

[Release No. 34-37667; File No. SR-NYSE-96-22]

**Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Extension of Rule 103A (Specialist Stock Reallocation)**

September 11, 1996.

**I. Introduction**

On August 6, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule change (File No. SR-NYSE-96-22) to extend the effectiveness of NYSE Rule 103A, Specialist Stock Reallocation, until September 10, 1997. The proposed rule change was published for comment in the Federal Register on August 21, 1996.<sup>3</sup> No. comments were received on the proposal. On September 10, 1996, the Exchange amended the filing ("Amendment No. 1") to shorten the length of the effectiveness of NYSE Rule 103A until January 10, 1997.<sup>4</sup> For the reasons set forth below, the Commission is approving the extension of NYSE Rule 103A until January 10, 1997, on an accelerated basis.

**II. Description of the Proposal**

The NYSE seeks to extend the effectiveness of Rule 103A, Specialist Stock Reallocation, until January 10, 1997. NYSE 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. The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed Securities.

The Exchange originally proposed the adoption of Rule 103A in 1979.<sup>5</sup> Since that time, the pilot program has been extended numerous times. Most recently, on May 10, 1995, the SEC extended the effectiveness of the rule until September 10, 1996.<sup>6</sup> In its approval order, the Commission stated its continued belief that the Exchange should develop objective performance standards to measure specialist performance.<sup>7</sup>

Currently, the Exchange has in place 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.<sup>8</sup> The capital utilization measure pilot has been extended until September 10, 1996.<sup>9</sup> 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.<sup>10</sup> 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 neighbor" information to the Allocation Committee for its use in

allocating newly-listed stocks.<sup>11</sup> On July 1, 1996, the Exchange filed to extend the pilot programs for both the near neighbor and capital utilization measure of specialist performance.<sup>12</sup> The Commission has approved the extension of both pilots until January 10, 1997. The Exchange has also indicated its intention to work with outside consultants and appropriate constituent groups to develop performance standards applicable to these objective 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.

**III. Discussion**

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) and 11(b) of the Act.<sup>13</sup> Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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. Section 11(b) of the Act, and Rule 11b-1 thereunder,<sup>14</sup> allow securities exchanges to promulgate rules relating to specialists consistent with the maintenance of fair and orderly markets.

Specifically, because specialist units play a crucial role in providing stability, liquidity, and continuity to the trading of stocks on the Exchange, the Commission believes that effective oversight, including periodic evaluation of the specialists' performance, is important to the maintenance of a fair and efficient marketplace. The Commission believes that the NYSE's Rule 103A performance evaluation

<sup>5</sup> Securities Exchange Act Release No. 15827 (May 15, 1979), 44 FR 100 (May 22, 1979) [File No. SR-NYSE-77-24].

<sup>6</sup> See Securities Exchange Act Release No. 35704 (May 10, 1995), 60 FR 26060 (May 16, 1995) [File No. SR-NYSE-95-18].

<sup>7</sup> See *id.* The Commission notes that the Exchange's current evaluation criteria under Rule 103A, 10 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.

<sup>8</sup> See Securities Exchange Act Release No. 33369 (December 23, 1993), 58 FR 69431 (December 30, 1993) [File No. SR-NYSE-93-30].

<sup>9</sup> See Securities Exchange Act Release No. 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) [File No. SR-NYSE-95-24].

<sup>10</sup> See Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35764 (July 11, 1995) [File No. SR-NYSE-95-05].

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 17 CFR § 240.19b-4 (1994).

<sup>3</sup> Securities Exchange Act Release No. 35764 (August 14, 1996), 61 FR 43284.

<sup>4</sup> Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission (September 10, 1996).

<sup>11</sup> The near neighbor measure would provide the Allocation Committee with performance data.

<sup>12</sup> File No. SR-NYSE-96-17.

<sup>13</sup> 15 U.S.C. § 78f(b)(5) and 78k(b) (1988).

<sup>14</sup> 17 CFR 240.11b-1 (1994).

process is critical to this oversight in that it provides the Exchange with the means to identify and correct poor specialist performance and to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities, as required pursuant to Exchange rules and the Act, and the rules thereunder.<sup>15</sup> Moreover, the possibility of a performance improvement action as a result of the evaluation process, in addition to the use of the evaluation results in stock allocation decisions, should help motivate and provide incentives for specialists to maintain and improve their market making performance for the benefit of investors.

In previous orders extending the Rule 103A pilot,<sup>16</sup> the Commission emphasized its desire for the Exchange to develop objective measures of market making performance and incorporate such measures into the Rule 103A pilot.<sup>17</sup> In addition, the Commission previously stated that it believes the mature status of the Intermarket Trading System, as a market structure facility, warrants the incorporation of ITS turnaround and trade-through concerns into the NYSE's Rule 103A performance standards. As discussed fully in a previous extension order,<sup>18</sup> the Commission believes that objective measures of specialist performance with regards to these concerns should be incorporated into the evaluation process.

Even though the proposal lacks objective market making performance standards, the Commission has determined to approve the proposal to extend the effectiveness of Rule 103A for an additional four months. In Amendment No. 1, the Exchange indicated that at the end of the four month extension it will seek permanent approval of the proposal from its Board of Directors, and subsequently file such request with the Commission.<sup>19</sup>

<sup>15</sup> See generally NYSE Rule 104 (Dealings By Specialists); and Commission Rule 11b-1 under the Act, 17 CFR 240.11b-1 (1994).

<sup>16</sup> See Securities Exchange Act Release Nos. 34022 (May 6, 1994), 59 FR 25143 (May 13, 1994); 32285 (May 10, 1993), 58 FR 28905 (May 17, 1993); 29180 (May 8, 1991), 56 FR 22489 (May 15, 1991); and 28215 (July 17, 1990), 55 FR 30060 (July 24, 1990).

<sup>17</sup> See *supra*. Although the Exchange has developed the capital utilization and near neighbor measures of market making performance for use by the Allocation Committee, it has not yet proposed to include these objective measures in its Rule 103A program.

<sup>18</sup> See Security Exchange Act Release No. 34022 (May 6, 1994), 59 FR 25143 (May 13, 1994).

<sup>19</sup> In this regard, the Commission expects the NYSE to submit to the Division of Market Regulation, no later than November 15, 1996, a proposed rule change pursuant to Rule 19b-4 under

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can continue to administer, on an uninterrupted basis, its Rule 103A evaluation process. A substantial portion of current Rule 103A was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program.<sup>20</sup> Further, interested persons were invited to comment on this proposal and the Commission received no comments. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 11 of the Act.

It is therefore, ordered, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change is hereby approved on an accelerated basis until January 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

Margaret H. McFarland,  
Deputy Secretary.

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BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Comments should be submitted by November 18, 1996.

**FOR FURTHER INFORMATION CONTACT:** Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC 20416. Phone Number: 202-205-6629.

#### SUPPLEMENTAL INFORMATION:

**Title:** Governor's Request for Disaster Declaration.

the Act, 17 CFR 240.19b-4, to request permanent approval of Rule 103A.

<sup>20</sup> See Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35821 (September 23, 1987); and 25681 (May 9, 1988), 53 FR 17287 (May 16, 1987).

<sup>21</sup> 15 U.S.C. § 78s(b)(2) (1988).

<sup>22</sup> 17 CFR 200.30-3(a)(12) (1996).

**Type of Request:** Extension of Currently Approved Collections.

**Description of Respondents:** States Requesting a Presidential Disaster Declaration.

**Annual Responses:** 50.

**Annual Burden:** 1,000.

**Comments:** Send all comments regarding this information collection to Bridget Dusenbury Disaster Resource Specialist, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6500 Washington, DC 20416. Phone No.: 202-205-6734.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

**Title:** Application for Certification as a Certified Development Company.

**Type of Request:** Extension of Currently Approved Collections.

**Description of Respondents:** Applicants to become CDC's.

**Annual Responses:** 15.

**Annual Burden:** 150.

**Comments:** Send all comments regarding this information collection to Michael J. Dowd, Director, Office of Loan Programs, Small Business Administration, 409 3rd Street, SW., Suite 8300 Washington, DC 20416. Phone No. 202-205-6490.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

**Title:** Survey of Commercialization Activities of SBIR Awardees.

**Type of Request:** Extension of Currently Approved Collections.

**Description of Respondents:** SBIR Program Participants.

**Annual Responses:** 700.

**Annual Burden:** 84.

**Comments:** Send all comments regarding this information collection to Daniel O. Hill, Assistant Administrator, Office of Technology, Small Business Administration, 409 3rd Street, SW., Suite 8150 Washington, DC 20416. Phone No.: 202-205-6450.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

**Title:** Request for Information Concerning Portfolio Financing.

**Type of Request:** Extension of Currently Approved Collections.