

measure to run concurrently with the Rule 103A and near neighbor pilots. During the pilot period, the Commission continues to expect the NYSE to monitor carefully the effects of the near neighbor and capital utilization programs and report its findings to the Commission. Specifically, the Commission requests that the NYSE report the near neighbor and capital utilization data as presented to the Allocation Committee. In addition, the Exchange should, for a three month sample period,²⁰ submit a report that identifies the specialist units, the securities for which they applied, the stocks that were allocated to them, and the specialist units' SPEQ ratings as presented to the Allocation Committee.²¹ In the report, the Exchange should identify allocations that were made to specialist units with relatively poor tier ratings in the objective measures and discuss the reasons the Allocation Committee made such allocations.²²

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. In addition, interested persons were invited to comment on the past proposal to extend the effectiveness of the measure.²³ The Commission received no comments on this proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (File No. SR-

NYSE-95-24) be approved through September 10, 1996.

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

Jonathan G. Katz,
Secretary.

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[Release No. 34-35932; File No. SR-NYSE-95-06]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendment of the Exchange's Allocation Policy and Procedures

June 30, 1995.

On February 28, 1995, 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 the Exchange's Allocation Policy and Procedures ("Allocation Policy").

The proposed rule change was published for comment in Securities Exchange Act Release No. 35662 (May 2, 1995), 60 FR 22596 (May 8, 1995). No comments were received on the proposal.

The NYSE Allocation Policy governs the allocation of equity securities to NYSE specialist units.³ The intent of the Allocation Policy is to ensure that each equity security listed on the Exchange is allocated in the fairest manner possible to the best specialist unit for that security. In October 1994, the Commission permanently approved amendments to the Allocation Policy that revised, among other things, the allocation criteria, the composition of the Allocation Committee⁴ and

Allocation Panel,⁵ and the Committee's disclosure policy.

The Allocation Policy emphasizes that the most significant allocation criterion is specialist performance. In this regard, the Allocation Policy specifies that the Committee will base its allocation decisions on the Specialist Performance Evaluation Questionnaire ("SPEQ"),⁶ objective performance measures, and the Committee's expert professional judgment in considering the SPEQ, objective measures, and other criteria.⁷ The NYSE's current objective performance measures include: timeliness of regular openings, promptness in seeking floor official approval of a non-regulatory delayed opening, timeliness of DOT turnaround and response to administrative messages, a specialist's TTV⁸ and stabilization rates,⁹ and such other measures as may be adopted (and which are approved by the Commission pursuant to Section 19(b) of the Act). In addition, the NYSE has adopted two pilot programs, the capital utilization¹⁰

⁵ The composition of the Allocation Panel reflects the Committee structure and includes floor brokers, allied members, and floor broker Governors. The Panel comprises the pool of individuals from which the Committee is formed. The Panel members are selected through an annual appointment process that utilizes input from the membership. Panel members are appointed to serve a one-year term; Governors, however, remain on the Panel for as long as they are Governors. The Exchange has proposed to amend the structure of the Allocation Panel to include Senior Floor Officials. See Securities Exchange Act Release No. 35776 (May 30, 1995), 60 FR 30135 (June 7, 1995).

⁶ The SPEQ is a quarterly survey on specialist performance completed by eligible floor brokers (*i.e.*, any floor broker with at least one year of experience). The SPEQ consists of 21 questions and requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.

⁷ The Allocation Policy specifies that the other criteria that the Allocation Committee may consider in exercising its professional judgment are: listing company input, allocations received by the unit, capital available for market making, listing company input, disciplinary actions and justifiable complaints against the specialist unit, and foreign listing considerations.

⁸ TTV percentage is computed by totaling all purchases and sales by the specialist and determining what percentage this share volume is of the security's twice total volume.

⁹ The stabilization rate represents the percentage of specialist transactions which were stabilizing (buying as the price declined and selling as it rose).

¹⁰ The specialist capital utilization program measures the dollar value of a specialist's proprietary trading in relation to the total dollar value of shares traded in the specialist's stocks. The Commission approved the capital utilization measure on a one-year pilot basis in Securities Exchange Act Release No. 33369 (December 23, 1993), 58 FR 69431 (December 30, 1993). The Commission approved a six-month extension to the pilot program in Securities Exchange Act Release No. 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995) (extending pilot through June 30 1995). The Commission has extended the capital

Continued

²⁰ This sample period shall be January 1, 1996, through March 31, 1996.

²¹ The Commission believes that this information will allow it to evaluate the extent to which the Allocation Committee's decisions appear consistent with the relative performance of specialist units according to the objective measures. In this regard, however, the Commission recognizes that the Allocation Committee also considers the SPEQ results and may use its professional judgment in making allocation decisions. See *supra* notes 3 and 17.

²² The Exchange may submit one report for both the near neighbor and capital utilization pilots. This report should be submitted to the Commission by May 15, 1996, along with the Exchange's request for permanent approval or extension of the pilot programs.

²³ See Release No. 35175, *supra* note 10.

²⁴ 15 U.S.C. 78s(b)(2) (1988).

²⁵ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ The NYSE Allocation Policy applies to the allocation of equity securities under the following circumstances: (1) when an equity security is to be initially listed on the NYSE; (2) when an equity security is to be reallocated as a result of disciplinary or other proceedings under NYSE Rules 103A, 475, or 476; or (3) when a specialist unit voluntarily surrenders its registration in a security as a result of possible disciplinary or performance improvement actions.

⁴ Under the Allocation Policy, the NYSE Allocation Committee has sole responsibility for the allocation of securities to specialist units pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of the Board of Directors. The Allocation Committee renders decisions based upon the allocation criteria specified in the Allocation Policy.

and near neighbor¹¹ objective measures of specialist performance.

The Exchange proposes to amend the Allocation Policy to limit the weight that the SPEQ may be given in the allocation decision making process to no more than 25%. Currently, the Policy permits the Allocation Committee to grant up to one-third weight to SPEQ results in its allocation decisions.

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) of the Act.¹² Section 6(b)(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. Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act¹³ and Rule 11b-1 thereunder,¹⁴ which allow exchanges to promulgate rules relating to specialists to ensure fair and orderly markets. For the reasons set forth below, the Commission believes that limiting the weight given the SPEQ 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 the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.¹⁵ To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock allocation procedures and policies that provide specialists with an initiative to strive for optimal performance.

Although the SPEQ remains a useful tool to measure performance, the

utilization program pilot so that the Exchange and the Commission may evaluate the capital utilization and near neighbor programs concurrently. See Securities Exchange Act Release No. 35926 (June 30, 1995) (extending pilot through September 10, 1996).

¹¹ The near neighbor approach to evaluating specialist performance compares the performance in a stock over rolling three-month periods to the performance of stocks with similar trading characteristics. The Commission approved the near neighbor program on a pilot basis in Securities Exchange Act Release No. 35927 (June 30, 1995).

¹² 15 U.S.C. 78f(b)(5) (1988).

¹³ 15 U.S.C. 78k(b) (1988).

¹⁴ 17 CFR 240.11b-1 (1994).

¹⁵ See 17 CFR 240.11b-1 (1994); NYSE Rule 104.

Commission has long believed that objective indications of performance should play an important role in allocation decisions. In particular, the Commission believes that objective performance measures can identify poor market making performance that otherwise may not be reflected in a unit's SPEQ survey results. In this regard, the Commission notes that the Exchange has initiated, on a pilot basis, the capital utilization and near neighbor programs. In light of these additional objective measures of specialist performance, the Commission believes that it is appropriate to limit the weight that the SPEQ may be given in allocation decisions to one quarter, thereby increasing the emphasis given to objective measures of performance. In addition, the Commission notes that a reduction in the weight given the SPEQ from one-third to 25% is relatively minor, especially given the additional objective measures to be considered by the Allocation Committee. Nevertheless, to the extent that the near neighbor and capital utilization measures are only adopted on a pilot basis, if those measure are not extended or permanently approved, the Commission would expect the NYSE to re-evaluate the Allocation Policy to ensure there are adequate indicia of performance being considered by the Allocation Committee.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-NYSE-95-06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jonathan G. Katz,
Secretary.

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[Release No. 34-35927; File No. SR-NYSE-95-05]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Near Neighbor Approach to Measuring Specialist Performance

June 30, 1995.

I. Introduction

On February 28, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section

¹⁶ 15 U.S.C. 78s(b)(2) (1988).

¹⁷ 17 CFR 200.30-3(a)(2) (1984).

19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a new approach to measuring specialist performance that would be used in allocation decisions and modify an existing measure of specialist performance.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35661 (May 2, 1995), 60 FR 22593 (May 8, 1995). No comments were received on the proposal.

II. Description

The NYSE proposes to adopt, on a pilot basis, the near neighbor measure of specialist performance to be considered by the Allocation Committee in allocating stocks to specialist units.³ The Exchange also proposes some modifications to its existing capital utilization measure, which is currently used by the Allocation Committee on a pilot basis.⁴

The near neighbor measure compares the performance in a stock over "rolling" three-month periods to the performance of stocks with similar trading characteristics ("near neighbors"). The near neighbor program analyzes the following market quality measures: (1) Continuity, which is the

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ The Exchange's Allocation Policy and Procedures governs the allocation of equity securities to NYSE specialist units. The Allocation Committee has sole responsibility for the allocation of securities to specialist units pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of the Board of Directors. The Allocation Committee renders decisions based upon the allocation criteria specified in the Allocation Policy. The Allocation Policy states that the Allocation Committee will base its allocation decisions on the Specialist Performance Evaluation Questionnaire ("SPEQ"), objective performance measures, and the Committee's expert professional judgment. See also note 13, *infra*. The Allocation Committee currently considers the capital utilization measure, in addition to several other objective performance measures. See, e.g., Securities Exchange Act Release No. 35927 (June 30, 1995) (discussing NYSE Allocation Policy and Procedures).

⁴ The specialist capital utilization program measures the dollar value of a specialist's proprietary trading in relation to the total dollar value of shares traded in the specialist's stocks. The Commission approved the capital utilization measure on a one-year pilot basis in Securities Exchange Act Release No. 33369 (December 23, 1993), 58 FR 69431 (December 30, 1993). The Commission approved a six-month extension to the pilot program in Securities Exchange Act Release No. 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995) (extending pilot through June 30, 1995). The Commission has extended the capital utilization program pilot so that the Exchange and the Commission may evaluate the capital utilization and near neighbor programs concurrently. See Securities Exchange Act Release No. 35926 (June 30, 1995) (extending pilot through September 10, 1996).