

under the Act to register an indefinite amount of shares under the Securities Act of 1933.

2. An investment company that has filed a declaration under rule 24f-2 must file annual notices with the SEC and pay share registration fees for shares sold in the previous fiscal year. If the rule 24f-2 notice is filed within two months after the close of the investment company's fiscal year, the amount of the registration fee is based on net sales (new sales minus redemptions) in the year in question. If the rule 24f-2 notice is not filed within two months, the registration fee is based on gross sales (with no credit for redemptions). At the latest, the rule 24f-2 notice along with the appropriate registration fee must be filed within six months after the end of an investment company's fiscal year. A.T. Ohio's fiscal year ends August 30, and the Fund's fiscal year ends August 31.

3. A.T. Ohio transferred all of its assets to the Ohio Municipal Money Market Portfolio (the "Portfolio") of the Fund on August 30, 1994. The Portfolio was established to continue the operations of A.T. Ohio as a series portfolio of the Fund. Applicants assert that there was uncertainty as to how the applicants' fees should be calculated because of the reorganization. Thus, the amounts of the registration fees were unsettled until after the New York banks were closed October 28, 1994, and applicants' administrator had to obtain a certified check in the amount of the Fund's net fee payment on October 31, 1994, the last day of the two month filing deadline.

4. A.T. Ohio and the Fund submitted their rule 24f-2 notices for the fiscal year ending August 30 and 31, 1994, respectively, to a same day courier service on October 31, 1994. Because A.T. Ohio had net redemptions during the fiscal year, no registration fee was due with the 24f-2 notice. The Fund, however, had net sales during the fiscal year. That notice, therefore, was accompanied by \$109,700.69, the fee payable to register the shares sold by the Fund in excess of redemptions. The filing arrived at the SEC's filing desk after 5:30 p.m. on October 31, 1994. As a result, the filing was made on November 1, 1994, but was rejected as having been filed too late to be eligible for a registration fee based on net sales. Thus, absent relief, applicants owe registration fees based on gross sales. For A.T. Ohio's fiscal year ending August 30, 1994, this would amount to an additional \$429,084.50 and for the Fund's fiscal year ending August 31, 1994 this would amount to an additional \$1,997.07.

Applicants' Legal Analysis

1. Section 6(c) permits the SEC to exempt any person, security, or transaction from any provisions of the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In addition, the SEC must find that an investment company was not at fault to grant an exemption from the two month filing deadline of rule 24f-2.¹

2. A.T. Ohio and the Fund believe that they made a good faith effort to file the rule 24f-2 notices on a timely basis by same-day courier. Applicants state that the delay in receipt of their filings was caused by a series of delays precipitated by the same-day courier service.

3. Applicants believe that the requested relief meets the section 6(c) standards. Thus, applicants request an exemption under section 6(c) from rule 24f-2 to permit them to pay registration fees based on net sales.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35175; File No. SR-NYSE-94-49]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Six-Month Extension of the Pilot for the Capital Utilization Measure of Specialist Performance

December 29, 1994.

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 December 22, 1994, 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 self-regulatory organization. The Commission is publishing this notice to

¹ See Decision of the Comptroller General of the United States, File No. B-239769.2 (July 24, 1992).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

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 extending for six months the pilot to use a measure of specialist performance which focuses on a specialist unit's use of its own capital in relation to the total dollar volume of trading activity in the unit's stocks. This capital utilization measure (described in detail below) would be used by the Allocation Committee ("Committee") in allocating newly-listed stocks.

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

In recognition of the importance of dealer participation, particularly in volatile markets when such participation is viewed as providing "value added" in maintaining fair and orderly markets, the Exchange has developed a measure of specialist performance dealing with utilization of capital for market-making. This measure of performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks.

On December 22, 1993, the Commission approved, on a pilot basis ending December 31, 1994, the Exchange's proposed rule change to adopt capital utilization as an additional measure of specialist performance.³ The Exchange is now seeking to extend that pilot for an additional six months, through June 30, 1995.

Under the pilot, a capital utilization percentage is derived for each eligible stock⁴ and the specialist unit overall by

³ See Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (File No. SR-NYSE-93-30).

⁴ The following are not included in any grouping of eligible stocks: foreign stocks, preferred stocks,

dividing the average daily dollar value of the unit's stabilizing purchases and sales by the average daily total dollar value of shares traded in the unit's stocks. This percentage is calculated both for stabilizing trades only and stabilizing plus reliquefying trades. (A reliquefying transaction is one in which the specialist reduces a position in a specialty stock by selling part of a long position on a zero-minus tick, or purchasing to cover part of a short position on a zero-plus tick.) These percentages are provided for base periods (*ie.*, non-volatile periods) and volatile periods (days when there is a change of one percent or more in the S&P 500 Stock Price Index),⁵ and each stock's ten percent most volatile days,⁶ so that performance of a unit relative to other units can be compared as to volatile and non-volatile market conditions.

The capital utilization measure separates stocks into three broad groupings including:

- Stocks included in the top 200 stocks in the S&P 500 Stock Price Index and other stocks that are at least as active (based on average daily dollar value of shares traded).
- The remainder of the S&P 500 and any stocks among the 500 most active on the Exchange.
- All other stocks.

Specialist units are placed alphabetically into three tiers based on their base day and volatile day capital utilization percentages for each of the three groupings of stocks. Within each grouping, a Floor-wide mean capital utilization percentage is calculated. A unit will be in Tier 1 if its capital utilization percentage is more than 1.1 standard deviations above the mean. (A standard deviation is a statistical measure of the distance from the mean.) A unit will be in Tier 2 if its capital utilization percentage is within 1.1

warrants, when-issued stocks, IPOs (for the first 60 days), closed-end funds, stocks selling for \$5 and under, stocks with less than 2,000 shares average daily trading volume, and stocks that have been delisted for more than six months.

⁵ "S&P 500 Stock Price Index" is a service mark of Standard and Poor's Corporation.

The base period calculation includes the total average daily dollar value for the trading days within the twelve month period excluding those days during which there was a change of 1% or more in the S&P 500 Price Index. The volatile period calculation includes the total average daily dollar value for the trading days within the twelve month period during which there was a change of 1% or more in the S&P 500 Price Index.

⁶ The base period calculation include the total average daily dollar value for the days within the twelve month trading period that were not among the 10% most volatile. The volatile period calculation includes the average daily dollar value for the days within the twelve month period that were the 10% most volatile.

standard deviations above or below the mean. A unit will be in Tier 3 if its capital utilization percentage is more than 1.1 standard deviations below the mean.

During the past year, the Allocation Committee has received specialist capital utilization information on a "rolling" 12-month basis. The Allocation Committee has been given information as to a unit's tier in each stock grouping, with the tier data being included with other objective data, such as DOT turnaround performance, stabilization rates and TTV percentages. The specialist units themselves have been given, on a monthly basis for the prior 12 months, their actual capital utilization percentages for each stock.⁷

The Exchange implemented this new measure of specialist performance as a one-year pilot which is due to expire on December 31, 1994. In its July 25, 1994, report on the Allocation and Capital Utilization pilots, the Exchange reviewed the Committee's use of the capital utilization measure in allocation decisions. The measure appears to be a useful addition to the other measures of specialist performance referred to by the Committee. It is proposed that the pilot measure of specialist capital utilization be extended for an additional six months, through June 30, 1995, to be used by the Allocation Committee as described above.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) 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.

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.

⁷ The specialist capital utilization measure is not being added as a basis for initiating a Performance Improvement Action under NYSE Rule 103A. During the pilot period, the Market Performance Committee will receive quarterly reports on the initiative, with a view toward their recommending such enhancements or modifications as may seem appropriate based on actual experience with this measure. Any modifications or enhancements would be filed with the Commission, and would be implemented only with the Commission's approval.

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. 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, NW., Washington, DC 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 other 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 Section, 450 Fifth Street, NW., Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-94-49, and should be submitted by January 27, 1995.

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

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 Sections 6 and 11 of the Act. Section 6(v)(5) requires 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. Section 11(b) of the Act and Rule 11b-1 thereunder allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. For the reasons set forth below, the Commission continues to believe that the consideration of specialist capital utilization by the Allocation Committee should enhance the Exchange's allocation process and encourage improved specialist performance, consistent with the protection of investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and rules thereunder, is the maintenance of fair and orderly markets in designated securities.⁸ To ensure that specialists fulfill these obligations, it is important that the Exchange develop objective measures of specialist performance and prescribe stock allocation procedures and policies that encourage specialists to strive for optimal performance. The Commission supports the NYSE's effort to develop an objective measure of specialist capital utilization to encourage improved specialist performance and market quality.

The Commission believes that extending the pilot period for the specialist capital utilization tier ratings is appropriate because that standard should provide the NYSE Allocation Committee with an objective measure of specialist performance that will refine the Exchange's allocation process and thereby encourage improved specialist performance. The NYSE's Allocation Policy emphasizes that the most significant allocation criterion is specialist performance.⁹ In the Commission's view, performance based stock allocations not only help to ensure that stocks are allocated to specialists who will make the best markets, but will provide an incentive for specialists to improve their performance or maintain superior performance.

For these reasons and for the other reasons discussed in Release No. 33369,¹⁰ the Commission has determined to extend the pilot period for this measure through June 30, 1995. The Commission believes that extending the pilot period is appropriate because it will provide the Exchange and the Commission with an opportunity to further study the effects of the use of the measure on the NYSE's allocation process. During the pilot period, the Commission continues to expect the NYSE to monitor carefully the effects of the revised Allocation Policy and report its findings to the Commission. Specifically, the Commission request the NYSE report the capital utilization data as presented to the Allocation Committee in three tiers¹¹ and any

action taken by the Allocation Committee.¹² The Commission also requests that the NYSE submit its monitoring report, as well as any requests for extension or permanent approval of the use of the capital utilization measure, by May 1, 1995.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after publication of the proposed rule change in the **Federal Register**. Accelerated approval will enable the Exchange to continue to make use of the capital utilization measure of specialist performance on an uninterrupted basis and will ensure continuity and consistency in the stock allocation deliberation process.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (File No. SR-NYSE-94-49) be approved through June 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35169; File No. SR-NASD-94-71]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Application of "Do Not Reduce" and "Do Not Increase" Instructions With Respect to the Repricing of Open Orders

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD. The Commission is publishing this notice to

should add any additional data and analysis to the report in order to assess the effectiveness of the capital utilization measure.

¹² This information should include which stocks were reallocated due to performance, and the specialist units involved in each reallocation.

¹³ 15 U.S.C. 78s(b)(2) (1988).

¹⁴ 17 CFR § 200.30-3(a)(12) (1991).

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 NASD is proposing to amend Article III, Section 46 of the Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are bracketed.

Adjustment of Open Orders

Sec. 46.

* * * * *

(e) The provisions of this rule shall not apply to: (1) orders governed by the rules of a registered national securities exchange; (2) orders marked "do not reduce" *where the dividend is payable in cash*; (3) orders marked "do not increase[;]" *where the dividend is payable in stock, provided that the price of such orders shall be adjusted as required by this rule*; (4) open stop orders to buy; (5) open sell orders; or (6) orders for the purchase or sale of securities where the issuer of the securities has not reported a dividend, payment or distribution pursuant to Securities and Exchange Commission Rule 10b-17.

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 NASD 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 NASD has prepared summaries, set forth in Section (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

Article III, Section 46 of the Rules of Fair Practice, which became effective September 15, 1994, requires a member holding an open order, prior to executing or permitting the order to be executed, to adjust the price and size of the order in proportion to the dividend or other distribution, on the day that the security is quoted ex. Since the rule became effective, the NASD has discovered an inconsistency in the definition of the terms "Do Not Reduce" (DNR) and "Do Not Increase" (DNI) between the NASD's Section 46 and

⁸ See, e.g., Rule 11b-1, 17 CFR 240.11b-1 (1994); NYSE Rule 104.

⁹ See, e.g., Commission's order approving revisions to the NYSE's Allocation Policy and Procedures, Securities Exchange Act Release No. 34906 (October 27, 1994), 59 FR 55142.

¹⁰ See note 3, *supra*.

¹¹ The Commission notes that this request for information is not exclusive an that the NYSE