

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 NASD. All submissions should refer to File No. SR-NASD-2002-126 and should be submitted by October 24, 2002.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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 association, and, in particular, the requirements of Section 15A of the Act.<sup>11</sup> Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act, which requires that the rules be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.<sup>12</sup> The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is necessary to protect investors in that the rules are designed to help address the backlog of cases created by the confusion over the

new California standards, are designed to provide them with a mechanism to help resolve their disputes with broker-dealers in a more expeditious manner, and are designed to help ensure the certainty and finality of arbitration awards. Additionally, the proposed rule change will become effective as a pilot program for six months, from September 30, 2002 to March 30, 2003, during which time the Commission and NASD will monitor the status of the previously discussed litigation.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASD-2002-126) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-25104 Filed 10-2-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46560; File No. SR-NYSE-00-31]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 Thereto by the New York Stock Exchange, Inc. To Amend Exchange Rules 36.30 and 104A.50

September 26, 2002.

#### I. Introduction

On July 3, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("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 amending NYSE Rules 36.30 and 104A.50. The Exchange submitted Amendment No. 1 to the proposed rule change on May 21, 2001.<sup>3</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The Exchange submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety ("Amendment No. 1"). Amendment No. 1 withdraws the proposed amendments to NYSE Rule 36.20 in the original filing that would have permitted certain off-floor communications by members on the floor. The NYSE has stated that

The proposed rule change was published for public comment in the **Federal Register** on June 16, 2001.<sup>4</sup> The Exchange submitted Amendment Nos. 2 and 3 to the proposed rule change on February 6, 2002<sup>5</sup> and September 20, 2002,<sup>6</sup> respectively. The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended by Amendments Nos. 1, 2 and 3.<sup>7</sup> This order also issues notice of filing of, and grants accelerated approval to, Amendment Nos. 2 and 3 thereto.

### II. Description of the Proposed Rule Change

NYSE Rule 36.30 governs the use of telephone lines at a specialist unit's post. The rule currently permits telephone lines from the post to the unit's off-floor offices and to the unit's clearing firm. The rule also permits specialists to have telephone lines to the floor of an options or futures exchange for the purpose of entering hedging orders on the floors of those exchanges.

The Exchange proposes to amend NYSE Rule 36.30 to more clearly

these amendments will be subject to a separate filing. Amendment No. 1 also amends proposed NYSE Rule 36.30A to clarify the manner in which Exchange specialists may communicate proprietary orders in foreign specialty stock from their post to off-floor broker-dealers. Finally, Amendment No. 1 amends proposed NYSE Rule 36.30C to include in the definition of foreign security depository shares that represent a foreign company's publicly traded security.

<sup>4</sup> Securities Exchange Act Release No. 44368 (May 30, 2001), 66 FR 30494.

<sup>5</sup> See Letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 31, 2002 ("Amendment No. 2"). Amendment No. 2 amends proposed Commentary .30 to NYSE Rule 36 to: (i) Add language stating that specialists relying on the rule must have an objective of facilitating the maintenance of a fair and orderly market on the Exchange; (ii) delete proposed subsection A.3; (iii) define "communication link;" (iv) clarify that NYSE Rule 92, on trading ahead, would apply to specialists entering proprietary orders in foreign securities; and (v) clarify that specialists are prohibited from using the communication links to receive material nonpublic information, and that if such information is received, the specialist must contact his firm's compliance officer, who must determine whether the specialist is permitted to continue to trade the stock.

<sup>6</sup> See Letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 19, 2002 ("Amendment No. 3"). Amendment No. 3 deletes the phrase "among other means" from the definition of "communication link" in proposed NYSE Rule 36.30D.

<sup>7</sup> The Commission has requested from the Exchange an explanation of the surveillance procedures it intends to implement to ensure that specialists comply with the proposed rule, as amended. This approval order is contingent upon the submission of these surveillance procedures as well as the Commission's finding that such surveillance procedures are adequate.

<sup>11</sup> 15 U.S.C. 78o-3.

<sup>12</sup> 15 U.S.C. 78o-3(b)(6).

identify the types of communications that may emanate from the post. The words "communication link" would replace "telephone" to encompass a wider range of communication methods, and would include a post telephone or terminal of an automated trading system, or similar device whereby information relating to the transmission of an order from the Exchange may be communicated.<sup>8</sup> The definition of communication link in the NYSE's proposal further states that the specialist may not maintain a communication link to a foreign exchange or market. In addition, in no instance would the specialist be permitted to use the link to receive material nonpublic information.

Under the new rule, specialists in foreign securities would be allowed to enter orders in their foreign specialty or related stocks directly from the post using a communication link. In that regard, the rule would permit a specialist to enter orders only to purchase or sell specialty or related foreign securities through a broker-dealer registered with the Commission or directly with a foreign broker-dealer pursuant to Rule 15a-6 under the Act.<sup>9</sup> The rule also states that in making such purchases or sales the specialists relying on the rule must have an objective of facilitating the maintenance of a fair and orderly market.<sup>10</sup> The prohibition on receiving orders for the purchase or sale of securities at the post would be retained. The term "foreign security" would be defined to include a foreign ordinary security, a depositary receipt or a depositary share representing a foreign security.<sup>11</sup>

The proposed rule change would also permit specialists to use the communication link to seek public information on the current market for a foreign security.<sup>12</sup> The communication links could be used to receive public information on stocks, data for the U.S. or foreign markets, vendor services or news. The communication link would not be used to give nonmembers market look information.

The Exchange also proposes to amend NYSE Rule 104A.50 to require

specialists to record and report to the Exchange the details of all proprietary transactions executed by the specialist unit away from the Exchange in foreign securities. The Exchange would inform specialists that the reports would be required to be submitted on Form 81, the electronic reporting mechanism already used by specialists to report proprietary transactions in specialty stocks.

### 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. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>13</sup> which requires an Exchange to 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.

In particular, the Commission believes that the proposed rule change should help specialists to more easily acquire inventory in foreign specialty stocks to meet the needs of the NYSE market and respond to changes in the related foreign market. The Commission notes that the proposal contains several requirements and prohibitions that help to ensure that any orders entered, or public information received, by the specialist in foreign specialty or related securities is in accordance with the U.S. securities laws and NYSE rules. For instance, the rule would prohibit the communication link from being used for the purpose of transmitting orders for securities to the NYSE floor. The rule also prohibits the specialist from maintaining a communication link to a foreign exchange or market. In addition, the rule specifically requires that any communication link at the specialist post be to a registered broker-dealer or a foreign broker-dealer subject to and in accordance with Rule 15a-6 under the Act.

In addition to the requirements noted above, the Commission also believes that certain additional limitations and restrictions in the rule should help to minimize any potential for abuse. First, the Commission notes that the specialist would be prohibited from using the communication link to receive material non-public information.<sup>14</sup> Second, the Commission notes that NYSE Rule 92

would prohibit a specialist using the communication link to enter a proprietary order in a foreign security from trading ahead of orders for the same security that the specialist is representing as agent.<sup>15</sup> Third, specialists would only be permitted to use the communication link to enter orders in their foreign specialty or related stocks. Finally, the Commission notes that a specialist relying on the rule must have the objective of facilitating the maintenance of a fair and orderly market on the Exchange.<sup>16</sup>

As noted above, the Commission has requested submission of adequate surveillance procedures to assure compliance with the rule, including all of the prohibitions and requirements set forth above. This approval order is contingent on the submission of such adequate surveillance procedures.<sup>17</sup>

Finally, the Commission believes that the other changes to the rule are consistent with the requirements of the Act. For example, the change from "telephone line" to "communication link" should allow more flexibility in the rule to use other land-based communication lines. The surveillance procedures that the Exchange must submit for Commission approval should help to ensure that such communication link can be adequately monitored for compliance with the rule.<sup>18</sup> The Commission also notes that NYSE 104.50A requires specialists to keep a record of all purchases and sales of foreign securities for an account in which the specialist has an interest, and to report such transactions to the Exchange. The Commission believes that this provision is consistent with the Act because it should help the Exchange to monitor trades under the new rule.

The Commission finds good cause for accelerating approval of Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* The Commission believes that the surveillance procedures should include procedures that ensure compliance with each of these prohibitions, as well as the other restrictions noted above in this order.

<sup>17</sup> See note 7, *supra*.

<sup>18</sup> See Amendment No. 2, *supra* note 5. The Commission notes that the definition of communication link does not permit the NYSE specialist to use portable telephones or other private wireless communication devices. If the NYSE wanted to permit such devices to be used under its Rule 36.30 it would first have to submit for Commission approval (i) a proposed rule change under Section 19(b) of the Act and (ii) specific surveillance procedures to ensure that communications using these types of devices are adequately surveilled and monitored for compliance with the rule and other regulatory requirements.

<sup>8</sup> See *infra*, note 18.

<sup>9</sup> 17 CFR 240.15a-6.

<sup>10</sup> See *e.g.*, NYSE Rule 104.

<sup>11</sup> Under proposed Rule 36.30C, a specialist could only make such purchases or sales in foreign securities in which he is registered as the specialist, or certain securities that are related to the security in which the specialist is registered. The rule would permit a specialist registered in the depositary receipt or share only to enter orders either in such security or the related ordinary security. A specialist registered in the ordinary security would be permitted to enter orders in such security, or where applicable, a related depositary receipt or share.

<sup>12</sup> See Amendment No. 2, *supra* note 5.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Amendment No. 2, *supra* note 5.

Commission notes that Amendment No. 2 provides useful clarification and add certain requirements to the proposal in response to concerns of Commission staff.<sup>19</sup> Amendment No. 3 eliminates language to rule that was confusing and helps to narrow and clarify the definition of communication link.<sup>20</sup> The Commission also notes that the substance of the proposal was published for comment and no comments were received. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) of the Act,<sup>21</sup> and 19(b)(2) of the Act<sup>22</sup> to accelerate approval of Amendment Nos. 2 and 3 to the proposed rule change.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NYSE-00-31), as amended, is approved.<sup>24</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-25165 Filed 10-2-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3448]

#### State of Texas; Disaster Loan Areas

As a result of the President's major disaster declaration on September 26, 2002, I find that Brazoria, Frio, Galveston, La Salle, Live Oak, Matagorda, Nueces, San Patricio and Wharton Counties in the State of Texas constitute a disaster area due to damages caused by Tropical Storm Fay occurring on September 6, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 25, 2002 and for economic injury until the close of business on June 26, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration,  
Disaster Area 3 Office, 4400 Amon  
Carter Blvd., Suite 102, Fort Worth,  
TX 76155.

In addition, applications for economic injury loans from small businesses

located in the following contiguous counties may be filed until the specified date at the above location: Aransas, Atascosa, Austin, Bee, Chambers, Colorado, Dimmit, Duval, Fort Bend, Harris, Jackson, Jim Wells, Karnes, Kleberg, Lavaca, McMullen, Medina, Refugio, Uvalde, Webb and Zavala in the State of Texas.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere .....	6.625
Homeowners Without Credit Available Elsewhere .....	3.312
Businesses With Credit Available Elsewhere .....	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere .....	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere .....	6.375
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere .....	3.500

The number assigned to this disaster for physical damage is 344811. For economic injury the number is 9R8000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 26, 2002.

**S. George Camp,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 02-25144 Filed 10-2-02; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF STATE

### [Public Notice 4141]

#### Determination on Report on Colombian Aerial Spray Program

**AGENCY:** Department of State.

**ACTION:** Notice.

Pursuant to the Kenneth M. Ludden Foreign Operations, Export Financing and Related Programs Appropriations Act, 2002 (Public Law 107-115), and after consultation with the Administrator of the Environmental Protection Agency and the Secretary of the Department of Agriculture, I hereby determine that:

(1) Aerial coca fumigation is being carried out in Colombia in accordance with regulatory controls required by the Environmental Protection Agency as labeled for use in the United States; and in accordance with Colombian laws as confirmed by the Colombian Government;

(2) The chemicals used in the aerial spraying of coca, in the manner in which they are being applied, do not pose unreasonable risks or adverse effects to humans or the environment; and

(3) Procedures are available to evaluate claims of local citizens that their health was harmed or their licit agricultural crops were damaged by such aerial coca fumigation and to provide fair compensation for meritorious claims; and that alternative development programs have been developed (in consultation with communities and local authorities in the departments in which such aerial coca fumigation is planned, and in the departments in which such aerial coca fumigation has been conducted) and such programs are being implemented.

You are hereby authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

Dated: September 4, 2002.

**Richard L. Armitage,**

*Deputy Secretary of State, Department of State.*

[FR Doc. 02-25169 Filed 10-2-02; 8:45 am]

**BILLING CODE 4710-10-P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Technical Corrections to the Harmonized Tariff Schedule of the United States

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative (USTR) is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice, pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415). These modifications correct inadvertent errors in the Annex to Presidential Proclamation 7585 of August 28, 2002 (67 FR 56207) so that the intended tariff treatment is provided.

**EFFECTIVE DATE:** The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after September 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington DC, 20508. Telephone (202) 395-5656.

<sup>19</sup> See Amendment No. 2, *supra* note 5.

<sup>20</sup> See Amendment No. 3, *supra* note 6.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> See notes 7 and 16 and accompanying text, *supra*.

<sup>25</sup> 17 CFR 200.30-3(a)(12).