

to the calculated average of their near neighbors. A "Mean" group stock will be considered to have "relatively high performance" if its performance percentage is in the top quartile of all stocks in its stock category (*i.e.*, top 200, next 300, or other).

Each specialist unit would receive three reports each month containing the results of the near neighbor analyses for the three most recent months combined. These would include: (1) A Stock Detail Report for each stock that provides market data and performance information about the stock and each of the other stocks that were identified as its "near neighbors," (2) a Stock Summary Report that lists each stock and provides data on the performance of the target stock and the average performance of its near neighbors, as well as whether the target stock's performance is "Below Mean," "Mean," or "Above Mean," for each performance measure, and (3) a Specialist Unit Summary Report that shows, for each performance measure and within each stock category, the number of stocks that are in each group classification, and the percentage of the unit's total stocks that are in each group classification. The Unit Summary Report also shows the percentage of the unit's "Mean" group stocks that had high performance percentages.

The Allocation Committee would receive only the summary data appearing on the Specialist Unit Summary Report, which will be updated each month (covering the three most recent months) upon the distribution of the reports to the specialist units. The Allocation Committee would not receive performance data for individual stocks. The Allocation Committee would also receive a list of each unit's stocks that had fewer than three near neighbors and were automatically classified in the "Mean" group. Included with each stock will be its percentage of the unit's total dollar value of shares traded.

The Exchange is proposing that this new approach to measuring specialist performance be implemented on a fifteen month pilot basis. During the pilot period, the Exchange will continue to study the near neighbor methodology with a view toward recommending such enhancements or modifications as may be appropriate as experience is gained with this approach to evaluating specialist performance.

The Exchange is also proposing the following modifications to the specialist capital utilization performance measure to ensure commonality between it and near neighbor: (1) Exclusion of stocks with two classes of shares (*e.g.*, Class A

& Class B), "merger/acquisition" stocks if there was a significant impact on the price or volume, and stocks that have been delisted for more than half of the examination period;¹³ and (2) reduction of the performance review period from a "rolling" 12 months to a rolling three months. With respect to the new exclusion for stocks with two classes of shares and stocks subject to merger and acquisition activity that significantly impacts the price or volume of the subject security, the Exchange believes the stocks' trading patterns to be such that they cannot reasonably be compared to other stocks that do not trade in the same manner. The performance review period is proposed to be reduced to a rolling three month period in order to give more prompt feedback of performance changes.

2. Statutory Basis

The basis under Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act 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 a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these requirements in that developing objective measures of specialist performance using a near neighbor approach would help perfect the mechanism of a free and open market.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 has neither solicited nor received written comments on the proposed rule change.

¹³The rule filing and Amendment No. 1, *see supra* note 1, propose to exclude stocks which have been delisted for more than six months based upon the current rolling twelve month performance review period. However, because the Exchange is proposing to change the review period to a rolling three month period, the Exchange will amend the filing to provide that stocks which have been delisted for more than half the review period will be excluded. Conversation between Don Siemer, NYSE, and Katherine Simmons, SEC, May 1, 1995.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. 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 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-95-05 and should be submitted by May 30, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

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