or an employee of a member organization shall apply for approval by the Exchange as an approved person. . . .'' The approval process requires that certain pertinent information about the approved person Applicant be provided to the Exchange for review. FORM AP–1 is used by Applicants who are entities and FORM U–4 is completed by natural person Applicants.

The Exchange is proposing several revisions to FORM AP–1, which will require additional information and otherwise enhance its effectiveness for reviewing, approving, and monitoring Approved Persons.

The proposed substantive revisions to FORM AP–1:

• require greater detail regarding both the nature of an Applicant's business and the Applicant's relationship with the member organization (items 7A and 9A–C of the Form);

• require the Applicant, promptly upon request, to provide the Exchange with updated financial and other information (Instruction Sheet, No. 8);

• require the Applicant, if a registered broker-dealer, to submit a copy of its most recent FOCUS Report (Instruction Sheet, No. 10);

• continue the effectiveness of the Applicant's FORM AP–1 agreements with the Exchange notwithstanding that the named member or member organization has changed its name or legal form (p. 4 of the Form, 5th paragraph); and

• require that a copy of a complete organization chart of Applicant and its affiliates be provided (Instruction Sheet, No. 9).

The proposed revisions (Form items 7A and 9A–C) will provide Exchange staff with more detailed information regarding the relationship between the member organization and approved person, enabling a more thorough evaluation of the Applicant (*e.g.,* the Form asks for a general description of the Applicant's business and requires Applicant to indicate specifically how it controls, is controlled by or under common control with the member or member organization).

The proposed revisions clarify circumstances under which an Applicant must file financial statements (Instruction Sheet, No. 8). Item 12 of the Form asks the Applicant to submit to the Exchange its most recent balance sheet and income or profit and loss statement if the Applicant (a) Controls the member organization; (b) is a subsidiary of the member organization for purposes of NYSE Rule 321 or its obligations or liabilities are guaranteed, endorsed or assumed by the member organization (under NYSE Rule 322); or (c) is a ''Material Associated Person'' as the term is used in Rule 17h–1T under the Act. The Exchange believes that in most cases there is no regulatory purpose served by requiring submission of financial statements of persons under common control unless, as previously indicated, the person is a ''Material Associated Person.'' The Exchange, however, reserves the right to request current financial statements from applicants under common control. The Form also provides clarification that when financial statements are required to be submitted, they must be current, and clarification of the Exchange's right to request updated financial and other information. Approved person Applicants that are registered broker-dealers must submit copies of their most recent FOCUS report (Instruction Sheet, No. 10).

The revised Form contains a new provision which states that the Applicant agrees that the statements, warranties, representations and undertakings in the Form will continue to apply notwithstanding a change to the member organization's name, form of organization, or legal status (but retains same SEC B/D number). This will eliminate the need for more frequent re-filings of FORM AP–1 (*see* page 4 of the Form, 5th paragraph).

To clarify the relationship between the Applicant and the member organization, a complete organization chart of the Applicant and its affiliates must be submitted with the Form (Instruction Sheet, No. 9). An organization chart may also identify other entities which should be approved persons.

Certain additional changes are proposed in response to suggestions made by Commission staff. They include the addition of a question (item 7B of the Form) to elicit the identity of any ''foreign financial regulatory authority'' to which the Applicant may be subject. They also include highlighting (on the Instruction Sheet) the responsibility of the Applicant to disclose whether it, or any person associated therewith, is subject to a statutory disqualification, and noting on the instruction Sheet (No. 8) that any required financial statements must be submitted in English.

Several formatting revisions have also been made, such as italicizing defined terms and providing space for evidencing Exchange staff processing, which make the Form clearer and easier to use.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act of the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act[5] because it is designed to prevent fraudulent and manipulative acts and practices, promotes just and equitable principles of trade, and, in general, protects investors and the public interest, in that it will enhance the process by which the Exchange reviews, approves, and monitors Approved Persons. The Commission believes that by providing more meaningful and detailed information for the Exchange's review, the proposed revisions to the NYSE's FORM AP–1, Application will enable the Exchange to make a better-informed decision concerning approval of applicants. The Commission also believes that such additional information on the application should improve the utility of the form in connection with the Exchange's regulatory oversight responsibilities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–00–24) is approved.

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

Margeret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20257 Filed 8–9–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43098; File No. SR–NYSE–99–46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Exchange Rule 104 (''Dealings by Specialists'')

July 31, 2000.

I. Introduction

On November 16, 1999, the New York Stock Exchange, Inc. (''NYSE'' or

[4] In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change. In its proposal, the NYSE seeks to increase capital requirements for specialist entities exceeding certain concentration-based criteria, and prescribe additional capital requirements for specialist entities resulting from merger, acquisition, consolidation, or other combinations of specialist assets. The proposed rule change was published for comment in the **Federal Register** on February 18, 2000.[3] The Commission received no comments on the proposed rule change, and this order approves the proposal.

II. Description of the Proposal

During the last decade, there has been a significant decline in the number of specialist units operating on the floor of the Exchange. Currently, there are 27 specialist units, with 491 specialists registered in 2,871 common stocks. The trend in specialist consolidations has raised concerns at the NYSE over the number of stocks assigned to any one specialist entity and the impact that market volatility can have on specialist entities and the overall operation of the market. The NYSE believes that adequate capitalization of the significantly larger specialist units is critical in dealing with volatile markets and in meeting specialist market maintenance obligations. Accordingly, the NYSE proposed Rule 104.21 to increase the minimum capital requirements of any specialist or specialist unit that exceeds certain concentration criteria.

The new provision would apply to any specialist or specialist unit whose market share is greater than 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);

(4) The total dollar value of stock trading on the Exchange (over the previous 12 months).

If the 5% threshold is exceeded, the new provision requires that the specialist entity maintain, at a minimum, net liquid assets equivalent to the following applicable requirements:

(1) $4 million for each specialist security contained in the Dow Jones Industrial Average;

(2) $2 million for each specialist security contained in the Standard & Poor's 100, not contained in 1;

(3) $1 million for each specialist security contained in the Standard & Poor's 500, not contained in 1 or 2;

(4) $500,000 for each specialist common stock, excluding bond funds, not contained in 1, 2, or 3;

(5) $100,000 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.

According to the Exchange, 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.

Because the proposal may subject specialist entities to sudden and substantially increased capital requirements, the proposal would grant the Exchange the discretion to allow a specialist entity to operate, for a period not to exceed 5 business days, despite the specialist entity's non-compliance with the provisions mentioned above. The Exchange believes that 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 disruption the maintenance of a fair and orderly market, particularly in volatile market situations. The Exchange also believes that 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. The NYSE notes 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 requirements[4] or the net capital requirements prescribed by NYSE Rule 104.20.

Further, the Exchange proposed that the capital requirements of 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. The NYSE believes that this provision is necessary given the potentially limitless variety of derivative and structured products, which are not easily categorized. In addition, the NYSE proposes 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 Exchange proposed that 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.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[5] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[6] of the Act in that it addresses concerns about capitalization, operational efficiency, and risk management. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that these new requirements are appropriate because they help ensure that specialist units have sufficient, separately dedicated capital with which to meet their market making responsibilities. Specialists occupy a unique position at the NYSE, and under NYSE rules, specialists are charged with the responsibility of maintaining fair and orderly markets.[7] The proposal increases capital requirements for specialist entities exceeding certain concentration-based criteria. In times of market volatility, specialist entities that meet these concentration criteria could

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42417 (February 11, 2000), 65 FR 8465.

[4] 17 CFR 240.15c3–1.

[5] In reviewing this proposal pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Exchange Rule 104.

potentially be subject to financial risk. This proposal helps ensure that these specialists are adequately capitalized and can meet their obligation of maintaining fair and orderly markets.

The Commission also believes that it is appropriate to place additional capital requirements on specialists units that are combining. The combined entity will be larger than either of the two (or more) original entities, responsible for more securities, and financially exposed to a larger degree. The potential impact of the financial failure of a large-sized specialist unit upon the NYSE would be proportionately greater in comparison to the failure of either original unit. Thus, imposing more stringent capitalization requirements upon the new unit should decrease the probability of any such failure, and minimize any subsequent detrimental impact upon the market place.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–99–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20258 Filed 8–9–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43111; File No. SR–NYSE–00–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend the Pilot Relating to Shareholder Approval of Stock Option Plans

August 2, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2000, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Exchange proposes to extend the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a ''broadly-based'' stock option plan (''1999 Proposal'').[3] The Commission approved 1999 Proposal on a pilot basis (''Pilot'') on June 4, 1999.[4] The Pilot is scheduled to expire on September 30, 2000. The Exchange proposes to extend the effectiveness of the Pilot until September 30, 2003.

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

The 1999 Proposal amended Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual to reflect the recommendations formulated by a Stockholder Approval Policy Task Force (''Task Force''), which was established by the Exchange to review comments and make recommendations concerning possible changes to its definition of what constitutes a ''broadly-based'' stock option plan for purposes of the Exchange's shareholder approval policy. The Task Force also recommended that the Exchange actively consider utilizing an overall dilution maximum for all non-tax qualified plans that otherwise would be exempt from shareholder approval requirements. The Task Force recommended that the Exchange direct it or another appropriate group to immediately consider the dilution issue with a target date of the NYSE's September 1999 meeting of the Board of Directors.

The Exchange did so, and the Task Force continued its work and submitted a report of its findings to the Exchange's Board at the November 1999 meeting.[5] The Task Force, however, recommended implementing enhanced disclosure requirements for the compensation tables contained in a company's SEC filings.[6] Although the Task Force formulated dilution standards and presented them in its report, the Task Force believed and the Exchange's Board agreed, that such standards should be adopted uniformly by all the major listing markets in the United States. The Task Force was concerned that adoption of the dilution standard by only one market would lead to competition for listings based on disparities in the corporate governance rules of the respective markets. The Task Force believed that this would compromise the purposes intended to be served by those rules, and could undermine the public's confidence and trust in the markets.

Accordingly, the Exchange began discussions with the management of the National Association of Securities Dealers regarding a dilution standard, but no consensus has yet been achieved. The Exchange is requesting an extension of the Pilot for three years in order to permit additional industry discussion of the issues, while at the same time enabling the Exchange to continue to study the experience of NYSE listed companies and their investors that utilize the exemption from shareholder approval for broadly-based stock options plans, as approved in the Pilot.

The order issued by the Commission approving the 1999 Proposal on a pilot

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[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the definition approved in the 1999 Proposal classifies a stock option plan as broadly-based if, pursuant to the terms of the plan (a) at least a majority of the issuer's full time, exempt U.S. employees are eligible to participate under the plan; and (b) at least a majority of the shares awarded under the plan (or shares of stock underlying options awarded under the plan) during the shorter of the three-year period commencing on the date the plan is adopted by the issuer or the term of the plan itself are made to employees who are not officers or directors of the issuer.

[4] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

[5] The Task Force had previously submitted a status report to the Commission in October 1999. *See* letter from Catherine Kinney, Group Executive Vice President, Office of the Chief Executive, NYSE, to Annette Nazareth, Director, Division of Market Regulation, SEC, dated October 28, 1999 (Status Report Submission NYSE 98–32).

[7] *See supra* note 4.

[8] The Commission notes that the Order directed the NYSE to address concerns raised regarding the three-year limit for reviewing grants awarded under broadly-based plans in any request to extend the Pilot by monitoring whether companies continue to