

been maintained and are readily accessible.

The Commission believes the proposal, requiring managing underwriters to disclose all available designation information, should encourage competition among dealers for other designations in subsequent underwritings. The proposal should not result in fixed pricing because only the designation amounts are being revealed. Investors will still be able to designate any firm they choose, because the investors' identities will remain confidential. Furthermore, disclosure of all designation information should prevent delays in disseminating full designation payments to members because designation information must be made available to syndicate members within ten business days following the date of sale. This requirement should, therefore, help ensure members receive the full designation credit they have earned.

The Commission also supports shortening the deadline for payment of designations from 30 business days following delivery of the securities to the customer to 30 calendar days after the issuer delivers the securities to the syndicate. The shortened deadline should prevent syndicate managers from unnecessarily delaying payment of designations to syndicate members.

The Commission agrees that an issuer "set-aside" is part of the take-down and, therefore, should be disclosed to syndicate members in the same manner as customer designations. This proposed rule change should act as a deterrent to fraudulent activity because disclosure of take down information including each dealers' percentage must be made by the later of 15 days following the date of sale or three business days following receipt by the managing underwriter of notification of any set-asides by the issuer. Furthermore, timely disclosure of this information will allow dealers to verify the accuracy of the information and, where necessary, address any discrepancies before settlement.

The Commission supports the proposed rule change and Amendment No. 1 concerning the allocation of securities. The proposed rule change required that the managing underwriter complete the allocation of securities within 24 hours of the sending of the commitment wire. In its letter to the MSRB, NYC contended that the proposed rule change erroneously assumed that a BPA would be signed prior to the completion of the allocation.⁴⁷ The NYC letter suggested that the allocation may be completed

(and investors be given notice of the allocations) prior to the signing of the BPA.⁴⁸ In response, the MSRB amended its proposal to include that any allocations made prior to the signing of the BPA in a negotiated offering or the official award of the bonds in a competitive sale must be subject to execution of a BPA or the award, as appropriate. Furthermore, investors must also be notified of this fact.⁴⁹

In cases where the BPA is signed before the commitment wire is sent, the Commission believes 24 hours should give the senior syndicate manager enough time to complete the allocation of securities. The Commission understands that there are occasions, however, when a deal is so complex that it takes longer than 24 hours after the commitment wire is sent to complete the process (e.g., production and verification of final numbers, final sizing of the bond sale) so that a BPA may be signed. The Commission, therefore, supports the amended language which recognizes this exception,⁵⁰ but protects investors by requiring full disclosure of the deal's status. Thus, investors will be aware that the deal could be subject to market fluctuations or may not even be finalized.

V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵¹ that the proposed rule change and Amendment No. 1 (SR-MSRB-97-15), are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-32324 Filed 12-3-98; 8:45 am]

BILLING CODE 8010-01-M

⁴⁸ *Id.* at 2.

⁴⁹ Amendment No. 1 at 51977.

⁵⁰ In these situations, the Commission notes that senior syndicate managers should consult the MSRB's rules and interpretations concerning the sending of confirmations prior to the signing of the BPA or the date of the award. Amendment No. 1 at 51977.

⁵¹ 15 U.S.C. 78s(b)(2).

⁵² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34-40711; File No. SR-NYSE-98-34)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 104.10 By Deleting the Odd-Lot Exception

November 25, 1998.

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 October 16, 1998, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 Exchange is proposing to amend NYSE Rule 104.10(6)(i) by eliminating paragraph (C), which provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset positions acquired by the specialist in executing odd-lot orders on the same day.

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 NYSE 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 NYSE 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

NYSE Rule 104 governs specialists' dealings in their specialty stocks. In particular, NYSE Rule 104.10(6) describes the manner in which a specialist may liquidate or increase his

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴⁷ NYC Letter at 1.

or her position in a specialty stock. In general, the rule requires such transactions to be effected "in a reasonable and orderly manner" in relation to the overall market. The rule also requires the market in the particular stock and the adequacy of the specialist's position to meet the reasonably anticipated needs of the market. NYSE Rule 104.10(6)(i)(A) provides that a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick (destabilizing ticks), only if the transaction is reasonably necessary in relation to the specialist's overall position in the stock and if Floor Official approval is obtained. Floor Official approval provides an independent review of these destabilizing transactions for compatibility with the reasonableness test.

NYSE Rule 104.10(6)(i)(C) provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset position acquired by the specialist in executing odd-lot orders on the same day. Odd-lot orders are executed throughout the day in the odd-lot system against the specialist in that stock. Periodically, the specialist receives an automated notification of the net amount of odd lots that have been executed against his or her position. The specialist can then offset these odd-lot transactions by buying or selling for his or her own account.

The basis for the exception was that these odd-lot offsets would not have an impact on the market as a whole. However, there has been a marked increase in the volume of odd-lot transactions in the last several years³ and, as a result, an increase in specialist offset transactions. The Exchange believes that odd-lot offsets should be treated as other liquidating transactions and be netted with round lot transactions. All destabilizing transactions would require Floor Official approval pursuant to Exchange Rules.⁴ Therefore, the Exchange is proposing to delete the exception for odd-lots in paragraph (C).

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section

6(b)(5) of the Act⁵ in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The NYSE 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

Written comments were neither solicited nor 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 longer period (i) as the 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, including whether the proposal is consistent with the Act. 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 Room. 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.

⁵ 15 U.S.C. 78f(b)(5).

SR-NYSE-98-34 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-32323 Filed 12-3-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40709; File No. SR-NYSE-97-28]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Capital and Margin Requirements for Joint Back Office Arrangements

November 25, 1998.

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 May 21, 1998, and September 28, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") Amendment Nos. 1 and 2, respectively, to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 to the proposed rule change for interested parties.

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

The Exchange seeks to amend Exchange Rule 431, "Margin Requirements," to establish margin and net capital requirements for Joint Back Office ("JBO") arrangements among broker-dealers. The proposed rule change also relates to: (i) net capital computations for members carrying proprietary accounts of other broker-dealers; (ii) net capital computations for members carrying the accounts of approved specialists or market makers; and (iii) control and restricted securities.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Exchange, and at the Commission.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Odd-lot volume exceeded 1 billion shares on the NYSE in 1997, an 87% increase from 1994.

Telephone conversation between Agnes Gautier, Vice President, Market Surveillance, NYSE, and Robert B. Long, Attorney, Division of Market Regulation, Commission, on October 23, 1998.

⁴ See Letter from Agnes Gautier, Vice President, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 20, 1998.