

Regulation T recently adopted by the Federal Reserve Board.

Miscellaneous Amendments. NASD Regulation is proposing to eliminate paragraph (c)(5) prescribing maintenance margin for American Stock Exchange Emerging Company Marketplace securities because the Emerging Company Marketplace no longer exists. NASD Regulation is also proposing to eliminate paragraphs (e)(3)(B) and (C) because Section 220.12 of Regulation T was deleted under the recent amendments to Regulation T.¹⁴

2. Statutory Basis

The Association believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the rules of an Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

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

The Association 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 NASD 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 proposal is

consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 NASD. All submissions should refer to File No. SR-NASD-99-05 and should be submitted by September 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41703; File No. SR-NYSE-99-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rules 13 and 72

August 4, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 10, 1999, 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 NYSE. 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 proposed rule change consists of amendments to NYSE Rules 13 and 72 to define XPress orders and describe

how such orders are to be executed. Below is the text of the proposed rule change. Proposed new language is in *italics*.

* * * * *

Rule 13 Definitions of Orders

XPress order

An order to buy or sell a security for no less than such number of shares as the Exchange shall from time to time determine and no more than the displayed size of an XPress quote, as defined below, which order is to be executed in whole or in part at the price of the XPress quote, if available, or at a better price if obtainable. The portion not so executed shall be treated as cancelled.

An XPress quote is a quote so indicated by the Exchange. In order to be indicated as an XPress quote, a published bid or offer must be at the same price, for no less than the number of shares and the minimum period of time that the Exchange shall from time to time determine. If the XPress bid or offer price changes or the published bid or offer size is less than such number of shares, the bid or offer shall no longer be indicated as an XPress quote. (See also Rule 72.50.)

The Exchange shall make known to its membership to minimum size for XPress orders and the minimum size and time requirements for XPress quotes.

Rule 72 Priority and Precedence of Bids and Offers

* * * * *

(f) *Except as provided in .50 below, a sale shall remove all bids from the Floor except that if the number of shares of stock or principal amount of bonds offered exceeds the number of shares or principal amount specified in the bid having priority or precedence, a sale of the unfilled balance to other bidders shall be governed by the provisions of these Rules as though no sales had been made to the bidders having priority or precedence.*

* * * * *

.50 XPress Orders.—An execution of an XPress order, in whole or in part, shall not remove bids or offers from the Floor. Once an XPress order has been represented in the Crowd, no part of the XPress bid or offer against which the XPress order is to be executed shall be withdrawn, except to provide price improvement to all or part of the XPress order. When an XPress order has been executed in part at an improved price, the remainder of such order shall be executed at the XPress bid or offer up to the number of shares then available, regardless of whether such number is less than the minimum size for an XPress quote. All XPress orders shall be executed in strict time priority with respect to each other. A member who is providing a better price to an XPress order must trade with all other market interest having priority at that price before trading with the XPress order.

¹⁴ Telephone conversation between Elliott R. Curzon, Assistant General Counsel, NASD Regulation, and Anitra Cassas, Division, Commission, on July 8, 1999.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 NYSE 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 and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation in its auction market, the Exchange proposes to create a new type of order, known as an "XPress Order." The Exchange believes this order type responds to the needs of market participants for "clean" executions when entering large-size orders in response to bids and offers which have been displayed for a minimum time period. NYSE Rule 13 would be amended to define XPress order and XPress quote. NYSE Rule 72 would be amended to provide the requirements for executing XPress orders.

An XPress order is an order of a specified minimum size which is to be executed against a displayed XPress quote, or at an improved price, if obtainable. In order to be indicated as an XPress quote, a published bid or offer must be for no less than the specified minimum share size at the same price for no less than 30 seconds. The Exchange proposes to initially set the minimum size for XPress orders and XPress quotes at 25,000 shares. Within six months after implementation, as experience is gained with XPress orders, the NYSE proposes to reduce the minimum size to 15,000 shares, unless experience indicates that it would not be appropriate to do so. The 30 second minimum requirement for XPress quotes would also be reviewed by the NYSE at such time, with consideration given to possibly decreasing this minimum.

It is possible for one or both sides of a quote to be indicated as XPress. If the XPress bid or offer *price changes* or the published bid or offer *size becomes less than* the specified minimum size, the bid or offer will no longer be indicated as an XPress quote. For example, if there is an XPress offer of 40,000 shares at 50 and the offer changes to 40,000 shares at $49^{15}/16$, the offer is no longer XPress,

as it has not been the same price for 30 seconds.

XPress orders will be delivered to the specialist's post via the Exchange's automated order routing system. Multiple XPress orders in the same stock will be executed in strict time priority with respect to each other and with respect to other orders. The size of the XPress order may not exceed the size of the XPress bid or offer against which it is to be executed at the time of order entry. An XPress order is guaranteed an execution at the XPress quote price up to the full size of the displayed XPress quote, if available.

If an XPress order is received at the specialist's post and the quote is no longer XPress, the XPress order will be cancelled. For example, assume there is an XPress offer of 30,000 shares when an XPress order to buy 25,000 shares is entered and a broker in the Crowd buys 25,000 shares (*i.e.*, takes 25,000 shares of the offer) before the XPress order is received at the post. The XPress order will be cancelled as the 5,000 share offer is less than the minimum size required and therefore is no longer an XPress offer. However, if the quote had been reduced in size from time of order entry, but was still an XPress quote (*i.e.*, still greater than minimum size), the full size of the XPress order would be represented and be given an opportunity for price improvement. Any portion of the XPress order not executed, at either the XPress or an improved price, would be cancelled.

All or part of an XPress order may be executed at an improved price, if available. An execution of an XPress order, in whole or in part, does not remove bids or offers from the Floor. This means that an XPress order that has been executed in part at an improved price retains its priority³ (*i.e.*, is first in line for execution) and does not have to compete (*i.e.*, be on parity) with newly entered bids or offers at the XPress quote. For example, if 30,000 shares are offered at $50^{2}/16$ (XPress), an XPress order could come in to buy 30,000 at $50^{2}/16$ and be partially executed at an improved price (*e.g.*, 15,000 at $50^{1}/16$). The remainder of the XPress order would retain priority to be executed at $50^{2}/16$ (the XPress offer price) and would not have to compete on parity with other subsequent bidders at $50^{2}/16$. (Without this proposed provision, Rule 72(f), which provides that a trade clears the Floor, would apply; in which case, once 15,000

traded $50^{1}/16$, all bids and offers would be removed from the Floor and a new auction would begin. If that were the case, the XPress bid to buy the remaining 15,000 shares at $50^{2}/16$ would no longer have priority and would be on a parity with any other bids made at that price, thereby defining the purpose of the XPress order type.)

Once the specialist has represented an XPress order in the Crowd, no part of the XPress bid or offer against which the XPress order is to be executed may be withdrawn, except to provide price improvement to all or part of the XPress order. The remainder of such order would be executed at the XPress bid or offer up to the number of shares then available, regardless of whether such number is less than the minimum size for an XPress quote.

For example, assume there is an XPress offer of 30,000 shares at 50 which consists of 20,000 shares offered by Broker A and 10,000 shares offered by Broker B. If an XPress order to buy 25,000 shares arrives at the post, the specialist will ask if anyone is willing to offer price improvement to a 25,000 share XPress order to buy at 50. Broker B could withdraw 10,000 shares offered at 50 and offer to sell 10,000 shares at $49^{15}/16$. The XPress order would then buy 10,000 shares at the improved price of $49^{15}/16$. Broker A could not then withdraw 20,000 shares offered at 50 because the XPress order has already been represented. The XPress order is entitled to 15,000 at 50 to complete the order, even though the quote is now below the minimum size.

All or part of the balance of an XPress bid or offer could be withdrawn after an XPress order has been executed and before any subsequent XPress orders are represented.

A member who is providing a better price to an XPress order must trade with all other market interest having priority at that price before trading with the XPress order. For example, assume the market is quoted $49^{15}/16$ bid for 5,000 shares and 60,000 shares offered at 50 which is an XPress offer. If an XPress order to buy 30,000 shares at 50 comes in and a broker in the Crowd offers to improve the price by selling 30,000 shares at $49^{15}/16$, the broker must first trade with the 5,000 share bid at $49^{15}/16$ which has priority. The XPress order would then buy 25,000 shares at $49^{15}/16$ and would complete the order by buying 5,000 shares at 50.

The effective date of the proposed rule change will be based on the implementation of enhancements to NYSE systems as well as the state of readiness of the member firm community. The preliminary target is to

³ Exchange Rules 71 and 72 provide that the first bid made at the highest price has priority. Similarly, the first offer at the lowest price has priority.

complete NYSE systems enhancements to support XPress orders by the third quarter of 2000.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)⁴ 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 NYSE believes the proposed rule change would perfect the mechanism of a free and open market by permitting orders that meet the rule's requirements to interact with exposed XPress bids and offers to the fullest extent possible, thus providing more options for market participants. The Exchange believes that the proposed rule change is designed to protect investors and the public interest by requiring that bids and offers be of a minimum size and be displayed for a minimum period of time before becoming XPress, and thus should give brokers and non-XPress orders the opportunity to interact with the quote before coming XPress eligible. In addition, brokers may interact with an XPress order by providing price improvement. The Exchange believes that the proposed rule change should protect bids and offers on the book or in the Crowd that have priority at an improved transaction price and all orders are executed in time and price priority.

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 reason 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. 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 NYSE. All submissions should refer File No. SR-NYSE-99-24 and should be submitted by September 1, 1999.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41701; File No. SR-NYSE-99-20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Examination Specifications and Content Outline for the Front Line Specialist Clerk Qualification Examination (Series 21)

August 3, 1999.

I. Introduction

On May 14, 1999, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to examination specifications and content outline for the Front Line Specialist Clerk Qualification Examination (Series 21). The proposed rule change was published for comment in the **Federal Register** on June 18, 1999.³ The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Exchange Rule 35 requires that employees of members and member organizations be registered with and approved by the Exchange prior to admittance to the Trading Floor. Currently, the registration process for Floor employees functioning as Front Line Specialist Clerks ("FLS Clerks") primarily consists of submission of a completed Form U-4 ("Uniform Application for Securities Industry Registration or Transfer") and fingerprints. Under a proposed interpretation of Rule 35, which has been approved separately by the Commission (SR-NYSE-99-19), these FLS Clerks also will have to be qualified by taking and passing an appropriate qualification examination and by meeting appropriate training requirements.

The Front Line Specialist Clerk Qualification Examination ("Series 21") and Content Outline, which the Exchange is asking the Commission to approve in this filing, were developed by the Exchange, in conjunction with a committee of Floor representatives (members, Specialists, and FLS Clerks)

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 41515 (June 10, 1999), 64 FR 32911.

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30-3(a)(12).