

3.5 of the by-laws to provide managing directors with the powers and duties formerly given to executive vice presidents. Sections 1.2 and 1.8 of the by-laws are amended to permit managing directors to call special shareholder meetings and to act as presiding officer at a shareholder meeting. Section 3.6 is amended to provide that in the event the President is unable to act, managing directors, executive vice presidents, and then vice presidents may assume such duties.

The proposed rule change also makes certain amendments to ISCC's rules. Rule 22 is amended to eliminate the ability of an executive vice president or vice president to suspend the rules and to permit the general counsel to exercise such authority. Rule 23 is amended to eliminate the ability of executive vice presidents to act on behalf of ISCC and to grant such authority to managing directors. Pursuant to Rule 33, the Board of Directors can now delegate the authority to prescribe procedures and regulations to managing directors rather than to executive vice presidents.

The proposed rule change is consistent with the requirements of Section 17A of the Act³ and the rules and regulations thereunder because it makes technical modifications to ISCC's rules and by-laws so that they coincide with ISCC's new internal management structure.

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

ISCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received by ISCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)⁴ of the Act and pursuant to Rule 19b-4(e)(3)⁵ promulgated thereunder in that the proposed rule change is concerned solely with the administration of ISCC. At any time within sixty days of the filing of such 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.

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 also will be available for inspection and copying at the principal office of ISCC.

All submissions should refer to File No. SR-ISCC-96-06 and should be submitted by February 7, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-38158; File No. SR-NYSE-96-34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. to Make Permanent the Near Neighbor, Capital Utilization and Rule 103A Pilot Programs for Measuring Specialist Performance and Adopt a New Specialist Performance Measure

January 10, 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 December 3, 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 and II 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 and to grant accelerated approval to the portion of the proposal to make permanent the Near Neighbor, Capital Utilization, and Rule 103A pilot programs for measuring specialist performance.³

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

The proposed rule change consists of making permanent certain pilot programs for measuring specialist performance and adopting a new specialist performance measure. The three pilots are the Near Neighbor pilot, the Capital Utilization Data pilot, and the Rule 103A pilot.⁴ The Exchange also proposes to adopt a new performance measure, the "adjusted stabilization" rate measure.

³ In partially approving the NYSE proposal, the Commission is not approving, at this time, the portion of the proposal relating to implementing a new specialist performance measure, the "adjusted stabilization" rate. That portion of the proposal is being published for comment in this notice.

⁴ The Commission notes that the capital utilization and near neighbor measures currently are only used by the Allocation Committee in making specialist allocation decisions. The Commission initially approved the capital utilization program on a one-year pilot basis in Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993). The Commission approved a six-month extension of the pilot program in Securities Exchange Act Release No. 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995) (extending pilot through June 30, 1995). The Commission approved two subsequent extensions of the pilot so that the Exchange and the Commission could evaluate the capital utilization, near neighbor, and Rule 103A programs concurrently. See Securities Exchange Act Release Nos. 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) (extending pilot through September 10, 1996) and 37668 (September 11, 1996), 61 FR 49371 (September 19, 1996) (extending pilot through January 10, 1997). The Commission approved the near neighbor program on a pilot basis in Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35927 (July 11, 1995) (pilot approved through September 10, 1996). The Commission approved an extension of the near neighbor pilot program, until January 10, 1997, in Securities Exchange Act Release No. 37668 (September 11, 1996), 61 FR 49371 (September 19, 1996). The Rule 103A pilot program was initially adopted in 1979. See Securities Exchange Act Release Nos. 15827 (May 15, 1979), 44 FR 100 (May 22, 1979). Since then, the program has been extended many times. The most recent extension continues the pilot until January 10, 1997. See Securities Exchange Act Release No. 37667 (September 11, 1996), 61 FR 49185 (September 18, 1996).

³ 15 U.S.C. 78q-1.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(e)(3).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange currently uses several programs to measure specialist performance, including specialist capital utilization, the "near neighbor" approach, and the standards of acceptable performance specified in Rule 103A. Information on these measures is supplied to the Allocation Committee for its use in determining allocation of listing companies.⁵ The "near neighbor" measure compares certain performance measures of a stock (price continuity, depth, quotation spread, and capital utilization) to those stocks with similar trading characteristics; the comparison is made over "rolling" three-month periods.⁶ The "near neighbor" measure has been in use on a pilot basis since August 1995. Capital utilization focuses on a specialist unit's use of its own capital in

relation to the total dollar volume of trading activity in the unit's stocks.⁷ It has been utilized as a pilot since February 1994. These measures are presented to the Allocation Committee in summary form for each unit applying for a new listing and are a factor in allocating newly-listed stock.

Rule 103A, adopted in 1979, codifies standards based on the Specialist Performance Evaluation Questionnaire ("SPEQ") and specialist performance with respect to openings of stocks and turnaround of order reports and administrative messages received. Data with respect to these standards is also provided to the Allocation Committee. In addition, the Market Performance Committee uses the Rule 103A information to initiate performance improvement actions for specialist units that fall below the criteria detailed in the Rule. A unit's continued inability to raise its performance level can lead to a reallocation of one or more of its stocks.

Commission staff have indicated to the NYSE staff the position that sufficient experience has been gained through extended operation of these pilot programs in order for the NYSE to determine whether each should be approved on a permanent basis. Permanent approval will not mean that the programs cannot be periodically revised and amended to improve their effectiveness. For example, the Exchange is currently working with consultants from the Massachusetts Institute of Technology to refine the near neighbor and capital utilization data to increase its usefulness. The NYSE notes that these efforts are ongoing and may lead to enhancements in the future.

In addition to making the three pilot programs permanent, the Exchange proposes to add, as a new measure of specialist performance, "adjusted stabilization" rates. Specialists are expected to stabilize stock price movements by buying and selling from their own account against the prevailing trend of the market. "Stabilization" refers to those instances where a stock dealer purchases on minus and zero minus ticks, and sells on plus and zero plus ticks. For purposes of the proposed specialist performance measure, "adjusted stabilization" would consist of proprietary purchases by specialists on minus and zero minus ticks, as well as zero plus tick purchases on the current bid (provided the current bid is

below the offer of the immediately preceding trade); and proprietary sales on plus and zero plus ticks, as well as zero minus tick sales on the current offer (provided the current offer is above the bid of the immediately preceding trade). The Exchange believes that "adjusted stabilization" is a useful concept in that it reflects liquidity added to the market by specialists, and is consistent with the specialist's overall obligation to stabilize the market in that the specialist is not initiating either a transaction or a price change, but is rather adding depth to the market at prices at which transactions have already occurred.

Adjusted stabilization rate information would be provided to the Allocation Committee to assist the Committee in assessing the value added by specialists to the depth and liquidity of stocks they currently trade.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)⁸ 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 that the proposed rule change is consistent with these requirements in that continuing to develop objective measures of specialist performance would help perfect the mechanism of a free and open market and 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments either solicited or 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:

⁵ The Exchange's Allocation Policy and Procedures govern the allocation of equity securities to NYSE specialist units. The Allocation Committee has sole responsibility for the allocation of securities to specialist units pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of the Board of Directors. The Allocation Committee renders decisions based upon the allocation criteria specified in the Allocation Policy. The Allocation Policy emphasizes that the most significant allocation criterion is specialist performance. In this regard, the Allocation Policy states that the Allocation Committee will base its allocation decisions on the Specialist Performance Evaluation Questionnaire ("SPEQ"), objective performance measures, and the Committee's expert professional judgment. See Securities Exchange Act Release No. 34906 (October 27, 1994), 59 FR 55142 (November 3, 1994) (order approving revisions to the NYSE's Allocation Policy).

The weight given in the allocation decision making process to the SPEQ was reduced from 1/3 to 1/4 in recognition of the Exchange's adoption for allocation decision purposes of the near neighbor and capital utilization objective measures. See Securities Exchange Act Release No. 35932 (June 30, 1995), 60 FR 35763 (June 30, 1995).

⁶ For a more detailed description of the near neighbor measure, see Securities Exchange Act Release No. 35927, *supra* note 1.

⁷ For a comprehensive description of the capital utilization measure of specialist performance, see Securities Exchange Act Release No. 35926, *supra* note 1.

⁸ 15 U.S.C. 78f(b)(5).

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the portion of the proposed rule change relating to making permanent the three pilot programs on an accelerated basis prior to the thirtieth day after publication in the Federal Register.

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 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 Exchange. All submissions should refer to File No. SR-NYSE-96-34 and should be submitted by [insert date 21 days from date of publication].

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the portion of the proposed rule change making permanent the specialist performance measure pilot programs is 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 Section 6(b)(5) of the Act.⁹ Section 6(b)(5) requires, among other things, that the 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. Further, the Commission finds that the portion of the

proposal to make permanent the pilot programs is consistent with Section 11(b) of the Act¹⁰ and Rule 11b-1 thereunder,¹¹ which allow exchanges to promulgate rules relating to specialists to ensure fair and orderly markets. For the reasons set forth below, the Commission continues to believe that the consideration of specialist near neighbor and capital utilization analysis and the Rule 103A performance evaluation process by the Allocation Committee will enhance the Exchange's allocation process and encourage improved specialist performance, consistent with helping to perfect the mechanism of a free and open market and to protect investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and rules thereunder, is the maintenance of fair and orderly markets in designated securities.¹² To ensure that specialists fulfill these obligations, it is important that the Exchange implement objective measures of specialist performance and prescribe stock allocation procedures and policies that encourage specialists to strive for optimal performance. The Commission supports NYSE's ongoing efforts to develop objective measures of specialist capital utilization and near neighbor analysis for use in the allocation process to encourage improved specialist performance and market quality. In addition, effective oversight, including periodic evaluation of the specialist's performance, is important to the maintenance of a fair and efficient marketplace. The Commission believes that the NYSE's Rule 103A performance evaluation is critical to this oversight in that it provides the Exchange with the means to identify and correct poor specialist performance, to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities, and to bring performance evaluation actions as a result of the evaluation process.

The Commission also believes that making permanent the pilot programs for these three measures is appropriate because the Exchange indicates that it has found these measures useful in providing the NYSE Allocation Committee with measures of specialist performance. The NYSE's Allocation Policy emphasizes that the most

significant allocation criterion is specialist performance.¹³ In the Commission's view, performance based stock allocations not only help to ensure that stocks are allocated to specialists who will make the best markets, but will provide an incentive for specialists to improve their performance or maintain superior performance.¹⁴

The Commission finds good cause for approving the portion of the proposed rule change relating to making permanent the pilot programs 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 that portion of the proposal is appropriate because it will enable the Exchange to continue to make use of the capital utilization, near neighbor, and Rule 103A evaluation measures of specialist performance on an uninterrupted basis and will ensure continuity and consistency in the stock allocation deliberation process. Further, the initial proposals to adopt the capital utilization pilot and the near neighbor pilot were noticed previously in the Federal Register for the full statutory period and the Commission did not receive any comments on these proposals.¹⁵ In addition, 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.¹⁶

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁷ that the portion of the proposed rule change (File No. SR-NYSE-96-34) relating to making permanent the pilot programs is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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¹³ See e.g., Securities Exchange Act Release No. 34906, *supra* note 4.

¹⁴ The Commission notes that it would still like the near neighbor and capital utilization measures to be incorporated into the Rule 103A evaluation process.

¹⁵ See *supra* Securities Exchange Act Release Nos. 33369 and 35927, note 2.

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

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78k(b).

¹¹ 17 CFR 240.11b-1.

¹² See, e.g., 17 CFR 240.11b-1; NYSE Rule 104.