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Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40036; File No. SR-NYSE-98-13]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Trading of Bonds

May 28, 1998.

I. Introduction

On April 15, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 to amend its rules and procedures governing the trading of bonds. The proposed rule change was published for comment in the *Federal Register* on April 28, 1998.³ No comments were received regarding the proposal. On April 30, 1998, the NYSE filed Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change and is simultaneously approving Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The NYSE proposes to amend its rules and procedures governing the trading of bonds. The Exchange seeks to delete obsolete provisions of its bond trading rules, to streamline those rules, and to consolidate the bond trading rules in a new Exchange Rule 86. In addition, the proposal would amend Exchange Rule 13, Exchange Rule 61, Exchange Rule 70, Exchange Rule 72, Exchange Rule

76, Exchange Rule 79A, and Exchange Rule 85.

The Exchange currently trades non-convertible bonds in its Automated Bond System ("ABS") and convertible bonds on its bond floor. Later this year, the Exchange intends to move all bond trading into the ABS.⁵ Currently, various Exchange rules govern the trading of bonds, particularly Rule 85, governing the trading of "cabinet" securities. The proposed rule change provides for uniform bond trading procedures and consolidates those procedures in new Rule 86.⁶ The rule change: (i) incorporates into new Rule 86 the same price/time priority matching procedures as Rule 85; (ii) establishes appropriate cross references to new Rule 86 in other NYSE rules; and (iii) eliminates the rules governing trading on the bond floor, which will no longer be necessary.

The proposed rule change also alters the procedure for the crossing of bonds. Currently, Rule 85 requires that a member hold a proposed cross for a "reasonable" period of time before effecting the cross, and that the member announce the intention to effect the cross on the bond floor. For the purposes of the ABS, the Exchange has interpreted this as requiring a member to display a proposed cross in the ABS for two minutes prior to effecting the trade. Based on its experience, the Exchange represents that these crossing procedures are no longer necessary.

Another change to the bond trading rules moves the rules governing transactions at wide variations from Rule 79A.40 to new Rule 86(g). For non-convertible bonds, the Exchange would retain the requirement that a Floor Official approve all sales made two points away from the last sale or more than 30 days after the last transaction. The Exchange would not apply this requirement in all instances to convertible bonds, noting such bonds generally are priced in relation to the underlying equity security. However, new Rule 86(g) allows a Floor Governor to impose the same requirement on the

⁵ On March 13, 1998, the Exchange submitted a proposed rule change, which became effective immediately upon filing pursuant to Section 19(b)(3)(A) of the Act, that interpreted Exchange Rule 85 to make convertible bonds eligible for trading in the ABS. See Securities Exchange Act Release No. 39808 (March 26, 1998), 63 FR 15900 (April 1, 1998).

⁶ New Rule 86 specifies that these bond trading procedures apply only to bonds "traded through ABS." The Exchange trades certain bonds, such as equity-linked securities, on its stock floor. These securities are traded pursuant to NYSE equity-trading procedures and are not subject to Rule 86. See Securities Exchange Act Release No. 32650 (July 16, 1993), 58 FR 39586 (July 23, 1993).

trading of convertible bonds if market conditions warrant.

Finally, Amendment No. 1 to the proposed rule change corrects typographical errors in the original submission.⁷

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirement of Section 6 of the Act. In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act.⁸ Section 6(b)(5) requires, among other things, that the rules of the Exchange "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities" and "protect investors and the public interest."

The proposed rule change is part of a large effort to move bond trading from the bond floor, where trading activity has declined, to the ABS which should allow for the more economic and efficient trading of bonds.⁹ Moreover, by consolidating bond trading procedures in a new Rule 86 and more clearly defining aspects of the ABS in that rule, bond trading at the Exchange should become more transparent for investors and market participants.

As for the proposed changes to the crossing procedures under the ABS, the Commission is satisfied that safeguards will prevent crosses from occurring in the ABS, under new Rule 86, at quotes outside of the spread reflecting the best bid and best offer in the ABS. The ABS will not allow for trading below and above the highest bid and lowest offer prices in the ABS without first completing orders at better prices.¹⁰ And although new Rule 86 will no longer require that a member hold a proposed bond cross for a "reasonable" period of time before effecting that cross, the Commission accepts that the infrequency and small size of crosses for bonds,—a distinct type of security traded at the Exchange,—makes this permissible. The Commission also notes the character of bond crosses on the Exchange, with most crosses involving bond brokers receiving matching buy and sell orders from two different

⁷ See Amendment No. 1.

⁸ 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ See *supra* Note 5.

¹⁰ See Letter from Fred Siesel, Director, Fixed Income Markets, Exchange, to Kenneth M. Rosen, Attorney, Division of Market Regulation, Commission, dated May 21, 1998.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 39903 (April 22, 1998), 63 FR 23324.

⁴ In Amendment No. 1, the Exchange corrected typographical errors in the proposed rule change. See Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Michael Walinkas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 29, 1998 ("Amendment No. 1").

correspondent firms within two minutes of each other. Of course, should the nature of crosses on the ABS change, so that crosses become more significant in size and frequency, the Commission would expect the Exchange to consider modifying ABS crossing procedures to reflect such changes.

Finally, because convertible bonds generally are priced in relation to an underlying equity security, it is acceptable that the new Rule 86 would not require the same approval process as that for non-convertible bonds for all sales made two points away from the last sale or more than 30 days after the last transaction. The Commission is satisfied that the provision allowing a Floor Governor to impose a more rigorous approval process when market conditions warrant should adequately protect investors.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Amendment merely corrects typographical errors in the original proposal which received no adverse comments following its publication.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed Amendment 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. 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 to the File No. SR-NYSE-83-13 and should be submitted by June 24, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the

proposed rule change (SR-NYSE-98-13), as amended, is approved.

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

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, et seq.) the Department of Transportation has submitted the following Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice requesting an emergency approval on the following collection of information was published on March 6, 1998 [FR 61, page 11326].

FOR FURTHER INFORMATION CONTACT: Charles McGuire, 202/366-1037, and refer to the OMB Control Number.

DATES: Comments on this notice must be received on or before July 6, 1998.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Report of DBE Awards and Commitments.

OMB Control Number: 2105-0510.

Type of Request: Extension of a currently approved collection.

Form(s): DOT F 4630.

Affected Public: DOT financially-assisted state and local transportation agencies.

Abstract: 49 CFR Part 23 establishes requirements for the Department of Transportation (DOT) so as to comply with the mandates of the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991 (Public Law 102-240, December 18, 1991). 49 CFR Part 23.49(a) requires that DOT and its Operating Administrations develop a recordkeeping system to monitor, assess and identify contract awards and progress in achieving DBE subcontract goals. In addition, PL 102-240 section

1003(b) requires that each state annually survey and compile a list of small business concerns and the location of such concerns, and notify the Secretary of Transportation of the percentage of such concerns controlled by women and by socially and economically disadvantaged individuals other than women. If these reporting requirements were not available, firms controlled by minorities would not achieve the fullest possible participation in DOT programs, and the Department would not be able to identify its recipients and evaluate the extent to which financial assistance recipients have been awarded a reasonable amount.

In order to minimize the burden on DOT recipients the Department has limited its informational request and reporting frequency to that necessary to meet its program and administrative monitoring requirements. The informational request consists of 17 data items on one page and one attachment, to be completed on an annual, semi-annual or quarterly basis. It is the overall long range objective of DOT to permit all DOT recipients to report on a yearly basis depending upon their past experience in meeting their goals.

Estimated Annual Burden Hours: 20,824 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention OST Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to OMB are best assured of having their full effect if OMB receives them within 30 days of publication.

Issued in Washington, DC, on May 26, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

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¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).