

securities principals and representatives.¹³

Finally, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the uniform implementation of the continuing education program on July 1, 1995. The Commission notes that the 15 day notice period provided for in the notice has expired. The Commission notes further that the rule change establishing the continuing education program was noticed in the **Federal Register** for the full statutory period¹⁴ and that on August 15, 1994, the NASD published Special Notice to Members 94-59 to request comment regarding the NASD's then draft rules to create a mandated continuing education program for the securities industry. As a result, commentators have had an extensive opportunity to comment on the requirements of the continuing education program.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NASD-95-22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jonathan G. Katz,

Secretary.

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[Release No. 34-35929; File No. SR-NYSE-95-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 460.20

June 30, 1995.

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 May 26, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission

¹³ Telephone conversation between Donald Hammond, Assistant Director, Government Securities Regulation Staff, Treasury, and Glen Barrentine, Senior Counsel, Division of Market Regulation, Commission, on June 29, 1995.

¹⁴ See Securities Exchange Act Release No. 35102 (December 15, 1994), 59 FR 65563.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

("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 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 an amendment to NYSE Rule 460.20 that would delete the requirement for an associated specialist of an approved person acting as an underwriter in a distribution of a security in which the associated specialist is registered to "give up the book" commencing with the "cooling-off" period specified in Rule 10b-6 under the Act¹ until the approved person has completed its participation in the distribution.

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections 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

1. Purpose

Currently, when an affiliated entity is participating in a distribution of a security in which the specialist organization is registered, the specialist organization is required to withdraw from the market commencing with the

¹ Rule 10b-6 is an anti-manipulation rule that, subject to certain exceptions, prohibits persons engaged in a distribution of securities from bidding for or purchasing, or inducing others to purchase, such securities, any security of the same class and series as those securities, or any right to purchase any such security ("related securities") until they have completed their participation in a distribution. The provisions of Rule 10b-6 apply to issuers, selling shareholders, underwriters, prospective underwriters, dealers, brokers, and other persons who have agreed to participate or are participating in the distribution, as defined in Rule 10b-6(c)(5), and their "affiliated purchasers," as defined in Rule 10b-6(c)(6), including broker-dealer affiliates. The applicable cooling off period is described in (xi) and (xii) of Rule 10b-6(a)(4). See 17 CFR 240.10b-6(a)(2) through (c)(6).

applicable cooling off period specified in Rule 10b-6 under the Act until the affiliate has completed its participation in the distribution.² NYSE Rule 460.20 provides that the specialist organization must "give up the book" (i.e., cease to function as a market maker) to an unaffiliated specialist organization, which then assumes all market making responsibilities under NYSE rules, until the approved person (affiliate) has completed its participation in the distribution, at which time the regular specialist organization regains the "book" and resumes its market making activities.

In May 1993, the Commission approved amendments to Rule 10b-6, and the adoption of new Rule 10b-6A, to permit NASD market makers to continue to make markets in a stock while participating in an underwriting of that stock, subject to several restrictions on their level of market making activity. (These restrictions are popularly referred to as "passive market making.")³ The Commission's passive market making restrictions cannot be appropriately extended to Exchange specialists, who are subject to an affirmative obligation to deal when necessary to contribute to the maintenance of a fair and orderly market. The Exchange is concerned, however, that failure to provide exemptive relief from Rule 10b-6 for NYSE specialist units affiliated with underwriting firms may have a detrimental effect on the Exchange's ability to compete for issuer listings and on the willingness of large firms to invest capital in the specialist business.

The Exchange has filed a request with the Commission⁴ for exemptive relief

² See Rule 10b-6(a)(4)(xi), 17 CFR 240.10b-6(a)(4)(xi).

³ See Securities Exchange Act Release No. 32117 (Apr. 8, 1993), 58 FR 19528. In general, Rule 10b-6A permits "passive market making" in connection with the distributions of certain securities quoted on the Nasdaq Stock Market during the Rule 10b-6 cooling-off period, the period when the rule's provisions otherwise would prohibit such transactions. A passive market maker's bids and purchases, however, are limited to the highest current independent bid i.e., a bid of a market maker who is not participating in the distribution and is not an affiliated purchaser of a participating market maker. Furthermore, Rule 10b-6A contains certain eligibility criteria, volume limitations on purchases, and notification and disclosure requirements. See Rule 10b-6A(c)(2) (Level of Bid), (c)(3) (Requirements to Lower the Bid), (c)(4) (Purchase Limitation), (c)(5) (Limitation on Displayed Size), (c)(6) (Identification of a Passive Market Making Bid), (c)(7) (Notification and Reporting to the NASD). See 17 CFR 240.10b-6A(c)(2) through (c)(6).

⁴ The Division of Market Regulation ("Division") is currently reviewing the Exchange's petition requesting regulatory relief. At the conclusion of the Division's review, the Division will make publicly

Continued

from certain provisions of Rules 10b-6 and 10b-13 ("Petition for Exemptive Relief").⁵ The proposed rule change contained in this 19b-4 filing would delete the requirement to "give up the book" in order to make Rule 460.20 compatible with the Exchange's Petition for Exemptive Relief.⁶ Rule 10b-6 currently requires an "affiliated purchaser" (i.e., the specialist organization that is associated with a broker-dealer participant in a distribution of a security in which the specialist organization is registered) to withdraw from the market during a certain period before and during the distribution.⁷ The proposed relief would allow such a specialist organization to continue to make a market in such stocks during such period, provided that it has obtained an exemption from certain Exchange rules pursuant to Exchange Rule 98 and agrees to certain monitoring requirements.

Rule 98 affords exemptive relief for entities in a control relationship with a specialist organization from restrictions in NYSE Rules 104, 104.13, 105, 113.20, and 460.10 that would otherwise be applicable to such entities' transactions in securities in which the specialist organization is registered, or to business transactions with the issuers of such securities.⁸ Pursuant to Rule 98 and the

available both the Exchange's petition and the Division's response to the petition. Any exemptive relief granted would supersede the relief previously granted by the Commission in *Letter regarding Application of Rules 10b-6 and 10b-13 to Specialists Affiliated with NYSE Member Firms*, (TP File No. 92-284) (Sept. 15, 1992).

⁵ Rule 10b-13 under the Act, among other things, prohibits a person making a tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase any such security (or any security that is immediately convertible or exchangeable for such security), otherwise than pursuant to the offer, from the time the offer is publicly announced until its expiration, including any extension thereof. Rule 10b-13 also applies to the dealer-manager of a tender offer because the dealer-manager acts as the agent of the bidder to facilitate the bidder's objectives. See 17 CFR 240.10b-13.

The Exchange is seeking relief from Rule 10b-13 to allow affiliated specialists to continue their market making functions in their respective specialty securities in connection with certain mergers or tender or exchange offers in which an affiliated broker-dealer is participating.

⁶ The Exchange's proposal is to conform NYSE rules with the exemption to be granted separately by the Division in response to the Exchange's Petition for Exemptive Relief. Therefore, the approval of the proposed rule change is contingent upon the Division granting the requested exemptive relief.

⁷ Absent an exemption from or exception to Rule 10b-6, Exchange specialists that are affiliated with a person participating in a distribution of securities would be precluded from bidding for or purchasing such securities, any security of the same class and series as those securities, or any related securities.

⁸ See NYSE Rule 104 (limiting a specialist's ability to effect purchases and sales regarding

implementing guidelines promulgated thereunder, the specialist organization and the affiliated entity must be operated as separate and distinct organizations, and "Chinese Wall" procedures must be established that place substantial limits on access to, and communication of, trading information, including positions and strategies, between the two organizations. Rule 98 exemptive relief is conditioned on the organizations' receiving prior written approval from the Exchange, which conducts an annual review to ensure that all conditions for the exemption are being met.

The Exchange believes that the restrictions on the flow of information between the affiliated specialist and its approved person contained in Exchange Rule 98, along with the additional safeguards (such as transaction monitoring by the Exchange, the specialist and the approved person) contained in its Petition for Exemptive Relief, make it appropriate to amend Rule 460.20 to delete its requirement for such specialist to "give up the book" to an unaffiliated specialist during a distribution in which the approved person participates.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

affiliated entities); NYSE Rule 104.13 (requiring that certain transactions be effected only for investment purposes); NYSE Rule 105 (limiting a specialist's interests in pools and options); NYSE Rule 113.20 (prohibiting a specialist from "popularizing" any security in which it is registered); NYSE Rule 460.10 (prohibiting control relationships, business transactions, and finder's fees between the issuer and the specialist).

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 Exchange. All submissions should refer to File No. SR-NYSE-95-21 and should be submitted by July 26, 1995.

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

Jonathan G. Katz,
Secretary.

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[Release No. 34-35926; File No. SR-NYSE-95-24]

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

June 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")¹ and Rule 19b-4 thereunder,²

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).