

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.<sup>2</sup>

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

<sup>2</sup>In 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.

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 6, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On May 10, 1995, the NYSE submitted to the Commission Amendment No. 1<sup>3</sup> and on June 2, 1995, the NYSE submitted Amendment No. 2<sup>4</sup> to the proposed rule change. The NYSE submitted Amendment No. 3 to the Commission on July 21, 1995.<sup>5</sup> The NYSE has requested accelerated approval of the proposal. The Commission is approving the proposal and soliciting comments.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its rules to permit the use of automated telephone voting systems by member organizations or their proxy agents. The proposed rule would amend NYSE Rule 452.16 and the Listed Company Manual Section 402.08(G) by adding the following test:

Instructions from beneficial owners may also be accepted by member organizations or their agents through the use of an automated telephone voting system, which has been approved by the Exchange. Such a system shall utilize an identification code for beneficial owners and provide an opportunity for beneficial owners to validate votes to ensure that they were received correctly. Records of voting including the date of receipt of instructions and the name of the recipient must be retained by the member organization of their agent.

### **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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 C.F.R. 240.19b-4.

<sup>3</sup> See letter from James E. Buck, Senior Vice President and Secretary, NYSE to Greg Corso, Office of Tender Offers, SEC, dated May 10, 1995. Amendment No. 1 made non-substantive, clarifying changes to the proposal. Amendment No. 1 is further described at note 6, *infra*.

<sup>4</sup> See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, SEC, dated May 25, 1995. Amendment No. 2 is further described at note 7, *infra*.

<sup>5</sup> See letter from James E. Buck, Senior Vice President and Secretary, NYSE to Sharon Lawson, Assistant Director, SEC, dated July 21, 1995. Amendment No. 3 is further described at note 8, *infra*.

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 III 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**

The Exchange proposes to amend its rules in order to permit member organizations or their proxy agents to accept the use of automated telephone voting systems to receive voting instructions from beneficial owners. The voting process that is presently used by member organizations or their agents provides for the transmission of a proxy statement and a voting authorization form to beneficial owners. The appropriate voting selections are indicated on the form by the beneficial owner and it is mailed back to the member organization or its agent.

The automated telephone voting system permits the beneficial owner to give voting instructions on appropriate corporate proposals through a touch tone telephone.<sup>6</sup> The system utilizes identification codes and provides a validation opportunity in order for the beneficial owner to confirm that voting instructions were received correctly.<sup>7</sup> Beneficial holders will be informed of this new option by specific language at the top of the voting form.<sup>8</sup>

The system is deemed to be less prone to tabulation error than the current system, in addition to being more efficient and cost effective.

<sup>6</sup> Amendment No. 1 clarified that beneficial owners still have the option to vote in writing using the voting authorization form. The use of the automated telephone voting system is an alternative to the current system.

<sup>7</sup> Under the NYSE rule, only those automated telephone systems which have been approved by the Exchange may be accepted by member organizations. Amendment No. 2 clarifies that the Exchange will consult with the Commission staff to determine whether the proposed system operates in a manner consistent with Section 14(a) of the Act and the rules and regulations thereunder, prior to the Exchange approving any automated system. Currently, Automatic Data Processing Brokerage Information Services Group provides the only approved system.

<sup>8</sup> Amendment No. 3 provides the specific language that will be added to the voting form for the purpose of informing beneficial owners of their option to vote through an automated telephone voting system. If this language is changed in any manner, the Exchange will contact the Commission and receive approval before using the new language.

##### **2. Statutory Basis**

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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

The Exchange does not believe that the proposed rule change will impose any 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.

### **III. 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, NW., Washington, DC 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, NW., Washington, DC 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-95-15 and should be submitted by August 28, 1995.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to permit the use of automated telephone voting systems by member organizations or their proxy agents 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 use of automated telephone voting systems by member organizations or their proxy agents is consistent with Sections 6<sup>9</sup> and 14<sup>10</sup> of the Act. In particular, the proposal is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest and Section 14 of the Act which sets forth the requirements for the solicitation of proxies.

The NYSE, consistent with Section 14 of the Act, has rules governing the forwarding of proxy materials to beneficial holders. Pursuant to these rules, member firms are required to forward to beneficial holders a proxy statement and a voting authorization form on which the holder would indicate his voting selections and mail the form back to the member firm. The NYSE is now proposing to adopt rules that would permit member firms or their proxy agents to use an Exchange approved automated telephone voting system that operates in a manner consistent with Section 14(a) of the Act as an alternative to written voting instructions.<sup>12</sup> Under the proposed rules, the automated system must at a minimum provide an identification code for beneficial owners and provide an opportunity for beneficial owners to validate instructions to ensure that they were received correctly. In addition, the automated system must provide beneficial owners with the same power

and authority to issue, revoke, or otherwise change voting instructions as currently exists for instructions communicated in written form. Further, member organizations or their agents utilizing this method must maintain records of voting which include information sufficient to evidence validity of voting instructions, including the name of the beneficial owner, the date of receipt of the instructions, and the voting instructions as transmitted.

The Commission believes that the proposal will be beneficial to both shareholders and member organizations in fulfilling the proxy requirements under the Act and NYSE rules for several reasons.

First, the use of an automated telephone voting system is a simpler and more efficient means of communicating voting instructions than the current method, which requires a beneficial owner to mail a voting authorization form to the member organization, who would vote the proxy. In this regard, the Commission notes that the proposed rule change will permit beneficial owners to make more timely decisions on corporate matters. For these reasons, the Commission believes that the proposed rule change appropriately gives beneficial owners the ability to use a more convenient and efficient means of providing voting instructions. Second, the use of an automated telephone voting system should prove to be more efficient and accurate than the current system in communicating voting instructions. As the NYSE has indicated, the automated telephone voting system is deemed less prone to tabulation errors than the scanners that are currently used to calculate the votes from the written voting authorization forms.<sup>13</sup> In addition, the automated telephone voting system utilizes identification codes and provides a validation opportunity for the beneficial owner to confirm that voting instructions were received correctly. Finally, the automated telephone voting system is generally viewed as more cost efficient for member organizations because this system can handle a higher volume of voting instructions than the scanners that are currently used to calculate voting instructions from the voting authorization forms.<sup>14</sup>

In summary, the Commission believes that the use of identification codes, the opportunity to confirm that voting

instructions were received correctly, and the purported improved accuracy in the new system will be beneficial to shareholders and member organizations and is consistent with the public interest and the protection of investors. Despite these benefits, the Commission notes that the automated voting system is an alternative to the current method of communicating voting instructions by mail. Shareholders will still have the option to choose their preferred method of communicating their voting instructions. In addition, the NYSE rules will continue to ensure that an adequate record is kept of all voting, including voting done through the automated telephone voting system.

The Commission finds good cause for approving the proposed rule change, including Amendments No. 1, 2, and 3, 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 use of automated telephone voting systems by member organizations or their proxy agent should provide an immediate benefit to investors by affording them a more convenient means of communicating their voting instructions, as well as a more efficient method of transmitting voting instructions. In addition, the Commission notes that the rule change continues to permit investors who wish to communicate their voting instructions by mailing the voting authorization form to the member organization to do so. The use of the automated telephone voting system is merely an alternative to the current system. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule changes as amended.

It is therefore ordered, pursuant to Section 19(b)(2)<sup>15</sup> that the proposed rule change, including Amendments No. 1, 2, and 3, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-19385 Filed 8-4-95; 8:45 am]

BILLING CODE 8010-01-M

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78n.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, SEC, dated May 25, 1995. As described above, Amendment No. 2 clarifies that the Exchange will consult with the Commission staff to determine whether the proposed system operates in a manner consistent with Section 14(a) of the Act and the rules and regulations thereunder, prior to the Exchange approving any automated system.

<sup>13</sup> Telephone conversation between Gary Tuttle, Director of Securities Operation Department, NYSE, and Elisa Metzger, Senior Counsel, SEC, on June 16, 1995.

<sup>14</sup> *Id.*

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 C.F.R. 200.30-3(a)(12).