

basis⁹ and then for an additional six months through June 30, 1995.¹⁰ In its July 25, 1994, report on the Allocation and Capital Utilization pilots, the Exchange reviewed the Committee's use of the capital utilization measure in allocation decisions. The measure appears to be a useful addition to the other measures of specialist performance referred to by the Committee. The Exchange is now seeking to extend that pilot to run concurrently with the pilot for Rule 103A¹¹ and the pilot for the "near neighbor" technique of measuring specialist performance.¹²

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) 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.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

⁹ See Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993).

¹⁰ See Securities Exchange Act Release No. 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995).

¹¹ See Securities Exchange Act Release No. 35704 (May 10, 1995), 60 FR 26060 (May 16, 1995). 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. The Commission emphasized in the extension order its belief that objective measures of specialist performance should be incorporated into the evaluation process. The Commission believes that the Exchange should have sufficient experience with the capital utilization and near neighbor measures of specialist performance at the end of the pilot period to judge whether these objective measures should be incorporated into the Rule 103A evaluation criteria.

¹² The near neighbor approach to evaluating specialist performance compares the performance in a stock over rolling three-month periods to the performance of stocks with similar trading characteristics. This objective measure of specialist performance will only be used, at this time, by the Allocation Committee in its decision making process. See *supra* note 3. The Commission approved the near neighbor pilot in Securities Exchange Act Release No. 35927 (June 30, 1995).

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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 NW., Washington, DC 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 other 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 NW., Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-95-24, and should be submitted by August 1, 1995.

IV. Commission's Findings and Order Granting Approval of Proposed Rule Change

The Commission finds that the proposed rule change 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.¹³ Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act¹⁴ and Rule 11b-1 thereunder,¹⁵ 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 capital utilization by the Allocation Committee

should enhance the Exchange's allocation process and encourage improved specialist performance, consistent with the protection of 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.¹⁶ 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.¹⁷

The Commission believes that extending the pilot period for the specialist capital utilization is appropriate because the Exchange indicates that it has found the measure useful in providing the NYSE Allocation Committee with an objective measure of specialist performance. The NYSE's Allocation Policy emphasizes that the most significant allocation criterion is specialist performance.¹⁸ 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. 33369,¹⁹ the Commission has determined to extend the pilot period for this measure through September 10, 1996. 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 and will permit the

¹⁶ See, e.g., 17 CFR 240.11b-1 (1994); NYSE Rule 104.

¹⁷ The Commission also has approved an NYSE proposal to reduce the weight given in the allocation decision making process to the Specialist Performance Evaluation Questionnaire from 1/3 to 1/4 in recognition of the Exchange's adoption of the near neighbor and capital utilization objective measures of special performance. See Securities Exchange Act Release No. 35932 (June 30, 1995).

¹⁸ 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.

¹⁹ See *supra* note 9.

¹³ 15 U.S.C. 78f(b)(5) (1988).

¹⁴ 15 U.S.C. 78k(b) (1988).

¹⁵ 17 CFR 240.11b-1 (1994).