

and near neighbor<sup>11</sup> objective measures of specialist performance.

The Exchange proposes to amend the Allocation Policy to limit the weight that the SPEQ may be given in the allocation decision making process to no more than 25%. Currently, the Policy permits the Allocation Committee to grant up to one-third weight to SPEQ results in its allocation decisions.

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.<sup>12</sup> 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 Act<sup>13</sup> and Rule 11b-1 thereunder,<sup>14</sup> which allow exchanges to promulgate rules relating to specialists to ensure fair and orderly markets. For the reasons set forth below, the Commission believes that limiting the weight given the SPEQ 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 the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.<sup>15</sup> To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock allocation procedures and policies that provide specialists with an initiative to strive for optimal performance.

Although the SPEQ remains a useful tool to measure performance, the

Commission has long believed that objective indications of performance should play an important role in allocation decisions. In particular, the Commission believes that objective performance measures can identify poor market making performance that otherwise may not be reflected in a unit's SPEQ survey results. In this regard, the Commission notes that the Exchange has initiated, on a pilot basis, the capital utilization and near neighbor programs. In light of these additional objective measures of specialist performance, the Commission believes that it is appropriate to limit the weight that the SPEQ may be given in allocation decisions to one quarter, thereby increasing the emphasis given to objective measures of performance. In addition, the Commission notes that a reduction in the weight given the SPEQ from one-third to 25% is relatively minor, especially given the additional objective measures to be considered by the Allocation Committee. Nevertheless, to the extent that the near neighbor and capital utilization measures are only adopted on a pilot basis, if those measures are not extended or permanently approved, the Commission would expect the NYSE to re-evaluate the Allocation Policy to ensure there are adequate indicia of performance being considered by the Allocation Committee.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NYSE-95-06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 95-16918 Filed 7-10-95; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-35927; File No. SR-NYSE-95-05]

### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Near Neighbor Approach to Measuring Specialist Performance**

June 30, 1995.

#### **I. Introduction**

On February 28, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a new approach to measuring specialist performance that would be used in allocation decisions and modify an existing measure of specialist performance.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35661 (May 2, 1995), 60 FR 22593 (May 8, 1995). No comments were received on the proposal.

#### **II. Description**

The NYSE proposes to adopt, on a pilot basis, the near neighbor measure of specialist performance to be considered by the Allocation Committee in allocating stocks to specialist units.<sup>3</sup> The Exchange also proposes some modifications to its existing capital utilization measure, which is currently used by the Allocation Committee on a pilot basis.<sup>4</sup>

The near neighbor measure compares the performance in a stock over "rolling" three-month periods to the performance of stocks with similar trading characteristics ("near neighbors"). The near neighbor program analyzes the following market quality measures: (1) Continuity, which is the

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> 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 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 13, *infra*. The Allocation Committee currently considers the capital utilization measure, in addition to several other objective performance measures. See, e.g., Securities Exchange Act Release No. 35927 (June 30, 1995) (discussing NYSE Allocation Policy and Procedures).

<sup>4</sup> The specialist capital utilization program measures the dollar value of a specialist's proprietary trading in relation to the total dollar value of shares traded in the specialist's stocks. The Commission approved the capital utilization measure on a one-year pilot basis in Securities Exchange Act Release No. 33369 (December 23, 1993), 58 FR 69431 (December 30, 1993). The Commission approved a six-month extension to 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 has extended the capital utilization program pilot so that the Exchange and the Commission may evaluate the capital utilization and near neighbor programs concurrently. See Securities Exchange Act Release No. 35926 (June 30, 1995) (extending pilot through September 10, 1996).

utilization program pilot so that the Exchange and the Commission may evaluate the capital utilization and near neighbor programs concurrently. See Securities Exchange Act Release No. 35926 (June 30, 1995) (extending pilot through September 10, 1996).

<sup>11</sup> 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. The Commission approved the near neighbor program on a pilot basis in Securities Exchange Act Release No. 35927 (June 30, 1995).

<sup>12</sup> 15 U.S.C. 78f(b)(5) (1988).

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

<sup>14</sup> 17 CFR 240.11b-1 (1994).

<sup>15</sup> See 17 CFR 240.11b-1 (1994); NYSE Rule 104.

<sup>16</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>17</sup> 17 CFR 200.30-3(a)(2) (1984).