

December 31, 2003. The short-term financing could include a revolving credit agreement, the issuance of commercial paper, bid notes issued to individual banks, which are participants in the revolving credit agreement, bank borrowing, or medium-term notes issued under its Indenture dated November 28, 1995, between Columbia and marine Midland Bank, Trustee, as amended.

Columbia and the Utility Subsidiaries also request authorization for the Utility Subsidiaries to issue to Columbia, and for Columbia to acquire from the utility Subsidiaries, short-term securities through December 31, 2003.

The authorization Columbia requests is subject to the general conditions for financing contained in the Omnibus Financing Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39327; File No. SR-BSE-97-7]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. to Extend a Pilot Program Relating to Market-On-Close Orders

November 14, 1997.

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 November 5, 1997,³ 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 and II below, which Items have been prepared by the self-regulatory organization. The Exchange has requested accelerated approval for the proposal, as amended. This order approves the Exchange's proposal, as amended, on an accelerated basis, and

solicits comments from interested persons.

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

The Exchange is proposing to extend its pilot program for the handling of Market-on-Close ("MOC") orders through October 31, 1998.⁴ The Exchange's pilot program procedures mirror the procedures in place on the primary markets, including the New York Stock Exchange, Inc. ("NYSE"), in order to ensure equal treatment of MOC orders.

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 self-regulatory organization 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 III below. The self-regulatory organization 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 purpose of the proposed rule change is to extend the Exchange's pilot program⁵ for the handling of MOC orders on expiration days,⁶ non-expiration days, and when NYSE Rule 80A is in effect. The pilot program, as previously approved by the Commission,⁷ mirrors the procedures of the primary markets (including the NYSE) so that the Exchange does not become a haven for MOC orders for pilot stocks that are prohibited on the primary markets. In this way, all orders sent to the Exchange will receive equal treatment to orders sent to the primary

markets. The term "pilot stocks" refers to the list of stocks designated by the NYSE as pilot stocks for purposes of its auxiliary closing procedures.

On non-expiration days, these procedures include: (a) Providing a 3:50 p.m. deadline for the entry of all MOC orders in all stocks; (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:50 p.m.; (c) publishing order imbalances of 50,000 shares or more as soon as practicable after 3:50 p.m. in the pilot stocks, stocks being added to or dropped from an index, and in any other stock with the approval of a floor official; and (d) limiting the entry of MOC orders after 3:50 p.m. to offsetting published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:50 p.m. in those instances where legitimate error has been made.

If an MOC index arbitrage order to buy (sell), to establish or increase a position (to eliminate or reduce a position), is entered and NYSE Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be canceled regardless of the time NYSE Rule 80A goes into effect. If NYSE Rule 80A goes into effect prior to 3:50 p.m., the MOC order may be re-entered with the instruction "buy minus" ("sell plus"). If NYSE Rule 80A goes into effect after 3:50 p.m. and there is a published imbalance in the subject stock, the MOC order may be re-entered with the instruction "buy minus" ("sell plus") to offset the imbalance.

On expiration days, the pilot procedures include: (a) Providing a 3:40 p.m. deadline for the entry of all MOC orders in all stocks; (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:40 p.m.; (c) publishing order imbalances of 50,000 shares or more as soon as practicable after 3:40 p.m. in the pilot stocks, stocks being added to or dropped from an index and, upon the request of a specialist, any other stock with the approval of a floor official; and (d) limiting the entry of MOC orders after 3:40 p.m. to offsetting published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:40 p.m. in those instances where a legitimate error has been made.

If an MOC index arbitrage order to buy (sell), to establish or increase a position (to eliminate or reduce a position), is entered and NYSE Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be canceled regardless

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4.

³ On November 10, 1997, the Exchange submitted an amendment to the filing, clarifying that the requested extension of the pilot was through October 31, 1998. See letter from Karen Aluise, Exchange to Mike Walinskas, Commission, dated November 10, 1997 ("Amendment No. 1").

⁴ See Amendment No. 1, *infra* note 3.

⁵ The pilot program has not been altered since its initial approval by the Commission. Phone conversation between Karen Aluise, Exchange and Janice Mitnick, Commission on November 10, 1997. See Release No. 34-37478 (July 25, 1996), 61 FR 40268 (August 1, 1996) (approving SR-BSE-96-8 relating to the Exchange's MOC pilot program).

⁶ The term "expiration days" refers to both: (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures, and options on stock index futures expire or settle concurrently and (2) the trading day on which end of calendar quarter index options expire.

⁷ See Release No. 34-37478 (July 25, 1996), 61 FR 40268 (August 1, 1996), *infra* note 5.

of the time NYSE Rule 80A goes into effect. If NYSE Rule 80A goes into effect prior to 3:40 p.m., the MOC order may be re-entered with the instruction "buy minus" ("sell plus"). If NYSE Rule 80A goes into effect after 3:40 p.m. and there is a published imbalance in the subject stock, the MOC order may be re-entered with the instruction "buy minus" ("sell plus") to offset the imbalance.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5), in particular in that the rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

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

The Exchange states that it does not believe that the proposed rule 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 states that no written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-97-7, and should be submitted by December 12, 1997.

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

The Commission finds that the proposed rule change is consistent with the Act and the rule and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.⁸ Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In recent years, the exchanges instituted certain safeguards (including the creation of auxiliary closing procedures on expiration days) to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. The Commission believes that the MOC order handling requirements instituted by the Exchange, as well as those instituted by other exchanges, work relatively well and may result in more orderly markets at the close on expiration days. In addition, under current competitive market conditions, a regional exchange which trades NYSE-listed stocks but does not have comparable auxiliary closing procedures could be utilized by market participants to enter MOC orders that would be prohibited on the NYSE. Although the Commission has no reason to believe that the Exchange has or will become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the Exchange that if this did occur, it could have a negative impact on the fairness and orderliness of the national market system. Accordingly, the Commission

⁸ In approving this proposal, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

finds that it is reasonable for the Exchange to extend the pilot program for MOC orders, and thereby maintain procedures for MOC orders received by the Exchange that should result in treatment consistent with that of MOC orders on the primary exchanges. Further, the Commission believes that the renewal of the pilot program does not present any new or novel regulatory issues not previously considered by the Commission when initially approving the pilot program for MOC orders.

The Commission notes that the NYSE received permanent approval for its MOC procedures in October 1996.⁹ As stated above, the Exchange's procedures for MOC orders are based on those of the NYSE. The Division of Market Regulation staff requests that prior to submitting another request for extension of the pilot program, the Exchange consider seeking permanent approval of its MOC procedures.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. By accelerating the effectiveness of the Exchange's pilot program, the Commission will enable the Exchange to continue the pilot program with as little disruption as possible. In addition, the Commission believes that the extension of the pilot does not present any new or novel regulatory issues as the Exchange's proposal merely reflects the pilot as previously approved by the Commission. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the act, that the proposed rule change (file No. SR-BSE-97-7) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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⁹ See Release No. 34-37894 (October 30, 1996), 61 FR 56987 (November 5, 1996).

¹⁰ 17 CFR 200.30-3(a)(12).