Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 14, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Western Resources, Inc. (70–9867)

Western Resources, Inc. (''WRI'' or ''Applicant''), 818 South Kansas Avenue, Topeka, Kansas 66612, a Kansas public utility holding company claiming an exemption from registration under section 3(a) of the Act by rule 2, has filed an application under sections 9(a)(2) and 10 of the Act.

WRI is engaged in the production, purchase, transmission, distribution and sale of electric energy in the State of Kansas. WRI's utility operations, conducted through KPL, a division of the company,[1] and Kansas Gas and Electric Company (''KGE''), a wholly owned electric public utility subsidiary of WRI, provide electric service to approximately 636,000 customers in 432 communities in the State of Kansas. KGE owns a 47% interest in Wolf Creek Nuclear Operating Corporation (''WC''), which operates the Wolf Creek Generating Station on behalf of its owners.[2] Through its ownership interest in ONEOK Inc.,[3] WRI has an approximately 45% economic interest in a natural gas distribution company that has 1.4 million customers.

Westar Generating, Inc. (''Westar Generating''), a wholly owned subsidiary of WRI, is a Kansas corporation that will hold an undivided 40% ownership interest in a 2X1 F class combined cycle generation facility that is under construction at The Empire District Electric Company State Line station (''State Line''), which is located on the Missouri side of the Kansas-Missouri state line just west of Joplin, Missouri. Westar Generating will hold this interest directly in the real property and assets that make up the generating station. The Empire District Electric Company (''Empire''), a nonaffiliate of WRI, holds the remaining undivided 60% ownership interest and operates the facility under the Agreement for the Construction, Ownership and Operation of State Line Combined Cycle Generating Facility (''Operating Agreement''). Westar Generating and Empire (collectively, ''Owners'') hold their interests as tenants in common.

WRI entered into the Operating Agreement on July 26, 1999 as a means of acquiring a generation source to meet the generation needs of KPL. Empire is constructing State Line under the Operating Agreement. State Line is not currently operational, and is being upgraded from its original configuration of a single Westinghouse 501–F.C. turbine installed in 1997 to a Westinghouse 501–F.D1. Empire is adding another 501–F.D2, two heat recovery steam generators, a steam turbine, a cooling tower, and associated equipment to create the 2X1 F facility. The new combined cycle facility will have a nominal rating of 500 MW. State Line began operations in June 1997 and was removed from service on September 11, 2000 to facilitate the conversion.

Westar Generating will acquire its interest in State Line in two phases. In the first phase, which has already occurred, Westar Generating acquired a 40% interest in the portion of State Line's assets under construction. The second phase, Westar Generating's acquisition of a 40% interest in the portion of the State Line assets that existed prior to the start of construction, will occur sometimes prior to State Line's resumption of commercial operation. Westar Generating will acquire its 40% interest in the already existing assets in the immediate future and before State Line resumes commercial operation.

WRI is seeking authority to retain its 40% indirect interest in State Line when the plant resumes commercial operation. WRI states that while State Line is under construction, Westar Generating is not an electric utility company, as defined by section 2(a)(3) of the Act. WRI also states that Westar Generating will become an electric utility company upon State Line's resumption of commercial operations. Therefore, Westar Generating will become a wholly owned subsidiary electric public utility company of WRI. The Owners began testing of the combined cycle facility in March 2001 and depending on the success of the trials, anticipate resuming commercial operation as early as May 15, 2001.

WRI and Westar Generating have entered into a power purchase agreement under which Westar Generating will sell its entire 40% entitlement to the output of State Line to WRI under a cost-based tariff which has been submitted for approval to the Federal Energy Regulatory Commission. In turn, WRI will sell State Line's output to KPL's retail customers and other customers. WRI will receive State Line's output at the high voltage side of State Line's step-up transformer and, via a thirty mile 200 MW point-to-point firm ten-year contract path with the Southwest Power Pool, transmit it to WRI's electric grid. WRI states that it will dispatch State Line using the same mechanisms and same system operator as it does to operate its existing generation. WRI will also purchase power generated during the testing of State Line.

Westar Generating also owns a 34% share in nonutility facilities such as offices, maintenance buildings and fire protection equipment.

Westar Generating's cost associated with acquiring its interest in State Line, including its 34% interest in the nonutility assets, will be equal to its share of the costs of constructing State Line. These costs will be approximately $104,292,841.

For the year ended December 31, 2000, WRI reported consolidated revenues of approximately $2,368,476,000 and consolidated utility revenues of $1,829,132,000. WRI's net income reported for the same period was $136,481,000 and WRI's utility operating income was $262,435,000. Consolidated assets and consolidated utility assets of WRI at December 31, 2000 were $7,767,208,000 and $4,632,479,000, respectively.

After State Line commences commercial operation. WRI states that it will continue to claim an exemption under section 3(a) by rule 2.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10231 Filed 4–24–01; 8:45 am]

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[1] KPL is the trade name for WRI's electric business.

[2] Applicant states that WC relies on a no-action letter issued by the Commission's staff in 1997 for the proposition that WC should not be classified as a utility. *See* Wolf Creek Operating Corporation, SEC No-Action Letter (November 24, 1997).

[3] WRI's ownership is comprised solely of up to 9.9% of the voting stock and shares of nonvoting convertible preferred stock of ONEOK. WRI states that it has relied on a no-action letter issued by the Commission's staff in 1997 for the proposition that ONEOK is not a subsidiary of WRI and that WRI does not control ONEOK. *See* Western Resources, Inc., SEC No-Action Letter (Nov. 24, 1997).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44194; File No. SR–NYSE–97–18]

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

April 18, 2001.

I. Introduction

On June 2, 1997, 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 prohibit a specialist from entering bids and offers in electronic communications networks (''ECNs'') or other market centers at prices superior to the specialist's quote on 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 proposed rule change, including Amendment Nos. 1 and 2, were published for comment in the **Federal Register** on May 20, 1999.[5] The Commission received three comment letters on the proposal. This order approves the proposed rule change as amended.

II. Description of the Proposal

The proposal would amend NYSE Rule 104.10 to explain that a specialist[6] 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 could not be inferior to his or her bid or offer in an ECN or another market center.[7] Thus, if a specialist placed a bid or offer in an ECN or on another market center at a price superior to the then disseminated best bid or offer on Exchange, the specialist would be required to communicate[8] such price to the Exchange.

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 in which the specialist would not be permitted to quote or trade under Exchange rules. The Exchange believes that if the specialist placed a superior priced bid or offer in an ECN[9] or other market center at a variation that could not be quoted or traded on the Exchange, the specialist would be unable to satisfy his or her specialist obligations, *i.e.,* the specialist could not trade at his or her best bid or offer with contra-side marketable orders received on the Exchange. Also, if the specialist placed in an ECN or other market center an inferior bid or offer at a variation not accepted by the Exchange and the order was subsequently executed on the ECN or other market center, the specialist could not satisfy any superior-priced orders on his or her book at the price of his or her trade off the Exchange, consistent with his or her responsibilities as agent.

III. Summary of Comments

The Commission received comment letters from American Century Investment Management (''ACIM'') and Archipelago, LLC, opposing the proposed rule change.[10] The Exchange responded to these letters but did not amend the proposed rule change.[11]

In its letter, ACIM suggested that the proposal was an attempt by the NYSE to control the trading of its own member firms to protect the NYSE's monopoly of listed equity trading in the U.S. ACIM urged the Commission to reject the proposal because it limits the competitiveness of the U.S. equity markets, raises the costs for investors, and conflicts with the Order Handling Rules (''OHR'')[12] by limiting the choices of specialists in the display and routing of orders. ACIM also questioned how the proposal would be implemented after decimalization, asking: (1) Will the specialist be forced to follow the increment selected by the NYSE, and (2) what happens to orders routed to the NYSE that do not meet the increment guidelines of the NYSE? In addition, ACIM argued that when a specialist faces the possibility of double liability because the specialist has used an ECN to post an order, the NYSE should not be able to mandate procedures for the specialist's behavior; the specialist should be able to make his own investment decisions.

Archipelago also challenged the proposal as anti-competitive. Specifically, Archipelago charged that the proposal violates the 1975 Amendments to the Act[13] and Rule 19c–1[14] because it undermines the concept of the National Market System (''NMS'') by severely limiting the ability of specialists to use ECNs in an agency capacity, which in turn prevent specialists from meeting their best execution obligations to customers.[15] In addition, the proposal deprives investors of pricing efficiency and flexibility; specifically the ability to enter competitively priced limit orders in sub-$1/16 increments. Archipelago further commented that the proposal, by limiting the ability of specialists to use ECNs competitively, is an attempt to circumvent the OHR, which require full integration of ECNs into the marketplace. Lastly, Archipelago stated that the NYSE has not provided any meaningful analysis concerning the competitive effects of the proposal as required by Rule 19b–4,[16] offering only perfunctory boilerplate.

In response, the Exchange argued that Archipelago and a ACIM's letters mischaracterized the NYSE's proposal and raised broad policy questions regarding the future evolution of the NMS that are not relevant to the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

[4] In Amendment No. 2, NYSE removed all references to the Commission's Quote Rule. NYSE also eliminated its proposed exemption for bids or offers relating to program trading orders entered into an ECN or other market centers by an upstairs trading operation conducted by a specialist member organization.

[5] Securities Exchange Act Release No. 41397 (May 13, 1999), 64 FR 27610.

[6] The Exchange defines ''specialist'' as an individual specialist on the floor.

[7] ''Another market center'' means a registered national securities exchange or registered national securities association.

[8] The Exchange views ''communicate'' in this context to require the specialist to make the price, whether the bid or the offer, available for execution on the Exchange. The specialist would then be liable for executions at this price on both the Exchange and on the ECN or other market center.

[9] The proposed rule applies only to specialists when they add liquidity to an ECN or another market center (*i.e.,* enter a new bid or offer) and not when they remove liquidity (*i.e.,* hit a pre-existing bid or offer) or enter ''fill-or-kill'' orders.

[10] *See* letter from Mike Cormack, Manager, Equity Trading, ACIM, to Jonathan G. Katz, Secretary, SEC, dated July 28, 1999. The Commission received two substantially similar comment letters from Archipelago. *See* letters from Gerald D. Putnam, CEO, Archipelago, to Jonathan G. Katz, Secretary, SEC, dated July 20 and July 21, 1999.

[11] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated September 23, 1999.

[12] Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[13] 15 U.S.C. 78k–1.

[14] Rule 19c–1 precludes exchanges from prohibiting exchange members from routing customer orders to off-exchange trading venues. 17 CFR 240.19c–1.

[15] Archipelago also noted that off-exchange restrictions on proprietary specialist trading are inconsistent with the NMS as well.

[16] 17 CFR 240.19b–4.

proposed rule change. Specifically, the NYSE responded that the proposal does not undermine the NMS or Rule 19c–1 because the proposal does not impose any restrictions on the routing of customer orders. The proposal only sets standards for a specialist's market maker bid or offer on the exchange. The NYSE also stated that the proposal is consistent with the OHR because it does not impose any restrictions on a specialist's responsibility to display customer orders.

Further, the NYSE wrote that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act with respect to the routing of customer limit orders to ECNs or other market centers. The NYSE opined that the restriction on specialists is appropriate because it is designed to ensure that specialists' dealer capital is committed to meeting their affirmative obligation to maintain fair and orderly markets in the primary market in which they are registered as dealers. Finally, the NYSE argued that each market center would determine its own decimal trading variation. If these variations are the same, then the restriction against bidding or offering at a variation not permitted on the Exchange will not apply. In any event, the NYSE suggested that contra side order flow would seek to trade at whatever variation it chooses.

IV. 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, and, in particular, with the requirements of section 6(b)(5) and 6(b)(8).[17] Section 6(b)(5) requires that the rules of an exchange be designated to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[18] Section 6(b)(8) requires that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Further, the Commission finds that the proposal is consistent with section 11(b) of the Act[19] and Rule 11b–1 thereunder,[20] which allow exchanges to promulgate rules relating to specialists to ensure orderly markets.

Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of securities on the Exchange. In return for the privilege of serving as the only specialist in stocks traded on the NYSE, which as the primary market for listed stocks continues to receive a significant percentage of the order flow, the NYSE improves conditions designed to improve the quality of its market. Among the obligations imposed upon specialists by the Exchange, and by the Act and rules thereunder, is the maintenance of an orderly market in designated securities.[21] To ensure that specialists fulfill these obligations, it is important that the Exchange have the ability to implement rules and develop measures to guide and improve specialists' performance. The Commission believes that the proposal is consistent with the Exchange's objective to promote the maintenance of orderly markets because it enhances the Exchange's ability to encourage improved specialist performance and market quality by clarifying specialists' duty at the NYSE—to quote his or her best bid and offer on the Exchange.

The Commission carefully considered the concerns expressed by Archipelago and AICM in their letters opposing the proposal. Although the proposed rule change places restrictions on specialists, the Commission finds that the restrictions are reasonable. First, NYSE's proposal only applies to the bids and offers of individual specialists on the floor of the Exchange. The Commission notes that the NYSE has amended the proposal so that it no longer applies to affiliates of individual specialists. Therefore, the proposal is limited to the firms that benefit from the privilege of acting as specialists on the NYSE. Second, the proposal is not inconsistent with Rule 19c–1 because it does not impose restrictions on the routing of customer orders. Third, it is not inconsistent with the OHR because it does not impose restrictions on a specialist's responsibility to display customer orders. Specialists will continue to have an obligation under the OHR to display a customer limit order that betters their quote.[22] Fourth, exchanges have historically maintained a minimum increment for quoting and trading listed securities on the exchange in order to ensure fair and orderly trading, including capacity limitations of exchange computer systems.[23] Fifth, as discussed above, exchanges need to have the ability to set standards for specialists' performance. This proposal with allow specialists to meet their obligations by ensuring that if a specialist places a superior priced bid or offer on an ECN or other market center, the specialist can trade at his or her best bid or offer with contra-side marketable orders received on the Exchange.

For these reasons, the Commission finds that the proposal is consistent with the Act, including sections 6(b)(5), 6(b)(8) and 11(b), in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

V. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NYSE–97–18), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10232 Filed 4–24–01; 8:45 am]

BILLING CODE 8010–01–M

[17] 15 U.S.C. 78f(b)(5) and 78f(b)(8).

[18] 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).

[19] 15 U.S.C. 78k(b).

[20] 17 CFR 240.11b–1.

[21] See, *e.g.,* 17 CFF 240.11b–1; NYSE Rule 104.

[22] *See supra* note 11 at 48316; *see also* NYSE Rule 79A.

[23] Currently, the exchanges have adopted a minimum price variation of a penny. *See* Securities Exchange Act Release No. 42914 (June 8, 2000).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–121]

Notice of Change in Location of Public Hearing: Intellectual Property Laws and Practices of the Government of Ukraine

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The location of the public hearing scheduled for April 27, 2001 in the Section 302 investigation of the intellectual property laws and practices of the Government of Ukraine has been changed to the Office of the United States Trade Representative, 1724 F Street, NW., Rooms 1 and 2, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419; or William Busis, Associate General Counsel, (202) 395–3150.

SUPPLEMENTARY INFORMATION: In a notice published on April 6, 2001 (66 FR