notice is hereby given that on June 22, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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.

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

The proposed rule change consists of extending the capital utilization pilot through September 10, 1996. The capital utilization measure 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. This capital utilization measure would continue to be used by the Allocation Committee (''Committee'') in allocating newly-listed stocks.[3]

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

## 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 III below and is set forth in Sections A, B and C below.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In recognition of the importance of dealer participation, particularly in volatile markets when such participation is viewed as providing ''value added'' in maintaining fair and orderly markets, the Exchange has developed a measure of specialist performance dealing with utilization of capital for marketmaking. This measure of 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.

Under the pilot, a capital utilization percentage is derived for each eligible stock[4] and the specialist unit overall by dividing the average daily dollar value of the unit's stabilizing purchases and sales by the average daily total dollar value of shares traded in the unit's stocks. This percentage is calculated both for stabilizing trades only and stabilizing plus reliquefying trades. (A reliquefying transaction is one in which the specialist reduces a position in a specialty stock by selling part of a long position on a zero-minus tick, or purchasing to cover part of a short position on a zero-plus tick.) These percentages are provided for base periods (*i.e.*, non-volatile periods) and volatile periods (days when there is a change of one percent or more in the S&P 500 Stock Price Index),[5] and each stock's ten percent most volatile days,[6] so that performance of a unit relative to other units can be compared as to volatile and non-volatile market conditions.

The capital utilization measure separates stocks into three broad groupings including:

- Stocks included in the top 200 stocks in the S&P 500 Stock Price Index and other stocks that are at least as active (based on average daily dollar value of shares traded)
- The remainder of the S&P 500 and any stocks among the 500 most active on the Exchange
- All other stocks

Specialist units are placed alphabetically into three tiers based on their base day and volatile day capital utilization percentages for each of the three groupings of stocks. Within each grouping, a Floor-wide mean capital utilization percentage is calculated. A unit will be in Tier 1 if its capital utilization percentage is more than 1.1 standard deviations above the mean. (A standard deviation is a statistical measure of the distance from the mean.) A unit will be in Tier 2 if its capital utilization percentage is within 1.1 standard deviations above or below the mean. A unit will be in Tier 3 if its capital utilization percentage is more than 1.1 standard deviations below the mean.

During the past year, the Allocation Committee has received specialist capital utilization information on a ''rolling'' 12-month basis.[7] The Allocation Committee has been given information as to a unit's tier in each stock grouping, with the tier data being included with other objective data, such as DOT turnaround performance, stabilization rates and TTV percentages. The specialist units themselves have been given, on a monthly basis for the prior 12 months, their actual capital utilization percentages for each stock.[8]

The Commission previously approved the Exchange's proposed rule change to adopt capital utilization as an additional measure of specialist performance to be considered by the Allocation Committee, first on a one-year pilot

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[3] The Exchange's Allocation Policy and Procedures governs 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 also* note 17, *infra.*

[4] The following are not included in any grouping of eligible stocks: foreign stocks, preferred stocks, warrants, when-issued stocks, IPOs (for the first 60 days), closed-end funds, stocks selling for $5 and under, and stocks with less than 2000 shares average daily trading volume. In Securities Exchange Act Release No. 35927 (June 30, 1995) the Commission approved an amendment to the capital utilization pilot that also excludes stocks with two classes of shares (*e.g.*, Class A and Class B), merger/acquisition stocks if there was a significant impact on the price or volume, and stocks that have been delisted for more than half of the examination period. In addition, the amendment to the pilot reduced the review period in which capital utilization is measured from a rolling 12 months to a rolling three months.

[5] ''S&P 500 Stock Price Index'' is a service mark of Standard and Poor's Corporation.

The base period calculation includes the total average daily dollar value for the trading days within the three month period excluding those days during which there was a change of 1% or more in the S&P 500 Price Index. The volatile period calculation includes the total average daily dollar value for the trading days within the three month period during which there was a change of 1% or more in the S&P 500 Price Index.

[6] The base period calculation includes the total average daily dollar value for the days within the three month trading period that were not among the 10% most volatile. The volatile period calculation includes the average daily dollar value for the days within the three month period that were the 10% most volatile.

[7] This has been changed to a rolling three months. *See supra* note 4.

[8] The specialist capital utilization measure is not being added as a basis for initiating a Performance Improvement Action under NYSE Rule 103A. *See infra* note 11. During the pilot period, the Market Performance Committee will receive quarterly reports on the initiative, with a view toward their recommending such enhancements or modifications as may seem appropriate based on actual experience with this measure. Any modifications or enhancements would be filed with the Commission, and would be implemented only with the Commission's approval.