

TABLE 2.—NRC AGREEMENT STATES, AS OF JUNE 30, 1995—Continued

Illinois Iowa	Nevada New Hampshire New Mexico	Texas. Utah. Washington.
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TABLE 3.—RCRA REGULATORY REQUIREMENTS FOR MIXED WASTE

Facility located in	Applicable requirements
State not authorized for base RCRA Program ..	Mixed waste is subject to Federal RCRA Subtitle C requirements. State may impose additional requirements.
State authorized for base RCRA program but not for mixed waste.	Mixed waste is not subject to RCRA Subtitle C requirements. State may impose non-RCRA mixed waste requirements.
State authorized for base RCRA program and mixed waste (mixed waste authorized State).	Mixed waste is subject to authorized State RCRA requirements.*

* Under § 3008(a)(2) of the SWDA, EPA retains enforcement authority in authorized States.

References

40 CFR Part 260, Hazardous Waste Management System: General Title 40, Code of Federal Regulations, § 260.10.

U.S. Environmental Protection Agency and U.S. Nuclear Regulatory Commission, 1989, "Guidance on the Definition and Identification of Commercial Mixed Low-Level Radioactive and Hazardous Waste and Answers to Anticipated Questions."

National Profile on Commercially Generated Low-level Radioactive Mixed Waste, NUREG/CR-5938, December 1992.

List of Regulations

Environmental Protection Agency General Regulations for Hazardous Waste Management, 40 CFR Part 260.

Environmental Protection Agency Regulations for Identifying Hazardous Waste, 40 CFR Part 261.

Environmental Protection Agency Regulations for Hazardous Waste Generators, 40 CFR Part 262.

Environmental Protection Agency Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, 40 CFR Part 264.

Environmental Protection Agency Interim Status Standards for Owners and Operators of Hazardous Waste Facilities, 40 CFR Part 265.

Environmental Protection Agency Regulations on Land Disposal Restrictions, 40 CFR Part 268.

Nuclear Regulatory Commission Regulations—Standards for Protection Against Radiation, 10 CFR Part 20.

Nuclear Regulatory Commission Regulations—Rules of General Applicability to Domestic Licensing of Byproduct Material, 10 CFR Part 30.

Nuclear Regulatory Commission Regulation—Domestic Licensing of Source Material, 10 CFR Part 40.

Nuclear Regulatory Commission Regulations—Domestic Licensing of Production and Utilization Facilities, 10 CFR Part 50.

Nuclear Regulatory Commission Regulations—Licensing Requirements for Land Disposal of Radioactive Waste, 10 CFR Part 61.

Appendix A

NRC Guidance Documents on the Storage of Radioactive Waste

1. NRC Generic Letter 81-38, Storage of Low-Level Radioactive Wastes at Power Reactor Sites.

2. NRC Generic Letter 85-14, Commercial Storage at Power Reactor Sites of Low-Level Radioactive Waste Not Generated by the Utility.

3. NRC Information Notice No. 89-13, Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites.

4. NRC Information Notice 90-09, Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees.

[FR Doc. 95-19359 Filed 8-4-95; 8:45 am]

BILLING CODE 7590-01-P

Membership on the Executive Resources Board

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to the Executive Resources Board for the Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Executive Resources Board.

The following individuals are appointed as members of the NRC Executive Resources Board responsible for providing institutional continuity in executive personnel management by overseeing NRC's Senior Executive Service (SES) and Senior Level System (SLS) merit staffing, succession planning, and position management activities.

New Appointees

Leonard J. Callan, Regional Administrator, Region IV

David L. Morrison, Director, Office of Nuclear Regulatory Research

Carl J. Paperiello, Director, Office of Nuclear Material Safety & Safeguards

In addition to the above new appointments, the following members are continuing on the ERB:

James M. Taylor, Executive Director for Operations

James L. Milhoan, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations & Research, Office of the Executive Director for Operations

Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations

Karen D. Cyr, General Counsel, Office of General Counsel

William T. Russell, Director, Office of Nuclear Reactor Regulation

Patricia G. Norry, Director, Office of Administration

Paul E. Bird, Director, Office of Personnel

Stuart D. Ebnetter, Regional Administrator, Region II

Edward L. Jordan, Director, Office for Analysis and Evaluation of Operational Data

Carlton R. Stoiber, Director, Office of International Programs

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT:

James F. McDermott, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301) 415-7516.

Dated at Rockville, Maryland, this 1st day of August, 1995.

For the U.S. Nuclear Regulatory Commission.

James F. McDermott,

Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission.

[FR Doc. 95-19360 Filed 8-4-95; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-7202; 34-36044; International Series Release No. 833]

Exemptions From Rules 10b-6 and 10b-13 for New York Stock Exchange Specialists

August 1, 1995.

Pursuant to delegated authority, on July 31, 1995, the Division of Market Regulation issued a letter ("NYSE Specialist Letter") granting exemptions from Rules 10b-6 and 10b-13 under the Securities Exchange Act of 1934 to allow New York Stock Exchange specialists to continue to act in their specialist capacity during a distribution of or a tender offer for specialty securities when they otherwise would be subject to those rules because of their affiliates' participation in such a distribution or tender offer. The NYSE Specialist Letter has been issued in the context of a continuing review of Rule 10b-6, and is published to provide notice of the availability of these exemptions.

Margaret H. McFarland,

Deputy Secretary.

April 28, 1995.

Mr. Jonathan G. Katz,

Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549

Dear Mr. Katz: The New York Stock Exchange, Inc. (the "Exchange" or "NYSE") is writing to request relief from the restrictions of Rule 10b-6 for certain specialist organizations that are affiliated with an organization engaged in a fixed price, firm commitment underwriting (hereafter referred to as a "distribution") of a security in which the specialist organization makes a market (a "specialty stock") where the two organizations are conducting their respective operations pursuant to NYSE Rule 98.

The Exchange is also requesting relief from the restrictions of Rule 10b-6 and Rule 10b-13 for such specialist organizations that are affiliated with the dealer-manager of an exchange or tender offer of a specialty stock, to the extent the specialist organization is bidding for or purchasing the security in the course of market making activities and not for the purpose of participating in the exchange or tender offer.

The Exchange believes that exemptive relief is appropriate in that (i) NYSE specialist organizations are subject to strict affirmative and negative obligations that restrict the specialist's ability to influence the price of, or condition the market for, a specialty stock; (ii) the Exchange's Rule 98 procedures mandate information barriers that preclude the flow of material non-public market information between a specialist organization and its affiliates; and (iii) the Exchange has appropriate surveillance capability and will conduct detailed surveillances and reviews of trading in

conjunction with activities subject to Rule 10b-6 and Rule 10b-13. The Exchange proposes that the exemptive relief sought herein be subject to the conditions specified below. The Exchange undertakes to submit such monitoring reports as the Commission deems appropriate.

Under separate cover, the Exchange is submitting, pursuant to the Commission's Rule 19b-4, a filing to amend NYSE Rule 460.20 to delete references to "giving up the book" by an Exchange specialist associated with a broker dealer that has obtained exemptive relief from specified NYSE rules pursuant to NYSE Rule 98.

Current Application of Rule 10b-6 to NYSE Specialists Affiliated With a Participant in a Distribution

NYSE Rule 460.10 prohibits Exchange specialist organizations and their affiliates from engaging in any "business transaction" with any company in whose stock the specialist organization is registered. The term "business transaction" is interpreted to include, among other matters, participating in a distribution of a security issued by such company.

Exchange Rule 98 provides an exemption from Rule 460.10 for affiliates of a specialist organization that conduct their operations pursuant to the Rule's requirements. The Rule 98 exemption is available only to the *affiliate*; under no circumstances may the specialist organization itself participate in any distribution of a security issued by a company in whose stock the specialist organization is registered.

Today, when an affiliated entity is participating in a distribution of a security stock, the specialist organization is required to withdraw from the market commencing with the applicable Rule 10b-6, "cooling off" period until the affiliate has completed its participation in the distribution. NYSE Rule 460.20 provides that the specialist organization must "give up the book" (i.e., cease to function as 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.

Current Application of Rule 10b-3 to NYSE Specialists Affiliated With a Dealer-Manager of an Exchange or Tender Offer

Rule 10b-13 generally prohibits any person making a tender offer from purchasing or making arrangements to purchase the security that is the subject of a tender offer from the time of the public announcement of the tender offer until its expiration. The Exchange understands that the Commission staff appears to have taken the interpretive position the Rule 10b-13 applies generally to the dealer-manager in connection with a tender offer. Thus, under Rule 10b-13, absent exemptive relief, a specialist organization affiliated with such dealer-manager would be prohibited from purchasing any such security that was a specialty stock during an exchange or tender offer.

In September 1992, the Division of Market Regulation granted the Exchange's request that a specialist organization be exempt from Rules 10b-6 and 10b-13, under specified conditions, where an affiliate that had obtained an exemption pursuant to Rule 98 was participating in a distribution or acting as dealer-manager of a tender or exchange offer.¹ The exemption permits the specialist organization to continue to function in its market capacity up until the period commencing five business days before the scheduled termination of the subject offer. The Exchange is seeking herein to broaden the exemption to permit the specialist organization to continue to function in its market making capacity during the entire offer period.

Disparities in Regulation

The Exchange wishes to note that currently there is a disparity between regulatory treatment of over-the-counter market makers and Exchange specialists. Market makers for over-the-counter issuers need not withdraw from the market if they are participating in a distribution of an issuer's securities, as they can continue to make markets subject to the passive market making tests. An NYSE specialist affiliated with a participant in a distribution of specialty security must, however, withdraw from the market, with the market making function then being assumed by a relief specialist. An over-the-counter issuer may view this disparate treatment of market makers as a possible reason to remain listed in the over-the-counter market, as it may perceive less potential disruption of the market making function in the over-the-counter market. Thus, the current regulatory scheme may have a negative impact on the Exchange's ability to attract new listings.

The current disparity in regulation may also operate as a disincentive for large, diversified NYSE member firms to enter, and commit capital to, the specialist business. Such firms may have to weight investment banking opportunities against the potential negative impact, both in terms of issuer relations and operational efficiencies, that may result when an affiliated Specialist is required to cease all market making activity in a specialty security subject to distribution. Such a potential negative impact may make specializing on the NYSE appear to be less attractive as a business proposition.

Affirmative and Negative Obligations of Specialists Under Exchange Rules

Exchange specialists are subject to affirmative and negative obligations with respect to their responsibilities to maintain fair and orderly markets. The negative obligation is codified in Exchange Rule 104, which provides that a specialist shall not effect a proprietary transaction in a specialty stock "unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer in such security." The

¹ See letter from William Heyman, Director, Division of Market Regulation, Securities and Exchange Commission to Robert McSweeney, Senior Vice President, Market Surveillance Division, New York Stock Exchange, dated September 15, 1992.

affirmative obligation is codified in Rule 104.10(2), which provides that, "In connection with the maintenance of a fair and orderly market, it is commonly desirable that a member acting as specialist engage to a reasonable degree under existing circumstances in dealings for his own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated."

The affirmative and negative obligations constitute the foundation of the NYSE's regulation of specialists. They preclude a specialist from trading when there is sufficient buying and selling interest to maintain a fair and orderly market, and require the specialist to trade to minimize short-term disparities in supply and demand. In the context of trading by a specialist while an affiliate is engaged in a distribution of a specialty stock, the negative obligation would bar trading by a specialist to influence the price of the stock when the market is otherwise fair and orderly; the affirmative obligation similarly restricts the ability of a specialist to influence a stock's price by requiring the specialist to react to short-term imbalances in supply and demand, and trade on whichever side of the market will be contra to the overall market trend. Thus, the affirmative and negative obligations significantly inhibit the specialist's ability to effect transactions for market conditioning purposes, which is the type of transaction Rule 10b-6 is intended to prohibit.

We are enclosing as an attachment several pages from the Exchange's Floor Official Manual which discuss the affirmative and negative obligations in detail, and which cross-reference these obligations to specific restrictions on specialist's trading as codified in various provisions of Rule 104.

Rule 98 Information Barriers

As noted above, this request for exemptive relief requires the specialist and affiliated organization to have Exchange approval under NYSE Rule 98 and its Guidelines. NYSE Rule 98 affords exemptive relief for entities in a control relationship with a specialist organization from restrictions in NYSE Rule 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 transaction with the issuers of such securities. Pursuant to Rule 98 and the implementing guidelines promulgated thereunder, the specialist organization and the affiliated entity must be operated as separate and distinct organizations, and information barriers 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. The functional separation procedures that must be implemented pursuant to Rule 98 preclude the transfer of market-sensitive information between a specialist organization and an affiliate, and minimize potential conflicts of interest whereby one entity might otherwise

be inclined to take market action for the purpose of benefiting the other entity.

The Exchange notes that the procedures specified in Rule 98 are consistent with procedures pertaining to the establishment of information barriers, monitoring of such barriers, and notice (in the case of Rule 98, to the Exchange) as described in the Commission's recent exemptive letter to CS Holding (TP File No. 94-267).

Through Exchange Rule 342 (Supervision), each member organization afforded exemptive relief under Rule 98 is required to monitor the procedures adopted to comply with the Guidelines. The Exchange inspects its member organizations afforded such relief on an annual basis for adherence to these supervisory requirements.

Exchange Surveillance

Since the adoption of Rule 10b-6 in 1955, the Exchange has made substantial investments in sophisticated surveillance procedures, including comprehensive audit trail submissions by member firms, and extensive use of software analytics designed to assist in reviewing this and other data available for such surveillance. For example, the Market Analysis and Reconstruction System (MARS) enables Exchange analysts to retrieve and review trading information dynamically and, utilizing information in the Exchange's existing data base, enables these analysts to review trading for anomalies using many combinations of analytical criteria.

The Exchange will conduct surveillance and reviews of specialist trading activity when an affiliated organization is involved in trading activities in a specialty stock subject to Rule 10b-6 or Rule 10b-13 that are specifically designed to highlight such trading for any possible manipulative intent.

Conditions for Exemptive Relief From Rule 10b-6 and Rule 10b-13

The Exchange believes that exemptive relief for a specialist organization affiliated with a participant in a distribution that has obtained exemptive relief pursuant to Rule 98 (an "Affiliated Specialist" and an "Affiliated Broker-Dealer") would be appropriate under the following conditions:

1. *Issuer Qualification Standards.* The security being distributed, or any security of the same class or series as those securities, or any right to purchase such security, or any security that is the subject of a transaction to which Rule 10b-13 is applicable ("Subject Security") must qualify for the two business day cooling-off period specified in paragraphs (a)(4) (v), (xi) and (xii)(A) of Rule 10b-6.

2. *Establishment of Information Barriers.* The Affiliated Specialist and the Affiliated Broker-Dealer must have, and implement effectively, written policies and procedures designed to segregate the flow of confidential market-sensitive information, including distribution information, between the Affiliated Specialist and the Affiliated Broker-Dealer. The policies and procedures must have been approved by the NYSE as conforming to the requirements of NYSE Rule 98.

3. *Monitoring of Information Barriers.* During the timeframe commencing with the

two business day cooling-off period until the distribution participant has completed its participation in the distribution ("Rule 10b-6 Covered Period"), the Affiliated Specialist and the Affiliated Broker-Dealer must conduct a daily review of transactions in the Subject Securities effected by the Affiliated Specialist and the Affiliated Broker-Dealer, respectively, and by Affiliated Purchasers, as that term is defined in Rule 10b-6(c)(i). Any irregular trades by the Affiliated Specialist, the Affiliated Broker-Dealer, and any Affiliated Purchaser, or suspected breaches of the Information Barriers, must be reported immediately to the NYSE.

4. *Notice of Breach.* Should any Affiliated Specialist or Affiliated Broker-Dealer discover that there was a breach of the Information Barriers during the Rule 10b-6 Covered Period, it must provide immediate notice to the NYSE of such occurrence. Upon request of the SEC Division of market Regulation (the "Division"), the Affiliated Specialist and/or Affiliated Broker-Dealer shall provide the Division with a written analysis of the circumstances surrounding that breach.

5. *Annual Compliance Review.* a. As part of the annual review specified in Exchange Rule 342.30, each Affiliated Specialist and each Affiliated Broker-Dealer must include a review, conducted by a person independent of the business line being reviewed, of its compliance during the calendar year with the terms of this exemption, including its operation and any breaches of information barriers, and report on such review to its management; or (ii) prepare a statement ("Statement") that it did not participate in any distributions of a Subject Security during the calendar year if such is the case. Upon a request from the Division, such reviews, management reports, and statements must be supplied to the Division within 15 days of the request.

b. Prior to relying on this exemption, each Affiliated Broker-Dealer and Affiliated Specialist must submit to the Division a written explanation of how it will comply with the review noted in paragraph (a) above. The explanation of the review must describe, among other things, the review plan, the scope of the review, how the review will be conducted, and the title of the person or group who will conduct the review.

6. *NYSE Surveillance.* The NYSE shall establish and implement special surveillance procedures to review all trading by the Affiliated Specialist and Affiliated Broker-Dealers in Subject Securities during the Rule 10b-6 Covered Period, including on-line surveillance of trading by the Affiliated Specialist and off-line surveillance of trading by Affiliated Broker-Dealers. The NYSE also will review trading in Subject Securities by the Affiliated Specialist and Affiliated Broker-Dealers for a ten business day period prior to the commencement of the Rule 10b-6 Covered Period and for two business days thereafter. With respect to transactions subject to Rule 10b-13 (the "Subject Offer"), the NYSE will review all trading by the Affiliated Specialist for the period commencing with public announcement of the Subject Offer, and reconstruct all Affiliated Specialist trading on a daily basis

from the period two business days prior to the commencement of the Subject Offer until the conclusion of the Subject Offer, to detect possible market manipulation and to monitor compliance by the Affiliated Specialist with its obligations under NYSE rules.

7. *Notice of Participation.* Affiliated Broker-Dealer must notify the NYSE of their participation in any distribution during which the Affiliated Specialist will continue its specialist activities in Subject Securities pursuant to the exemption granted herein. At a minimum, the Affiliated Broker-Dealer must provide the NYSE advance notice, on the business days prior to commencement of the Rule 10b-6 cooling-off period, of the dates of the Rule 10b-6 Covered Period and notice of the completion of the distribution.

8. *Recordkeeping.* A. All documents required under this Exemption shall be kept for a period of not less than two years. Reports of annual compliance reviews must be retained for a period of three years.

b. None of the requirements of these exemptions shall have any effect upon the obligations of any Affiliated Specialist or Affiliated Broker-Dealer to make, preserve, or produce records pursuant to any other provision of the federal securities laws, or the rules of the Exchange.

9. *Disclosure.* The Affiliated Broker-Dealer shall include in the "Plan of Distribution" section of the prospectus, pursuant to Rule 408 under the Securities Act of 1933, a brief description of the activities of the Affiliated Specialist and the exemption granted herein. When an Affiliated Broker-Dealer is participating in a distribution as a managing or co-managing underwriter, the inside front cover page of the prospectus shall display prominently a statement to the effect that the Affiliated Specialist will act in its specialist capacity in the Subject Security pursuant to the exemption granted herein.

10. *Analysis.* The NYSE will provide the Division with a written analysis of the operation of the exemption granted herein for the 18-month period commencing from the date exemptive relief is granted.

In all other respects, the Affiliated Specialist and its Affiliated Broker-Dealer must comply with the provisions of Rules 10b-6 and 10b-13. No bids or purchases of Subject Securities by the Affiliated Specialist or Affiliated Broker-Dealers may be effected for the purpose of creating actual, or apparent, active trading in a Subject Security or raising the price of a Subject Security. In addition, Affiliated Specialists and Affiliated Broker-Dealers availing themselves of the exemption herein must comply with the anti-fraud and anti-manipulation provisions of the Securities Exchange Act of 1934, particularly Section 9(a), Section 10(b), and Rule 10b-5 thereunder.

We have enclosed a description of surveillance of specialist trading activity when an affiliate is engaged in a distribution of a specialty security. Confidential treatment is requested pursuant to the Freedom of Information Act and the applicable SEC rules thereunder. Such treatment is requested on the grounds, among others, that the information submitted may contain confidential financial data of private parties as well as sensitive surveillance data,

disclosure of which may significantly impair the effectiveness of the Exchange's self-regulatory mechanism. Accordingly, should any request be made for disclosure of these materials, or their contents, we ask that you notify us of this fact immediately, giving us an opportunity to interpose our objections.

Sincerely,

James E. Buck,
Senior Vice President and Secretary.
July 31, 1995.

Mr. James E. Buck,
Senior Vice President and Secretary,
New York Stock Exchange, Inc.,
11 Wall Street,
New York, N.Y. 10005.

Re: Application of Rules 10b-6 and 10b-13 to New York Stock Exchange Specialists File No. TP 94-293

Dear Mr. Buck: In regard to your letter dated April 28, 1995, as supplemented by conversations with the staff, this response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter. Each defined term in this letter has the same meaning as defined in your letter unless otherwise noted herein.¹

Response:

Subject to certain exceptions, Rule 10b-6 under the Securities Exchange Act of 1934 ("Exchange Act") prohibits persons participating in a distribution of securities and their "affiliated purchasers," as defined in paragraph (c)(6)(i) of Rule 10b-6 ("Affiliated Purchaser"), from bidding for or purchasing, or inducing others to bid for or purchase, such securities, or any security of the same class and series as those securities, or any right to purchase any such security ("Subject Securities"), until they have completed their participating in the distribution. Paragraph (a)(4)(xi) ("exception ix") of Rule 10b-6 excepts from this prohibition bids for or purchases of the Subject Securities effected by an underwriter, prospective underwriter, or dealer, and their affiliated purchasers, prior to two or nine business days before the commencement of offers or sales of the security to be distributed ("cooling-off period"). Once the cooling-off period commences, Rule 10b-6 requires the distribution participant and its affiliated purchasers to cease bidding for or purchasing the Subject Securities until the distribution participant has completed its participation in the distribution ("Rule 10b-6 Covered Period"), as set forth in paragraph (c)(3) of Rule 10b-6.

Because a New York Stock Exchange, Inc. ("NYSE") specialist organization ("Affiliated Specialist") affiliated with a distribution participant would be an Affiliated Purchaser, such Affiliated Specialist would be required

¹ The letter supersedes our letter dated September 15, 1992, which granted exemptions from Rules 10b-6 and 10b-13 under the Securities Exchange Act of 1934 ("Exchange Act") to permit specialists affiliated with member broker-dealer organizations to continue to function as specialists in their respective specialty securities in connection with certain mergers and tender or exchange offers in which the affiliated broker-dealer participates in a distribution or acts as dealer-manager of a tender or exchange offer.

to suspend its specialist activities in a Subject Security during the applicable cooling-off period until any affiliated broker-dealer ("Affiliated Broker-Dealer") has completed its participation in the distribution.

Rule 10b-13, among other things, prohibits a person making a cash tender offer or exchange offer for an equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security or any security which is immediately convertible into or exchangeable for such security, otherwise than pursuant to the offer, from the time the offer is publicly announced until its expiration ("Rule 10b-13 Covered Period"). Rule 10b-13 applies to the dealer-manager of the offer (and affiliates of the dealer-manager, including an Affiliated Specialist) because the dealer-manager acts as the agent of the bidder to facilitate the bidder's objectives.

Currently, to ensure compliance with Rule 10b-6(a)(4)(xi), the NYSE requires the Affiliated Specialist to suspend its specialist activities in a Subject Security during the applicable cooling-off period specified in Rule 10b-6, until the Affiliated Broker-Dealer has completed its participation in the distribution. Specifically, NYSE Rule 460.20 provides that the Affiliated Specialist must "give up the book" (*i.e.*, suspend its specialist activities) to a specialist organization unaffiliated with any distribution participant, which then assumes all specialist responsibilities under NYSE rules. When the Affiliated Broker-Dealer has completed its participation in the distribution, the Affiliated Specialist may regain the "book" and resume its specialist activities in the Subject Security.

On the basis of your representations and the facts presented, particularly the affirmative and negative obligations that govern specialist trading under NYSE Rule 104; the provisions of NYSE Rule 98 that require information barrier policies and procedures that segment information between the Affiliated Specialist and its Affiliated Broker-Dealer; and NYSE surveillance procedures designed to detect specialist activity that may condition the market for a Subject Security during a distribution, and without necessarily concurring in the analysis in your letters, the Commission hereby grants exemptions from Rules 10b-6 and 10b-13 to Affiliated Specialists and their Affiliated Broker-Dealers to permit the Affiliated Specialists to continue to bid for and purchase Subject Securities as a specialist during the Rule 10b-6 Covered Period and the Rule 10b-13 Covered Period, as applicable, subject to the following conditions:

1. *Scope of the Exemptions.* These exemptions apply to mergers, exchange offers, and firm commitment, fixed price offerings that are distributions for purposes of Rule 10b-6, and tender and exchange offers subject to Rule 10b-13. The Subject Securities must have a minimum price of five dollars per share and a minimum public float of 400,000 shares, as computed in accordance with Rule 10b-6(c)(7).

2. *Establishment of Information Barriers.* The Affiliated Specialist and the Affiliated

Broker-Dealer must have, and implement effectively, written policies and procedures designed to segregate the flow of confidential market-sensitive information, including distribution information, between the Affiliated Specialist and the Affiliated Broker-Dealer ("Information Barriers"). The policies and procedures must have been approved by the NYSE as conforming to the requirements of NYSE Rule 98.

3. Monitoring of Information Barriers.

During the Rule 10b-6 Covered Period or Rule 10b-13 Covered Period, as applicable, the Affiliated Specialist and Affiliated Broker-Dealer reasonably must monitor for compliance with, and must inquire into possible breaches of, Information Barriers. Any inquiries must be documented, and the underlying records, including any analyses, inter-office memoranda, and employee statements, must be made available promptly to the Division of Market Regulation ("Division") upon request.

4. Notice of Breach. Should any Affiliated Specialist or Affiliated Broker-Dealer discover that there was a breach of the Information Barriers during the Rule 10b-6 Covered Period and Rule 10b-13 Covered Period, as applicable, it must provide immediate notice to the NYSE of such occurrence. Upon request of the Division, the Affiliated Specialist or Affiliated Broker-Dealer shall provide the Division with a written analysis of the circumstances surrounding the breach.

5. Annual Compliance Review. a. Each Affiliated Specialist and each Affiliated Broker-Dealer must annually: (i) conduct an independent review ("Annual Compliance Review") of its compliance during the calendar year with the terms of these exemptions, including their operation and any breaches of information barriers, and report on such review to its management; or (ii) prepare a statement ("Statement") that it did not participate in any distribution or tender offer involving a Subject Security during the calendar year if such is the case. The Annual Compliance Review must be conducted by an independent person acceptable to the Division, and may be conducted in conjunction with the annual review specified in NYSE Rule 342.30. Upon a request from the Division, such reviews, management reports, and statements shall be supplied to the Division within 15 days of the request.

b. Prior to relying on these exemptions, each Affiliated Broker-Dealer and Affiliated Specialist must submit to the Division a written explanation of how it will comply with the Annual Compliance Review. The explanation of the Annual Compliance Review. The explanation of the Annual Compliance Review must describe, among other things, the review plan, the scope of the review, how the review will be conducted, and the independent person, who will conduct the review.

6. NYSE Surveillance. The NYSE shall establish and implement special surveillance procedures to review all trading by the Affiliated Specialist and Affiliated Broker-Dealers in Subject Securities during the Rule 10b-6 Covered Period, including on-line surveillance of trading by the Affiliated

Specialist and off-line surveillance of trading by Affiliated Broker-Dealers. The NYSE also will review trading in Subject Securities by the Affiliated Specialist and Affiliated Broker-Dealers for a ten business day period prior to the commencement of the Rule 10b-6 Covered Period and for two business days thereafter. With respect to tender offers subject to Rule 10b-13, the NYSE will review all trading by the Affiliated Specialist for the period commencing with a public announcement of the tender offer, and reconstruct all Affiliated Specialist trading on a daily basis from the period of two business days prior to the commencement of the tender offer until the offer's expiration.

7. Notice of Participation. Affiliated Broker-Dealers shall give timely notice to the NYSE of their participation in any distribution or tender offer during which the Affiliated Specialist will continue its specialist activities in Subject Securities pursuant to the exemptions granted herein. The Affiliated Broker-Dealer must provide the NYSE advance notice prior to the commencement of the Rule 10b-6 Covered Period and Rule 10b-13 Covered Period, as applicable, and notice of the completion of the distribution and tender offer, as applicable.

8. Recordkeeping. a. All documents required under these exemptions shall be kept for a period of not less than two years. Reports of Annual Compliance Reviews must be retained for a period of three years.

b. None of the requirements of these exemptions shall have any effect upon the obligations of any Affiliated Specialist or Affiliated Broker-Dealer to make, preserve, or produce records pursuant to any other provision of the federal securities laws or other regulatory requirements.

9. Disclosure. a. The Affiliated Broker-Dealer shall include in the "Plan of Distribution" section of the prospectus, pursuant to Rule 408 under the Securities Act of 1933, a brief description of the activities of the Affiliated Specialist and the exemptions granted herein, as applicable. When an Affiliated Broker-Dealer is participating in a distribution as a managing or co-managing underwriter, the inside front cover page of the prospectus shall display prominently a statement to the effect that the Affiliated Specialist will act in its specialist capacity in the Subject Security pursuant to the exemptions granted herein.

b. At the commencement of the distribution or tender offer, the Affiliated Broker-Dealer shall disclose to the market the fact of the distribution or tender offer and of the Affiliated Specialist's continuation as a specialist in the Subject Security, pursuant to the exemptions granted herein.

10. Rule 10b-13 Condition. The Affiliated Specialist may tender only those Subject Securities into an exchange offer that it has acquired in a manner consistent with its specialist obligations under NYSE Rule 104.

11. Analysis. The NYSE will provide the Division with a written analysis of the operation of the exemptions granted herein for the 18 month period beginning on the date of this letter. On or before April 30, 1997, the Division will notify the NYSE whether the exemptions should be extended,

modified or terminated. Unless otherwise extended, these exemptions will expire on July 31, 1997.

The foregoing exemptions from Rules 10b-6 and 10b-13 are strictly limited to the application of those rules to activities by Affiliated Specialists, acting in their specialist capacity, as described above, and are subject to compliance with the conditions set forth above. These exemptions are subject to modification or revocation if at any time the Commission or Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.²

No bids or purchases of Subject Securities by the Affiliated Specialist or Affiliated Broker-Dealers shall be made for the purpose of creating actual, or apparent, active trading in a Subject Security or raising the price of a Subject Security. In addition, Affiliated Specialists and Affiliated Broker-Dealers availing themselves of this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Section 9(a), (10)(b), 14(e) and Rules 10b-5 and 14e-3 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the Affiliated Specialist, the Affiliated Broker-Dealer, and their Affiliated Purchasers. The Commission expresses no view with respect to any other questions that the proposed transaction may raise, including, but not limited to, the applicability of any other federal or state laws.

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

Brandon Becker,

Director.

[FR Doc. 95-19384 Filed 8-4-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36040; File No. SR-NYSE-95-15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1, Amendment No. 2, and Amendment No. 3 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Use of an Automated Telephone Voting System by Member Organizations or Their Agents

July 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

²In 1994, the Commission published a concept release regarding the anti-manipulation regulation of securities distributions, which sought comment on, among other things, the application of Rule 10b-6 to affiliated purchasers. See Securities Exchange Act Release No. 33924 (April 19, 1994), 59 FR 21681. In light of the comments received in response to that release, the Commission may determine to undertake rulemaking or other action that may supersede these exemptions.