

[Release No. 34-35776; File No. SR-NYSE-95-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Allocation Policy and Procedures

May 30, 1995.

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 March 31, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, and on May 17, 1995, filed Amendment No. 1 to the proposed rule change,¹ 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 proposed rule change consists of amendments to the Exchange's Allocation Policy and Procedures which would permit Floor broker Senior Floor Officials to replace Governors for quorum purposes.

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 intent of the Exchange's Allocation Policy and Procedures ("Policy") is to ensure that each security is allocated in the fairest manner possible to the best specialist unit for

that security. In accordance with this intent, the Exchange recently amended the Policy to increase the number of Floor broker Governors² on the Allocation Committee from one to three.³ Formerly, only one Floor broker Governor served as a member of the Allocation Committee. The Exchange believes that the Floor broker Governors on the Allocation Committee add a comprehensive knowledge of specialist performance and a broad perspective and expertise relating to the Exchange. In conjunction with this amendment, the Exchange amended the Policy's quorum requirement to require at least two Floor broker Governors to be present at Allocation Committee meetings. Prior to the amendment, the Policy required only one such Governor to be present.⁴ These rule changes were implemented by the Exchange in October, 1994.

In order to avoid the appearance of a conflict of interest on the part of an Allocation Committee member, the Policy requires an Allocation Committee member whose firm has an investment banking/underwriting relationship with a listing company or is affiliated with a specialist unit applicant, to abstain from deliberations with respect to that particular stock. Since the implementation of the amendments discussed above, the Exchange has found that the conflict of interest exclusion may, at times, impede the Exchange's efforts to maintain the maximum presence of three Floor broker Governors on the Allocation Committee. The Exchange believes that conflict of interest abstentions, among other matters, could lead to situations in which the quorum requirement for Floor broker Governors could not be met. In order to respond to this concern, the Exchange is proposing to amend the Policy to permit Senior Floor Officials⁵ to substitute for Floor broker Governors on the Allocation Committee for purposes of satisfying quorum requirements.

The Allocation Committee membership is drawn from the Allocation Panel, which consists of 28

Floor brokers, 8 allied members,⁶ the 8 Floor broker Governors (who are part of the Allocation Panel by virtue of their appointment as Governors), and the 4 allied members serving on the Exchange's Market Performance Committee.⁷ The Exchange would also amend the Policy to expand the Allocation Panel by appointing a minimum of 5 Senior Floor Officials each year. The Senior Floor Officials on the Allocation Panel would constitute a separate category, distinguished from the 28 Floor brokers.

In the event that any of the Floor broker Governors on the standing Allocation Committee were not able to attend an Allocation Committee meeting, or to participate in the allocation of a particular stock, the Exchange would first seek to substitute for such Governor(s) with another Floor broker Governor on the Allocation Panel. If no such Governor was available, in order to maximize the seniority of the Allocation Committee membership, a Senior Floor Official broker on the Allocation Panel that is not a standing member of the Allocation Committee would be sought as a substitute for the absent Governor(s). In instances where no Senior Floor Official broker was available from the Allocation Panel, any Senior Floor Official broker on the standing Allocation Committee may substitute for the absent Governor(s) for purposes of meeting the Governor quorum requirement.

In the event that no current Floor broker or allied member is available from the Allocation Panel, a former Allocation Committee chairman may substitute for a standing Allocation Committee member who cannot attend a meeting or participate in a particular allocation decision. However, a former Allocation Committee chairman may not substitute for a Floor broker Governor for the purpose of meeting the Floor broker Governor quorum requirement unless such former Allocation Committee chairman is a Senior Floor Official.

The Exchange is also amending the "Term of Service" provision for Panel members to include a provision for Senior Floor Officials. Senior Floor

² A Floor broker Governor is an individual, designated as such by the Chairman of the Exchange's Board of Directors, who is empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Director as prescribed by the rules of the Exchange's Board of Directors.

³ This committee determines which specialist unit will specialize in a particular security. See Securities Exchange Act Release No. 34626 (September 1, 1994), 59 FR 46457.

⁴ See Securities Exchange Act Release No. 34626 (September 1, 1994), 59 FR 46457.

⁵ A Senior Floor Official is a former Governor or a former Floor Director.

⁶ An allied member is a general partner, principal executive officer or employee who controls a member firm or member organization. See New York Stock Exchange, Inc., Constitution, Art. 1, Sec. 3(c).

⁷ The Allocation Panel comprises the pool of individuals from which the Allocation Committee is formed. The Allocation Panel members are selected through an annual appointment process with input from the membership. Panel members are appointed to serve a one-year term; Floor broker Governors, however, remain on the Allocation Panel for as long as they are Floor broker Governors.

¹ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Elisa Metzger, Staff Attorney, SEC dated May 16, 1995.