

its participants because DTC believes that the publication date is less relevant to BEO securities than other types of securities. According to DTC, issuers of BEO securities generally do not publish partial call notices. Instead, the issuers inform DTC of the call notice because DTC is the securities' holder of record. DTC will then notify its participants. While an issuer may inform DTC of a publication date, DTC believes that this is done only for purposes of DTC's lottery and that the date has no real significance. As a result of the expected fewer short positions, DTC believes that its participants will save on depository charges which are 130 percent of the current market value of short positions. DTC's participants also will save on the costs associated with reconciling short positions and the costs associated with purchasing securities to cover short positions.

DTC believes that the proposed rule change is consistent with the requirements of the Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder because it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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

DTC has solicited participant comments on the proposed rule change. It has taken into account participant responses to earlier proposed alternatives to revising the call lottery procedures in developing this rule change. The Reorganization Division Inc. of the Securities Industry Association wrote DTC to express its support for revising the call lottery procedures for BEO securities.⁷

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

Within thirty-five days of the date of publication of this notice in the **Federal**

⁷ Letter from Brad F. Lesowitz, President, Reorganization Division, Inc., Securities Industry Association to Donald F. Donahue, Executive Vice President, DTC (April 4, 1997). A copy of the letter is attached as Exhibit C to DTC's proposed rule change, which is available for inspection and copying at the Commission's Public Reference room or through DTC.

Register or within such longer period: (i) as the Commission may designate up to ninety 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 DTC consents, the Commission will:

(A) By order approve such 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 in 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 DTC. All submissions should refer to the file number SR-DTC-97-14 and should be submitted by December 29, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-31962 Filed 12-5-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39368; File No. SR-NYSE-97-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Pilot for Allocation Policy and Procedures

November 26, 1997.

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

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 26, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 extends the effectiveness of the pilot program relating to the Exchange's Allocation Policy and Procedures until January 16, 1998. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

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

The purpose of the proposed rule change is to extend the effectiveness of a pilot program relating to the Exchange's Allocation Policy and Procedures. The Exchange's Allocation Policy and Procedures are intended: (1) To ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security; and (4) to contribute to the strength of the specialist system.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸ 17 CFR 200.30-3(a)(12).

The Exchange recently implemented, on a pilot basis, a revised Allocation Policy and Procedures to amend the procedures by which the Exchange selects a specialist for newly listing companies.³ The Exchange's pilot program provides listing companies with two options, either: (1) to have their specialist unit selected by the Allocation Committee according to existing allocation criteria, with company input permitted in the form of a "generic letter" which may describe desired general characteristics of a specialist unit, but may not mention particular units or describe characteristics that would be applicable to a readily identifiable specialist unit; or (2) to make the final selection of a specialist unit from among three to five units selected by the Allocation Committee, with a generic letter from the company describing desired specialist unit characteristics permitted, as in (1) above. In the case of both options, if a generic letter is submitted, the letter would be distributed to all specialist units along with allocation data sheets ("green sheets").

On October 6, 1997, the Commission approved an extension of the pilot program until November 28, 1997 to continue to study its effects.⁴ On October 20, 1997, the NYSE requested that the Commission grant permanent approval of the Allocation Policy and Procedures, as amended.⁵ The proposed amendments relate to sections of the policy dealing with listing company input, spin-offs and related companies. Subsequently, Commission staff determined that the Commission required more time to consider the Exchange's request to make permanent the amendments to the Allocation Policy and Procedures. Therefore, at the request of Commission staff, the Exchange proposes to extend the Allocation Policy and Procedures pilot program until January 16, 1998.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act⁶ that an Exchange have rules that are designed to promote just and

equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that extending the effectiveness of the Allocation Policy and Procedures until January 16, 1998 is consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated between specialist units to ensure fairness and equal opportunity in the process.

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

The Commission finds that the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(e)(6)⁸ thereunder because it does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange requests that the Commission waive the provision in Rule 19b-4(e)(6)(iii)⁹ requiring written notice of the NYSE's intent to file the proposed rule change at least five days prior to the filing date. The Commission grants the Exchange's request to waive the pre-filing requirement because the proposed merely continues an existing pilot program for a limited duration.

A proposed rule change filed under Rule 19b-4(e) does not become operative prior to thirty days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds good cause for the proposed rule change to become operative prior to the thirtieth day after the date of the filing, November 26, 1997. The Commission notes that accelerating the operative date of the proposed rule change will enable the Exchange to continue its Allocation Policy and Procedures pilot program on an uninterrupted basis. The Commission further notes that it has previously solicited comments on the pilot program and no comments were received. Further, the extension of the existing pilot is of limited duration, only until January 16, 1998. For the foregoing reasons, the proposed rule change will become operative on November 28, 1997.

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, NW., 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 in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-97-32 and should be submitted by December 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-32027 Filed 12-5-97; 8:45 am]

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³ See Securities Exchange Act Release No. 38372 (March 7, 1997), 62 FR 13421 (March 21, 1997) (notice of filing and immediate effectiveness of File No. SR-NYSE-97-04).

⁴ See Securities Exchange Act Release No. 39206, 62 FR 53679 (October 15, 1997) (order approving File No. SR-NYSE-97-27).

⁵ See Securities Exchange Act Release No. 39288 (October 30, 1997), 62 FR 60297 (November 7, 1997) (noticing File No. SR-NYSE-97-30).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(e)(6).

⁹ 17 CFR 240.19b-4(e)(6)(iii).

¹⁰ 17 CFR 200.30-3(a)(12).