

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 26, 1999, the Boston Stock Exchange, Inc. ("BSE" 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 Exchange. 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 Exchange seeks to amend the Summary Fine Schedule of the Minor Rule Violation Plan through the addition of violations of Rule 11Ac1-4 under the Act ("Display Rule").³ The text of the proposed rule change is available at the Office of the Secretary, BSE, 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 Exchange 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 proposes to amend its Minor Rule Violation Plan ("Plan") to include violations of the Display Rule.⁴ By amending the Summary Fine Schedule of the Plan, the Exchange will address certain violations of the Display Rule, which are deemed to be inadvertent, or without special aggravating or intentional purposes, through the use of fines rather than a full disciplinary procedure. Where violations of the Display Rule are intentional, however, the Exchange is not limited nor precluded from initiating more formal Disciplinary Proceedings under Chapter XXX or imposing sanctions of more or less than

the recommended fines (not to exceed \$2,500 in any event).

The Plan as amended would provide that failure to display a customer limit order immediately (no later than 30 seconds) after receipt (without a specific exclusion provided by the Display Rule) will result in a written warning for the initial offense; a \$50 fine for the second offense; and a \$100 fine for subsequent offenses.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,⁵ in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Additionally, the BSE believes the proposal is consistent with Section 11A(a)(1)(C)(iii) and (iv) of the Act.⁶ In adopting Section 11A, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market.⁷

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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

No written comments were either solicited or received.

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 such 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 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 Exchange. All submissions should refer to file number SR-BSE-99-04 and should be submitted by June 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41397; File No. SR-NYSE-97-18]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Specialists' Entry of Bids and Offers in Electronic Communications Networks and Other Market Centers

May 13, 1999.

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 2,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.11Ac1-4.

⁴ 17 CFR 240.11Ac1-4.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78k-1(a)(1)(C)(iii) and (iv).

⁷ *Id.*

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

1997, 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 November 19, 1997, the Exchange submitted Amendment No. 1 to the proposed rule change.³ On February 10, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

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

The proposed rule change would amend NYSE Rule 104.10 ("Dealings By Specialists") to place certain restrictions on specialists' entry of bids and offers in ECNs.⁵ Below is the text of the proposed rule change. Proposed additions are italicized.

Rule 104

Dealings by Specialists

* * * * *

No change .10(1)–(9).

.10 (10) *A specialist's bid or offer in a specialty stock on the Exchange may not be inferior to the specialist's market maker bid or offer disseminated by an electronic communications network (as that term is defined in Securities and Exchange Commission Rule 11Ac1–1(a)(8)) or any other market center. A specialist may not disseminate a market maker bid or offer on another market center or electronic communications network at a price at which Exchange rules would preclude dissemination of such bid or offer on the Exchange.*

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 Exchange 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 proposes to amend NYSE Rule 104.10 to indicate that a specialist⁶ has a duty to quote his or her best bid and offer on the Exchange. Under the proposed rule, a specialist's bid or offer for a specialty stock on the Exchange cannot be inferior to his or her bid or offer made in an ECN or another market center.⁷ Thus, if a specialist places a bid or offer into an ECN or on another market center at a price superior to the then disseminated best bid or offer on the Exchange, the specialist would be required to communicate⁸ such price to the Exchange.

The Exchange's Specialist Job Description requires a specialist, when acting as agent for orders entrusted to him or her, "to ensure the timely and best possible execution in accordance with the terms of the order and the rules and policies of the Exchange."⁹ The Exchange believes that because a specialist is required to make markets on the Exchange, the specialist's activities should be focused primarily on committing capital and market-making on the Floor of the Exchange. The Exchange maintains that the specialist must make available on the Exchange his or her best bid or offer in

the stocks in which he or she specializes.

II. Primary Duties

(A) *Agency Function*—In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should:

Act as agent on behalf of orders entrusted to the specialist, hold the interests of such orders above the specialist's own, and properly represent each order, regardless of its size or source, in the marketplace to ensure the timely and best possible execution in accordance with the terms of the order and the rules and policies of the Exchange.

See also Securities Exchange Act Release No. 25398 (February 26, 1988) 53 FR 7458 (March 8, 1988), and Securities Exchange Act Release No. 26523 (February 7, 1989) 54 FR 6631 (February 13, 1989), the notice and order approving the revised Specialist Job Description. In addition, in November 1989, the Commission approved a proposal further revising the Specialist Job Description. See Securities Exchange Act Release No. 27427 (November 7, 1989), 54 FR 47628 (November 15, 1989).

In addition, the proposed rule change would prohibit a specialist from entering a bid or offer for a specialty stock in an ECN or on another market center at a price variation that specialist would not be permitted to quote or trade under Exchange rules. The Exchange represents that this proposed provision will facilitate the specialist's compliance with the obligation to make his or her best bid and offer on the Exchange Floor. If the specialist placed a superior priced bid or offer in an ECN¹⁰ or other market center at a variation that could not be quoted or traded on the Exchange, the Exchange believes that the specialist would be unable to satisfy his or her specialist obligations (*i.e.*, trading at his or her best bid or offer with contra-side marketable orders received on the Exchange). Alternatively, if the specialist placed in an ECN or other market center an inferior bid or offer at a variation not traded on the Exchange which was subsequently executed on the ECN or other market center, the specialist, consistent with his or her

⁶The Exchange defines "specialist" as an individual specialist on the floor rather than specialist member organizations. Per telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, Betsy Minkin, Senior Project Specialist, Market Surveillance, NYSE, Jeffrey Schwartz, Special Counsel, Market Regulation, SEC, and Heather Traeger, Attorney, Market Regulation, SEC on May 12, 1999.

⁷"Another market center" means a registered national securities exchange or registered national securities association.

⁸The Exchange views "communicate" in this context to require the specialist to make the price, whether bid or offer, available for execution on the Exchange. In the exchange's view, the specialist would then be liable for executions at this price on both the Exchange and on the ECN or other market center. Per telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, Betsy Minkin, Senior Project Specialist, Market Surveillance, NYSE, Jeffrey Schwartz, Special Counsel, Market Regulation, SEC, and Heather Traeger, Attorney, Market Regulation, SEC on May 12, 1999.

⁹The Specialist Job Description is found in the NYSE's 1997 Floor Official Manual, Section 9. Section 9(II)(A) provides:

¹⁰The Exchange views the proposal as applying only to specialists when they add liquidity on an ECN or another market center (*i.e.*, entering a new bid or offer) and not when they remove liquidity (*i.e.*, hitting a pre-existing bid or offer) or enter "fill-or-kill" orders. Per telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, Betsy Minkin, Senior Project Specialist, Market Surveillance, NYSE, Jeffrey Schwartz, Special Counsel, Market Regulation, SEC, and Heather Traeger, Attorney, Market Regulation, SEC on May 12, 1999.

³In Amendment No. 1, NYSE modified references the Exchange has made to the Commission's Quote Rule.

⁴In Amendment No. 2, NYSE removed all references to the Commission's Quote Rule. NYSE also eliminated its proposed exemption to the proposed restriction on specialists, relating to trading orders entered into an electronic communications network ("ECN") or other market centers by an upstairs trading operation conducted by a specialist member organization.

⁵An ECN is defined in paragraph (a)(8) of Rule 11Ac1–1 under the Act.

responsibilities as agent, would be required to satisfy any superior-priced (higher bid or lower offer) orders on his or her book at the price of his or her trade off the Exchange. This could not be done at a price variation that could not be traded or quoted on the Exchange.

This proposed rule change would apply to all bids and offers made by a member acting as a specialist on the Floor of the Exchange in any of the specialty stocks in which he or she is registered.

2. Statutory Basis

The Exchange states that the basis under the Act for the 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 in general, to protect investors and the public interest. The Exchange believes the proposed amendment to Rule 104.10 accomplishes these ends in that it would ensure that orders entered on the Exchange would be able to receive the best price that the specialist was quoting.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no 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

No written comments were solicited or received with respect to 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 the proposed rule change is consistent with the Act. In particular, the Commission is seeking comment on the following issues:

1. Whether the proposed provision prohibiting specialists to quote in pricing increments not permitted on the Exchange would have an anti-competitive impact on specialists or other trading mechanisms and if so, whether the anti-competitive impact is necessary to ensure specialists quote their best prices publicly.

2. What impact this proposal is likely to have when the markets begin quoting in decimals.

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 at 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 No. SR-NYSE-97-18 and should be submitted by July 6, 1999.

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

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Final Environmental Impact Statement; Colorado Airspace Initiative (CAI)

AGENCY: Federal Aviation Administration (FAA), Transportation.

ACTION: Extension of the time period during which the FAA will receive public comment on its Notice of Availability and Intent to Adopt the

Final Environmental Impact Statement for the Colorado Airspace Initiative.

SUMMARY: On Tuesday, April 27, 1999, the Federal Aviation Administration provided notice that it was recirculating and intended to adopt the Final Environmental Impact Statement (FEIS) prepared by the Air National Guard (ANG) for the modification of existing, and the establishment of new military training airspace areas in Colorado, hereinafter known as the Colorado Airspace Initiative (CAI). The proposed actions assessed in the FEIS are substantially the same as the new military training airspace that the ANG has asked the FAA to designate.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gaffin, Environmental Specialist, Environmental Programs Division (ATA-300), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC, 20591 (202) 267-3075.

SUPPLEMENTARY INFORMATION: As provided in 40 CFR 1506.3 and FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, the FEIS of another Federal Agency may be adopted in accordance with the procedures in 40 CFR 1506.3. Under 40 CFR 1506.3(b), if the actions covered by an EIS and the actions proposed by another Federal agency are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. The FAA has determined that the proposed action of modifying existing and establishing new military training airspace areas over the State of Colorado is substantially the same as the actions considered in the ANG's FEIS. FAA staff has independently reviewed the ANG FEIS to determine if it is current and that the FAA NEPA procedures have been satisfied. FAA has determined that the FEIS adequately assesses and discloses the potential environmental impacts of the proposed action. FAA staff concluded that, after mitigation measures are taken into consideration, the existing airspace can be modified and new military training airspace can be established with no significant impacts on environmental resources.

The proposal will modify existing and establish new military training airspace areas over the State of Colorado. The ANG has requested this action to respond to changes in readiness training requirements. The requirements are reflected in specific United States Air Force regulations for military aircraft and personnel operating in the affected airspace. Additionally, this action responds to the changes in commercial

¹¹ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 200.30-3(a)(12).