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.8 To ensure that specialists fulfill these obligations, it is important that the Exchange develop objective measures of specialist performance and prescribe stock allocation procedures and policies that encourage specialists to strive for optimal performance. The Commission supports the NYSE's effort to develop an objective measure of specialist capital utilization to encourage improved specialist performance and market quality.

The Commission believes that extending the pilot period for the specialist capital utilization tier ratings is appropriate because that standard should provide the NYSE Allocation Committee with an objective measure of specialist performance that will refine the Exchange's allocation process and thereby encourage improved specialist performance. The NYSE's Allocation Policy emphasizes that the most significant allocation criterion is specialist performance.9 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.

For these reasons and for the other reasons discussed in Release No. 33369,10 the Commission has determined to extend the pilot period for this measure through June 30, 1995. The Commission believes that extending the pilot period is appropriate because it will provide the Exchange and the Commission with an opportunity to further study the effects of the use of the measure on the NYSE's allocation process. During the pilot period, the Commission continues to expect the NYSE to monitor carefully the effects of the revised Allocation Policy and report its findings to the Commission. Specifically, the Commission request the NYSE report the capital utilization data as presented to the Allocation Committee in three tiers 11 and any

action taken by the Allocation Committee.<sup>12</sup> The Commission also requests that the NYSE submit its monitoring report, as well as any requests for extension or permanent approval of the use of the capital utilization measure, by May 1, 1995.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after publication of the proposed rule change in the **Federal Register**. Accelerated approval will enable the Exchange to continue to make use of the capital utilization measure of specialist performance on an uninterrupted basis and will ensure continuity and consistency in the stock allocation deliberation process.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, <sup>13</sup> that the proposed rule change (File No. SR–NYSE–94–49) be approved through June 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.  $^{14}$ 

#### Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–370 Filed 1–5–95; 8:45 am]

[Release No. 34–35169; File No. SR–NASD–94–71]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Application of "Do Not Reduce" and "Do Not Increase" Instructions With Respect to the Repricing of Open Orders

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD. 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 NASD is proposing to amend Article III, Section 46 of the Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are bracketed.

Adjustment of Open Orders Sec. 46.

\* \* \* \* \*

(e) The provisions of this rule shall not apply to: (1) orders governed by the rules of a registered national securities exchange; (2) orders marked "do not reduce" where the dividend is payable in cash: (3) orders marked "do not increase[;]" where the dividend is payable in stock, provided that the price of such orders shall be adjusted as required by this rule; (4) open stop orders to buy; (5) open sell orders; or (6) orders for the purchase or sale of securities where the issuer of the securities has not reported a dividend, payment or distribution pursuant to Securities and Exchange Commission Rule 10b-17.

## 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 NASD 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 NASD has prepared summaries, set forth in Section (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

Article III, Section 46 of the Rules of Fair Practice, which became effective September 15, 1994, requires a member holding an open order, prior to executing or permitting the order to be executed, to adjust the price and size of the order in proportion to the dividend or other distribution, on the day that the security is quoted ex. Since the rule became effective, the NASD has discovered an inconsistency in the definition of the terms "Do Not Reduce" (DNR) and "Do Not Increase" (DNI) between the NASD's Section 46 and

<sup>&</sup>lt;sup>8</sup> See, *e.g.*, Rule 11b–1, 17 CFR 240.11b–1 (1994); NYSE Rule 104.

<sup>&</sup>lt;sup>9</sup> See, *e.g.*, Commission's order approving revisions to the NYSE's Allocation Policy and Procedures, Securities Exchange Act Release No. 34906 (October 27, 1994), 59 FR 55142.

<sup>&</sup>lt;sup>10</sup> See note 3, supra.

<sup>&</sup>lt;sup>11</sup>The Commission notes that this request for information is not exclusive an that the NYSE

should add any additional data and analysis to the report in order to assess the effectiveness of the capital utilization measure.

<sup>&</sup>lt;sup>12</sup>This information should include which stocks were reallocated due to performance, and the specialist units involved in each reallocation.

<sup>13 15</sup> U.S.C. 78s(b)(2) (1988)

<sup>14 17</sup> CFR § 200.30–3(a)(12) (1991).