place outside that market.⁸

Finally, the Exchange will issue a memorandum to all specialists and Floor Officials explaining the relief afforded by the change to NYSE Rule 104 upon receiving approval of the proposed rule change.⁹ This memorandum will provide specific reference to the interaction between specialists destabilizing parity transactions and certain Exchange rules, including NYSE Rule 123A.30 on percentage orders, NYSE Rule 123A.40 on election of stop orders, NYSE Rule 127 on specialists trading as principal in parity adjustment situations, and NYSE Rule 440B on the short sale rule.¹⁰ Specialists will also be informed that destabilizing parity trades must be reported on Form 81. Specialists will remain subject to all other requirements of NYSE Rule 104 with respect to their affirmative and negative obligations to maintain a fair and orderly market.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)¹¹ 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. The proposed amendment is consistent with these objectives in that it fosters efficient market making in foreign securities traded on the Exchange.

⁷ Securities Exchange Act Release No. 37016 (March 22, 1996), 61 FR 14185 (March 29, 1996) (approving SR-NYSE-96-04).

⁸ See Amendment No. 1, *supra* note 3.

⁹ See Amendment No. 1, *supra* note 3.

¹⁰ The Exchange will reference NYSE Rule 440B on the short sale in the memorandum that will be issued to specialists and Floor Officials. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on February 15, 2001.

¹¹ 15 U.S.C. 78f(b)(5).

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 date of 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, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. 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 Room.

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 Number SR-NYSE-00-30 and should be submitted by March 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-5799 Filed 3-8-01; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 3599]

Culturally Significant Objects Imported for Exhibition; Determinations; "Gauguin Tahiti"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 et seq.], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended by Delegation of Authority No. 236-3 of August 28, 2000 [65 FR 53795], I hereby determine that the object to be included in the exhibit, "Gauguin Tahiti," imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the object at the Museum of Fine Arts, Boston, Massachusetts, from on or about February 1, 2004, to on or about May 31, 2004, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is Room 700, United States Department of State, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: March 5, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

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¹² 17 CFR 200.30-3(a)(12).