

Agreement setting forth DTC's and the transfer agents' responsibilities.

II. Discussion

Section 17A(b)(3)(F) of the Act⁵ requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that DTC's proposal is consistent with Section 17A(b)(3)(F) of the Act because DTC has taken steps to safeguard the securities which are in its custody or control or for which it is responsible by requiring each transfer agent to execute an agreement that sets forth DTC's and the Transfer agents' respective responsibilities. Moreover, the Drop Service will foster cooperation and coordination between DTC and other entities engaged in the clearance and settlement of securities transactions by providing a facility that will enable transfer agents to comply with certain NYSE and Amex rules.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-96-09) be, and hereby is approved.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-21329 Filed 8-20-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37564; File No. SR-NYSE-96-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change Relating to the Extension of Rule 103A (Specialist Stock Reallocation)

August 14, 1996.

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 August 6,

1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 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 NYSE proposes to extend the effectiveness of Rule 103A, Specialist Stock Reallocation, until September 10, 1997.

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

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grants authority to the Exchange's Market Performance Committee to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance. Based on such determinations, the Market Performance Committee is authorized to conduct a formal Performance Improvement Action in appropriate cases.

On May 10, 1995 the SEC extended the effectiveness of the rule until September 10, 1996.³ In its approval order, the Commission stated its continued belief that the Exchange

should develop objective performance standards to measure specialist performance.⁴ In this regard, the Exchange notes that it has previously developed two objective measures of specialist performance. It should be noted, however, that these measures are not currently included in the Rule 103A program. The first objective measure of performance pertains to specialist capital utilization. Adopted in December 1993 on a pilot basis, the capital utilization measure of specialist performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks.⁵ The capital utilization measure pilot has been extended until September 10, 1996.⁶ The Exchange's Allocation Committee is being provided with specialist capital utilization information for its use in allocation decisions.

The second objective measure of performance, which was recently developed, pertains to "near neighbors." On June 30, 1995, the Commission approved this filing on a fifteen month pilot basis through September 10, 1996.⁷ The "near neighbors" measure compares certain performance measures of a given stock (price continuity, depth, quotation spread and capital utilization) to those of its "near neighbors" (i.e., stocks that have certain similar characteristics). The Exchange would provide "near neighbors" information to the Allocation Committee for its use in allocating newly-listed stocks.⁸ On July 1, 1996, the Exchange filed to extend the pilot programs for both the near neighbor and capital utilization measure of specialist performance.⁹ During the next twelve months, the Exchange expects to work with outside consultants and appropriate constituent groups to develop performance standards applicable to these objective

⁴ See *id.* The Commission notes that the Exchange's current evaluation criteria under Rule 103A¹⁰ include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests. Specialist performance also is measured by the Exchange's Specialist Performance Evaluation Questionnaire.

⁵ See Securities Exchange Act Release No. 33369 (December 23, 1993), 58 FR 69431 (December 30, 1993) [File No. SR-NYSE-93-30].

⁶ See Securities Exchange Act Release No. 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) [File No. SR-NYSE-95-24].

⁷ See Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35764 (July 11, 1995) [File No. SR-NYSE-95-05].

⁸ The near neighbor measure would provide the Allocation Committee with performance data.

⁹ File No. SR-NYSE-96-17.

⁵ 15 U.S.C. § 78q-1(b)(3)(F) (1988).

⁶ 17 CFR 200.30-3(a)(12) (1995).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 35704 (May 10, 1995), 60 FR 26060 (May 16, 1995) [File No. SR-NYSE-95-18].

measures for incorporation into Rule 103A.

Regarding the Intermarket Trading System ("ITS"), the Commission has stated its belief that the mature status of the ITS as a market structure facility warrants the incorporation of ITS turnaround and "trade-through" concerns into the NYSE's Rule 103A performance standards. The Exchange continues to believe that ITS matters are more appropriately addressed by means of the Exchange's regulatory process rather than through its performance measurement system, but will continue to study the matter.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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. The Exchange believes the proposed extension of Rule 103A is consistent with these objectives in that it will allow the Exchange to continue to administer the rule on an uninterrupted basis, fostering quality specialist performance.

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

Within thirty-five days of the date of publication of this notice in the Federal 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 the self-regulatory organization 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 6 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-96-22 and should be submitted by September 11, 1996.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-21318 Filed 8-20-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37563; File No. SR-PSE-96-21]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Liability of the Exchange and Its Governors, Officers, and Agents

August 14, 1996.

I. Introduction

On June 17, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new provisions pertaining to the liability of the Exchange and to amend an existing provision. Specifically, the PSE proposes to adopt: New Rule 13.2, which clarifies and broadens the

existing limitations on the Exchange's liability; new Rule 13.3, which prohibits members from instituting certain types of legal proceedings against Exchange officials; and new Rule 13.4, which provides for the recovery of the Exchange's defense costs in certain circumstances. In addition, the PSE proposes to amend Rule 6.59, to clarify its purposes and to provide a reference to the new provisions in Rule 13.

Notice of the proposed rule change appeared in the Federal Register on July 3, 1996.³ No comments were received on the proposed rule change.⁴ This order approves the PSE's proposal.

II. Background and Description

A. Liability of Exchange

The principal rule concerning Exchange liability is contained in Article VI, Section 6 of the PSE Constitution. Article VI, Section 6 provides that the Exchange is not liable to members for damages arising out of the use or enjoyment of Exchange facilities in the conduct of their business.

New Rule 13.2(a)⁵ clarifies that, except as otherwise expressly provided in the rules of the Exchange, neither the Exchange nor its Governors, officers, committee members, employees, or agents shall be liable to members or their associated persons except where the Exchange's liability is attributable to willful misconduct, gross negligence, bad faith, fraud, or criminal acts. In addition, new Rule 13.2(a) clarifies that the limitation of the Exchange's liability includes interruption, failure or unavailability of Exchange facilities or services.

New Rule 13.2(a)⁶ also adds language which limits the Exchange's liability for errors, omissions, or delays in calculating or disseminating various kinds of data relating to current or closing index values, reports of transactions or quotations for options or other securities, and further provides that the Exchange does not warrant the

³ See Securities Exchange Act Release No. 37391 (July 1, 1996), 61 FR 36100 (July 9, 1996).

⁴ The PSE submitted a letter regarding the enforceability of the proposed rules under state law. See letter from Rosemary A. MacGuinness, Senior Counsel, Director of Arbitration, PSE, to Glenn Barrentine, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated August 7, 1996.

⁵ The PSE notes that new Rule 13.2(a) is based on Chicago Stock Exchange ("CHX") Article I, Rule 18(a) and the proposed rule changes filed by the Chicago Board Options Exchange ("CBOE") to Rule 6.7(a). See Securities Exchange Act Release No. 36863 (February 20, 1996), 61 FR 7285 (February 27, 1996) (File No. SR-CBOE-96-02).

⁶ The PSE notes that this language to new Rule 13.2(a) is based on CBOE Rule 24.12.

¹⁰ 17 CFR 200.30-3(a)(912) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4.