

Commission and any persons, 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 at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-00-03 and should be submitted by March 10, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42417; File No. SR-NYSE-99-46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 104 ("Dealings by Specialists")

February 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 16, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 9, 1999, the NYSE submitted Amendment No. 1 to the proposed rule change.³ 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 seeks approval of proposed Rules 104.21 and 104.22 which would, respectively: (1)

Increase capital requirements for specialist entities exceeding certain concentration-based criteria; and (2) prescribe additional capital requirements for specialist entities resulting from merger, acquisition, consolidation, or other combinations of specialist assets. In addition, the filing seeks approval of proposed Rule 104.23, which would permit the Exchange to provide a "grace period," not to exceed 5 business days, during which specialist entities may operate despite noncompliance with the provisions of Rules 104.21 and 104.22.

Further, the filing seeks approval of amendments to existing Rule 104.20, which would clarify the definition of "net liquid assets" and allow the Exchange to determine the capital requirements for securities not specifically addressed by the Rule. Proposed new language is italicized; proposed deletions are in brackets.

Rule 104 (Dealings by Specialists)

. Supplementary Material:
Capital Requirements of Specialists (effective June 1, 1971.)

.20 Regular specialists.—

(1) A member registered as a regular specialist at an active post must be able to assume a position of 150 trading units in each common stock in which he is registered.

(2) A member registered as a regular specialist at an active post must be able to assume a position of 30 trading units in each convertible preferred stock, of 1200 shares in each of the 100 share trading unit non-convertible preferred stocks and of 300 shares in each of the 10 share unit non-convertible preferred stocks in which he is registered.

(3) *The position which a member registered as a regular specialist at an active post must be able to assume, for each stock in which he is registered that is not included in (1) or (2) above, shall be determined by The Exchange. Such determinations shall be based upon the structure and characteristics of the security and shall be the amount prescribed in (1) or (2) above for the type of stock with the most similar structure and characteristics.*

(4)[(3)] A member registered as a regular specialist at the inactive Post must have, at all times, net liquid assets of at least \$150,000.

(5)[(4)] Notwithstanding .30 of this Rule, each member registered as a regular specialist at an active post must be able to establish that he can meet, with his own net liquid assets, a minimum capital requirement which shall be the greater of \$1,000,000 or 25% of the position requirements as set forth in Paragraphs (1), [and] (2) and (3)

above, except as determined by the Exchange in unusual circumstances.

The [Market Surveillance and Evaluation] Division of *Member Firm Regulation* must be informed immediately by a specialist, in each instance, of his inability to comply with the provisions set forth in the above Paragraphs.

[The term "net liquid assets" is defined as the excess of cash or readily marketable securities over liabilities for a specialist who neither carries nor services customers' accounts and who does no business with others than members and member organizations. The term for all other specialists refers to excess net capital computed in accordance with the provisions of Rule 325 except that capital accounts of partners, accounts of partners which are covered by agreements approved by The Exchange providing for the inclusion of equities therein as partnership property and borrowings covered by subordination agreements approved by The Exchange under Rule 326.13 may be considered "proprietary accounts" and as such included in the computation of such excess net capital for purposes of this Rule, with "haircuts" restored in respect of long or excess short positions of securities for which he is registered as a specialist and for long positions of securities which he shall have deposited or pledged with a bank or member organization as collateral for funds borrowed to finance transactions or positions in such specialist securities.]

(6) *For those members registered as a regular specialist subject to the Net Capital Rule (SEA Rule 15c3-1), the term "net liquid assets" refers to excess net capital computed in accordance with the provisions of Rule 325 ("Capital Requirements") with the following adjustments:*

(i) *Additions for haircuts and undue concentration charges on specialty securities in dealer accounts;*

(ii) *Additions for any other haircuts on long positions which are deposited or pledged as collateral for funds borrowed to finance dealer transactions or positions in specialist securities;*

(iii) *Deductions for floor brokerage and/or commissions receivable;*

(iv) *Deductions for clearing organization deposits; and*

(v) *Deductions for any cash surrender value of life insurance policies allowable under the net capital rule.*

(7) *For members registered as a regular specialist not subject to the Net Capital Rule, "net liquid assets" is defined as the excess of cash, net credit balances at clearing broker(s), and*

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jack Drogin, Senior Special Counsel, Division of Market Regulation, Commission, dated November 24, 1999. In Amendment No. 1, the Exchange changed the implementation date of the proposed rule change ("Amendment No. 1").

readily marketable securities over all liabilities.

In the event that two or more specialists are associated with each other and deal for the same specialist account, the above requirements shall apply to such specialists as one unit, rather than to each specialist individually.

[Specialists must be able to meet the above requirements without taking into consideration the capital required to carry or finance investment accounts.]

.21 Concentration Measure Requirements

Notwithstanding the provisions of (1) through (5) in rule 104.20 above, if a regular specialist entity's market share exceeds 5% of any of the following concentration measures:

- (1) All listed common stock (current);
- (2) The 250 most active listed common stocks (over the previous 12 months);
- (3) The total share volume of stock trading on the Exchange (over the previous 12 months); or
- (4) The total dollar value of stock trading on the Exchange (over the previous 12 months) such entity shall maintain net liquid assets equivalent to the following applicable requirements:

- (i) \$4 million for each specialist security contained in the DJIA
- (ii) \$2 million for each specialist security contained in the S&P 100, not contained in (i)
- (iii) \$1 million for each specialist security contained in the S&P 500, not contained in (i) or (ii)
- (iv) \$500 thousand for each specialist common stock, excluding bond funds, not contained in (i), (ii) or (iii)
- (v) \$100 thousand for each specialist security not included in (i) through (iv), excluding warrants.

.22 Combinations of Specialist Entities

A specialist entity resulting from the merger, consolidation, acquisition, or other combination of specialist assets:

- (i) subject to the concentration measure requirements of Rule 104.21, shall maintain net liquid assets in accordance with those provisions, or equivalent to the aggregate net liquid assets of the specialist entities prior to their combination, whichever is greater;
- (ii) not subject to the concentration measure requirements of Rule 104.21, shall maintain net liquid assets according to the provisions of Rule 104.20, or equivalent to the aggregate net liquid assets of the specialist entities prior to their combination, whichever is greater.

.23 Maintaining a Fair and Orderly Market

Solely for the purpose of maintaining a fair and orderly market, the Exchange may, for a period not to exceed 5 business days, allow a specialist entity to continue to operate despite such specialist entity's non-compliance with the provisions of Rules 104.21 and 104.22.

[.23] .24 Relief Specialists.—
no change

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 Exchange 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 Exchange 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

During the last decade, there has been a significant decline in the number of specialist units operating on the Floor of the Exchange. For example, at the end of 1957 there were 136 specialist units with 348 individual specialists registered in a total 1,077 common stocks. In contrast, by year-end 1986, there were 54 specialist units with 410 individual specialists registered in 1,560 common stocks. Currently, there are 27 specialist units, with 491 specialists registered in 2,871 common stocks.

The trend in specialist consolidations has raised concerns over the number of stocks assigned to any one specialist entity and the impact that market volatility can have on special entities and the overall operation of the market. The adequate capitalization of the significantly larger specialist units is critical in dealing with volatile markets and in meeting specialist market maintenance obligations. Accordingly, new Rule 104.21 is being proposed to increase the minimum capital requirements of any specialist or specialist unit which exceeds certain concentration criteria.

The new provision would require that any specialist or specialist unit, whose market share is greater than 5% of any of the following concentration measures, be subject to a revised method of calculating its "net liquid asset" requirement:

- (1) All listed common stock (current);
- (2) The 250 most active listed common stocks (over the previous 12 months);
- (3) The total share volume of stock trading on the Exchange (over the previous 12 months);
- (4) The total dollar value of stock trading on the Exchange (over the previous 12 months).

If the 5% threshold is exceeded, the specialist entity shall maintain, at minimum, net liquid assets equivalent to the following applicable requirements:

- (1) \$4 million for each specialist security contained in the DJIA;
- (2) \$2 million for each specialist security contained in the S&P 100, not contained in 1;
- (3) \$1 million for each specialist security contained in the S&P 500, not contained in 1 or 2;
- (4) \$500 thousand for each specialist common stock, excluding bond funds, not contained in 1, 2, or 3;
- (5) \$100 thousand for each specialist security not included in 1 through 4, excluding warrants.

In addition, proposed Rule 104.22 would require any new specialist entities resulting from merger, acquisition, consolidation, or other combination of specialist assets, to maintain net liquid assets equivalent to the greater of either:

- (1) The aggregate net liquid assets of the specialist entities prior to their combination, or
- (2) The capital requirements otherwise prescribed by Rule 104.

The purpose of this requirement is to prevent specialist units from withdrawing capital, prior to or upon combination of their assets, resulting in the combined entity having less capital than its component parts.

Given that proposed rules 104.21 and 104.22 may subject specialist entities to sudden and substantially increased capital requirements, Rule 104.23 is proposed to authorize the Exchange to allow a specialist entity to operate, for a period not to exceed 5 business days, despite such specialist entity's non-compliance with the provisions of Rules 104.21 and 104.22. This limited discretionary authority would, under appropriate circumstances, permit the Exchange to determine a reasonable time period for the infusion of additional specialist capital without disrupting the maintenance of a fair and orderly market, particularly in volatile market situations. In addition, the time period would allow for the orderly reallocation of specialist securities in the event a specialist entity is unable to comply with the prescribed

requirements. It is important to note that this authority extends only to compliance with the heightened concentration/combination standards proposed in this filing; it does not apply to the Commission's net capital requirements⁴ or the net capital requirements prescribed by NYSE Rule 104.20.

These heightened requirements are in keeping with the Exchange's resolve to maintain high quality market performance in its listed securities. By minimizing the potential risk of financial problems that would have a significant adverse impact on the functioning of its markets, the overall effectiveness of the specialist system is strengthened.

It is further proposed that the capital requirements for specialist securities not specifically addressed in the Rule (*i.e.*, certain derivatives and structured products) be determined by the Exchange according to a comparison of the products' structure and characteristics relative to the existing standardized securities whose capital requirements are currently prescribed in the Rule. This provision is necessary given the potentially limitless variety of derivative and structured products, which are not easily categorized.

In addition, it is proposed that Rule 104.20 be amended to clarify the definition of "net liquid assets" and distinguish its application to specialist units subject to the Commission's net capital rule from specialist units which are not.

The effective date of the rule amendments will be no later than ninety (90) days from the date of Commission approval, but it may be earlier, *i.e.*, thirty (30) days following written notice to the membership if the NYSE determines that specialist entities are ready to comply with the new requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)⁵ of the Act in that it promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and, in general, protects investors and the public interest. These interests are served when the capitalization of specialist entities is adequate to maintain a fair and orderly market.

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.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such data if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 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 Room. 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-99-46 and should be submitted by March 10, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-3939 Filed 2-17-00; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9G67]

State of New York (and a Contiguous County in the State of New Jersey)

Bronx County and the contiguous counties of New York, Queens, and Westchester in the State of New York, and Bergen County, New Jersey constitute an economic injury disaster loan area as a result of a fire that occurred on October 20, 1999 in the Castle Hill section of the Bronx. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on November 9, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South, 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for the State of New Jersey is 9G68.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 9, 2000.

Aida Alvarez,
Administrator.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9G69]

State of Oregon

Lane and Lincoln Counties and the contiguous counties of Benton, Deschutes, Douglas, Klamath, Linn, Polk, and Tillamook in the State of Oregon constitute an economic injury disaster loan area as a result of flooding, landslides, debris flows, and resulting road closures beginning on November 24, 1999. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file

⁴ 17 CFR 240.15c3-1.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).