

trade and protect investors and the public interest since the issuance and sale of the Contracts on an open-ended basis does not raise the kinds of underwriting issues with which the Corporate Financing Rule is primarily and traditionally concerned; the structures of the instrument are that of insurance products which traditionally have been regulated under state insurance law; the terms of the Corporate Financing Rule were not developed to address such products.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-94-61 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35439; File No. SR-NYSE-94-38]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendment to Exchange Rule 104.13

March 2, 1995.

On October 26, 1994, 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 NYSE Rule 104.13 regarding investment account transactions of specialists and related parties.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35019 (November 29, 1994), 59 FR 62762 (December 5, 1994). No comments were received on the proposal.

Rule 104 provides that a specialist may not effect any purchase or sale of a security in which the specialist is registered ("specialty stocks") for the account of an approved person associated with the specialist's organization, unless such transaction is reasonably necessary to permit the specialist to maintain fair and orderly markets. Currently, NYSE Rule 104.13 requires that transactions in specialty stocks for the accounts of specified

persons affiliated with or related to a specialist must be for investment purposes and executed in accordance with certain restrictions relating to the price at which transactions may take place ("tick" restrictions).³ The rule applies to the accounts of employees or parties active in the business of a specialist or persons active in the specialist business, and any approved person (individual or entity in a control relationship) of the specialist, other than an approved person entitled to an exemption under NYSE Rule 98.⁴

The Rule change expands the restrictions contained in NYSE Rule 104.13 to transactions in specialty stocks effected "for the benefit of" the specified parties. This rule change will apply the Rule 104.13 restrictions to transactions that, although not effected directly for the "account" of a specified party, are effected for an account in which a specified party has a beneficial interest.

The rule change also extends to affiliated persons the Rule 104.13 restriction against specialists' originating orders in specialty stocks for any accounts over which they exercise investment discretion.⁵ In addition, the rule change specifies that the restrictions in Rule 104.13 apply to transactions effected for trust accounts that benefit the specialist or affiliated persons.

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. The Commission believes that the rule change is consistent with Section 11(a) of the Act⁶ which generally makes it unlawful, with certain exceptions, for any member of a national securities exchange to effect a transaction on such exchange for his own account, the account of an associated person, or an account with respect to which it or an associated

person thereof exercises investment discretion. The Commission also believes that the rule change is consistent with Section 6(b)(5) of the Act⁷ which 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.

Specifically, the Commission believes that extending the restrictions on transactions in specialty stocks to those effected "for the benefit of" affiliated parties in appropriate and consistent with prohibiting or restricting certain interested transaction that may involve potential conflicts of interest. The rule change is designed to ensure that affiliated persons will not be permitted to effect transactions in specialty stocks, whether or not they use accounts in their own names, outside of the restrictions contained in NYSE Rule 104.13. The Commission believes that the rule change will further the purpose of the NYSE Rule and will prevent affiliated persons from avoiding the Rule 104.13 restrictions.

The Commission further believes that the rule change to extend to affiliated persons the Rule 104.13 restrictions against specialists' originating orders in specialty stocks for any accounts over which they exercise investment discretion is consistent with Sections 6 and 11(a) of the Act.⁸ The Commission believes that the rule change is an appropriate limitation on specialists' and affiliated persons' trading and is designed to prevent fraudulent and manipulative actions. In addition, the Commission believes that it is appropriate to specify in the rule that the restrictions in Rule 104.13 apply to transactions effected for trust accounts that benefit the specialist or affiliated persons.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-94-38) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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⁷ 15 U.S.C. 78f(b)(1988).

⁸ The Commission approved the Rule 104.13(d) restriction against specialists originating orders in specialty stocks for any account over which they may have investment discretion in Securities Exchange Act Release No. 34231 (June 17, 1994), 59 FR 32722 (June 24, 1994).

⁹ 15 U.S.C. 78s(b)(2) (1988).

¹⁰ 17 CFR 200.30-3(A)(12) (1994).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ The tick restrictions provide that acquisitions may only be made at prices below the last different price—on "minus" or "zero minus" ticks, and liquidations may only be made at prices above the last different price—on "plus" or "zero plus" ticks. See NYSE Rule 104.13(b).

⁴ NYSE Rule 98 and its Guidelines provide exemptions from various NYSE rules affecting approved persons affiliated with specialist, including Rule 104.13. The exemptions are predicated on the existence of procedures to achieve a functional separation between the specialist organization and the approved person. The rule change amends the reference to Rule 104.13 in Rule 98 so that it reflects the changes to Rule 104.13 being approved herein.

⁵ Currently, the restriction states that specialists should not originate orders in specialty stocks for any accounts over which they may have discretion.

⁶ 15 U.S.C. 78k(a)(1988).