

in the recapture. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and rule 22c-1 to the extent deemed necessary to permit them to recapture the 2% Bonus under the New Contracts.

### Conclusion

For the reasons summarized above, Applicants submit that the Exchange Offer is consistent with the protections provided by Section 11 of the Act, and that approval of the Exchange Offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants further submit that their request for exemptions from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder meet the standards set out in Section 6(c) of the Act. Applicants submit that the requested order should therefore be granted.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3872 Filed 2-17-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27136]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 11, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 7, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at

law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 7, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Yankee Atomic Electric Company (70-9561)

Yankee Atomic Electric Company ("Yankee"), located at Suite 200, 19 Midstate Drive, Auburn, Massachusetts, 01501, a subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed a declaration under section 12(c) of the Act and rule 42 under the Act.

Yankee proposes to repurchase, on a *pro rata* basis, from its ten stockholders ("Sponsors"), 95%, or 145,730 shares, of its presently outstanding common stock at a purchase price of \$100 per share.<sup>1</sup> The purchase price is equal to the book value per share of the common stock on June 30, 1999. The repurchase is subject to the condition that all Sponsors tender their allotment of shares. Yankee intends to accomplish this repurchase in one or more steps over the next one to two years. The funds for the repurchase will be obtained by liquidating short-term investments held by Yankee at June 30, 1999. After the proposed repurchase, Yankee will maintain minimal equity until it ultimately prepares to liquidate and wrap up its affairs.

Yankee is a single purpose electric utility which formerly operated a nuclear powered electric generation facility ("Rowe Plant"), the output of which was sold to Yankee's ten Sponsors. The Rowe Plant was permanently taken out of service in February 1992 and Yankee is in the process of decommissioning the facility. Under power contracts between Yankee and each Sponsor, which have been approved by the Federal Energy Regulatory Commission, the Sponsors are continuing to make payments to Yankee to cover funds for decommissioning the Rowe Plant and waste disposal, amortization of plant

<sup>1</sup> The ten Sponsors, each of which is an affiliate of Yankee, are: New England Power Company; The Connecticut Light & Power Company; Public Service Company of New Hampshire; Western Massachusetts Electric Company; Boston Edison Company; Central Maine Power Company; Montaup Electric Company; Commonwealth Electric Company; Cambridge Electric Light Company; and Central Vermont Public Service Corp. The Sponsors currently hold all the outstanding shares of common stock of Yankee.

investment and return on equity. As these obligations are reduced or provided for, Yankee believes its minimum equity requirements will also significantly decline. Therefore, Yankee contemplates this initial repurchase of common stock to reduce its equity.

For the Commission by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3938 Filed 2-17-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42418; File No. SR-NASD-00-03]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Rule 2520 Relating to Margin Requirements for Day-Trading Customers

February 11, 2000.

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> notice is hereby given that on January 13, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the National Association of Securities Dealers Regulation ("NASD Regulation"), 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 NASD. 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

NASD Regulation proposes to amend NASD Rule 2520 to impose overall more stringent margin requirements for day-trading customers. The text of the proposal is below. Deletions are in brackets, and additions are in italics.

#### NASD RULE 2520. Margin Requirements

(a) Definitions No change.

(b) Initial Margin

For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/

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

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

or securities in the account which shall be at least the greater of:

(1) through (3) No change.

(4) equity of at least \$2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). *The minimum equity requirement for a "pattern day trader" is \$25,000 pursuant to paragraph (f)(8)(B)(iv)a. of this Rule.*

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided it is in compliance with Regulation T of the Board of Governors of the Federal Reserve System and after such withdrawal the equity in the account is at least the greater of \$2,000 (\$25,000 in the case of a "pattern day trader") or an amount sufficient to meet the maintenance margin requirements of this [paragraph] Rule.

(c) through (f)(8)(A)(iii) No change.

(f)(8)(B) Day[-]Trading

(i) The term "day[-]trading" means the purchasing and selling or the selling and purchasing of the same security on the same day in a margin account except for:

a. a long security position held overnight and sold the next day prior to any new purchase of the same security, or

b. a short security position held overnight and purchased the next day prior to any new sale of the same security.

(ii) [A "day-trader" is any customer whose trading shows a pattern of day-trading.] *The term "pattern day trader" means any customer who executes four or more day trades within five business days. However, if the number of day trades is 6% or less of total trades for the five business day period, the customer will not be considered a pattern day trader and the special requirements under paragraph (f)(8)(B)(iv) of this Rule will not apply. In the event that the organization at which a customer seeks to open an account knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the special requirements under paragraph (f)(8)(B)(iv) of this Rule will apply. If a pattern day trader does not day trade for a 90 day period, the customer will no longer be considered a pattern day trader.*

(iii) The term "day-trading buying power" means the equity in a customer's account at the close of business of the previous day, less any maintenance margin requirement as

prescribed in paragraph (c) of this Rule, multiplied by four for equity securities.

Whenever day[-]trading occurs in a customer's margin account the special maintenance margin required for the day trades in equity securities [to be maintained] shall be [the margin on the "long or short" transaction, whichever occurred first, as required pursuant to the other provisions of this Rule. When day-trading occurs in the account of a "day-trader" the margin to be maintained shall be the margin on the "long" or "short" transaction, whichever occurred first, as required by Regulation T of the Board of Governors of the Federal Reserve System or as required pursuant to the other provisions of this Rule, whichever amount is greater.] *25% of the cost of all day trades made during the day. For non-equity securities, the special maintenance margin shall be as required pursuant to the other provisions of this Rule. Alternatively, when two or more day trades occur on the same day in the same customer's account, the margin required may be computed utilizing the highest (dollar amount) open position during that day. To utilize the highest open position computation method, a record showing the "time and tick" of each trade must be maintained to document the sequence in which each day trade was completed.*

(iv) Special Requirements for Pattern Day Traders

a. Minimum Equity Requirement for Pattern Day Traders—*The minimum equity required for the accounts of customers deemed to be pattern day traders shall be \$25,000. This minimum equity must be deposited in the account before such customer may continue day trading and must be maintained in the customer's account at all times.*

b. *Pattern day traders cannot trade in excess of their day-trading buying power as defined in paragraph (f)(8)(B)(iii) above. In the event a pattern day trader exceeds its day-trading buying power, which creates a special maintenance margin deficiency, the following actions will be taken by the member:*

1. *The account will be margined based on the cost of all the day trades made during the day,*

2. *The customer's day-trading buying power will be limited to the equity in the customer's account at the close of business of the previous day, less the maintenance margin required in paragraph (c) of this Rule, multiplied by two for equity securities, and*

3. *"Time and tick" (i.e., calculating margin using each trade in the sequence that it is executed, using the highest*

*open position during the day) may not be used.*

c. *Pattern day traders who fail to meet their special maintenance margin calls as required within five business days from the date the margin deficiency occurs will be permitted to execute transactions only on a cash available basis for 90 days or until the special maintenance margin call is met.*

d. *Pattern day traders are restricted from using the guaranteed account provision pursuant to paragraph (f)(4) of this Rule for meeting the requirements of paragraph (f)(8)(B).*

e. *Funds deposited into a day trader's account to meet the minimum equity or maintenance margin requirements of paragraph (f)(8)(B) of this Rule cannot be withdrawn for a minimum of two business days following the close of business of the day of deposit.*

(C) When the equity in a customer's account, after giving consideration to the other provisions of this [paragraph (c)] Rule, is not sufficient to meet the requirements of [subparagraph (i) or (ii) hereof] paragraph (f)(8)(A) or (B), additional cash or securities must be received into the account to meet any deficiency within [seven] five business days of the trade date.

*In addition, on the sixth business day only, members are required to deduct from Net Capital the amount of unmet maintenance margin calls pursuant to SEC Rule 15c3-1.*

(f)(9) and (f)(10) 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, NASD Regulation 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. NASD Regulation 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

Day-trading margin requirements have come under close scrutiny as day-trading activities have become more prevalent. Over the past few months, the

431 Committee<sup>3</sup> has been meeting frequently to consider responses to various problems that it identified. The proposed rule change is based on the Committee's recommendations. The NASD believes that the proposal will more appropriately protect the safety and soundness of member firms and ensure the overall financial well-being of the securities markets.

Because Regulation T initial margin requirements and NASD/NYSE standard maintenance margin requirements<sup>4</sup> are calculated only at the end of each day, a day trader who has no positions, including losses, in his or her account at the end of the day would not incur a Regulation T initial margin or a standard maintenance margin requirement. However, current NASD/NYSE initial margin provisions generally require a customer to deposit margin of at least \$2,000, except that cash need not be deposited in excess of the cost of any security purchased.

Although a day trader may end the day with no position, the day trader and the firm, if credit is extended, are at risk during the day. To address this risk, the NASD and NYSE require day traders to demonstrate that they have the ability to meet the initial margin requirements for at least their largest open position during the day. Specifically, a customer who meets the definition of "day trader" under the rule must deposit in his or her account the margin that would have been required under Regulation T (*i.e.*, the 50 percent initial margin requirement) if the customer had not liquidated the position during the trading day. If the customer day trades but is not considered a "day trader," the customer is still required to post 25% of the largest open position during the day.

Currently, if a customer's day trading results in a day-trading margin call, the customer has seven days to meet the call by depositing additional cash or securities. Because day traders typically end the day flat and this day-trading "margin" deposit is not securing a margin loan, the customer is not

required to leave the margin deposit in the account and may withdraw the deposit the day after the deposit is made. Additionally, if a customer fails to meet a day-trading margin call, the firm is not required to take specific action against the customer's account. Because day traders typically end the day flat, there are no securities to liquidate, as there would be for an existing position.

NASD Regulation believes that the proposed rule change would address the following deficiencies in the existing rules relating to day-trading margin activities.

First, the proposed rule change would amend the definition of "pattern day trader" to cover only true day traders. Day-trading margin requirements should be imposed only on true day traders, not just incidental or occasional day traders. NASD Regulation believes that the current definition is too broad because it includes customers, such as institutions and other large individual accounts, that have a high volume of trading activity and that occasionally day trade, not as a strategy, but in response to a specific investment decision or in reaction to events. Accordingly, under the proposal day traders would be defined as those customers who day trade four or more times in five business days, unless their day-trading activities do not exceed 6% of their total trading activity for that period.

Additionally, the proposal requires a firm that knows or has a reasonable basis to believe that the customer is a pattern day trader, to designate the customer as a pattern day trader immediately, instead of delaying such determination for five business days. A firm would have a reasonable basis for believing that a customer is a pattern day trader if, for example, the firm provided training to the customer on day trading in anticipation of the customer opening an account. If a pattern day trader does not day trade for a 90-day period, he or she will no longer be considered a pattern day trader.

Second, the proposed rule change would revise the minimum equity requirement. NASD Regulation believes that the current minimum equity requirement of \$2,000 does not sufficiently prevent day traders from continuing to generate losses in their accounts, without any additional deposit of funds. Accordingly, the proposed rule change would require a day trader to have \$25,000 of minimum equity in his or her account on any day in which the customer day trades. This minimum equity must remain in the account for at least two subsequent

business days following the close of business on any day the deposit was required. NASD Regulation believes that a minimum requirement of \$25,000 would more appropriately address the additional risks inherent in leveraged day-trading activities and would better ensure that customers cover any loss incurred in the account from the previous day prior to day trading.

Third, the proposed rule change would permit day-trading buying power of up to four times the day trader's maintenance margin excess. NASD Regulation believes that current day-trading margin calls represent illusory liabilities because the funds used to meet a call are deposited after the day-trading risk has already been incurred and need only remain in the account overnight. Accordingly, the proposal would not permit day-trading buying power to exceed four times the day trader's maintenance margin excess. This calculation would be based on equity maintained in the account prior to each day's trading and, at the firm's option, could be based either on the largest open position at any time during the day or the customer's total trading commitment during the day. By limiting a customer's day-trading buying power to four times maintenance margin excess and requiring that amount to be in the account prior to day trading, NASD Regulation believes that the intraday risks to firms caused by customer day trading would be more appropriately addressed.

Fourth, the proposed rule change would impose a day-trading margin call if day-trading buying power was exceeded. Under the proposal, if a day-trading customer exceeded his or her day-trading buying power limitations, additional restrictions would be imposed on the day trader to protect the firm from the additional risk and help prevent the recurrence of such prohibited conduct. The proposal requires member firms to issue a day-trading margin call to day traders that exceed their day-trading buying power. Customers would have five business days to deposit funds to meet this day-trading margin call. Funds used to meet a day-trading margin call would be required to remain in the account for two business days. Until the call is met, the day-trading account would be restricted to day-trading buying power of two times the maintenance margin excess based on the customer's daily total trading commitment. If the day-trading margin call is not met by the fifth business day, the account would be further restricted to trading only on a cash available basis for 90 days or until the call is met.

<sup>3</sup> After the Board of Governors of the Federal Reserve System extensively amended Regulation T, an informal ad hoc committee (the "431 Committee") was formed to consider changes to the NYSE's and NASD's margin rules (NYSE Rule 431 and NASD Rule 2520, respectively). The 431 Committee also was formed to ensure that the NYSE's and NASD's margin rules were consistent in order to prevent confusion and to avoid conferring advantages on members that are required to comply with one rule and not the other. The 431 Committee is composed of NYSE staff, attorneys from the NYSE's outside counsel, NASD staff, Federal Reserve staff, and representatives from several clearing firms and broker/dealers.

<sup>4</sup> NASD Rule 2520 and NYSE Rule 431, the margin provisions for the NASD and the NYSE, respectively, are substantially similar.

Fifth, the proposed rule change would prohibit cross-guaranteeing of day-trading accounts. The proposal would prohibit day traders from meeting the day-trading margin requirements through the use of cross-guarantees. Each day-trading account would be required to meet the applicable requirements independently, using only the financial resources available in the account. Accordingly, day traders would be prohibited from using cross-guarantees to meet the minimum equity requirements or to meet day-trading margin calls.

Finally, the proposal would revise the current requirement that the sale and repurchase on the same day of a position held from the previous day must be treated as a day trade. Under the proposed rule change, the sale of an existing position would be treated as a liquidation and a subsequent repurchase viewed as the establishment of a new position and therefore not subject to the rules affecting day trades. Similarly under the proposal, if a short position was carried overnight, the purchase to close the short position and subsequent new sale would not be considered a day trade.

## 2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will more appropriately address the deficiencies in the existing day trading margin rules, promote the safety and soundness of member firms, and further investor protection.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation believes that the proposed rule change will not 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 NASD did not solicit written comments. However, the NASD received a petition to the NASD Board of Directors dated December 2, 1999, from Steven H. Levine, Special Credit

Counselor to the Electronic Traders Association ("ETA"). The petition requested that the NASD make certain modifications to its proposed rule change. In general, the petition supported the increase in the minimum equity requirement from \$2,000 to \$25,000 and the increase in day-trading buying power from two times to four times maintenance margin excess. It also supported the use of "time and tick" as part of the proposed rule and raised no objection to the five business day requirement for day traders to meet the day-trading margin call.

The petition opposed the proposed definition of a pattern day trader and indicated that for almost 65 years, a general standard of three day trades in a twelve-month period resulting in a person being deemed a day trader has worked. It also noted that many of the NYSE's largest carrying clearing firms only allow one or two day trades as an indication of a day trading pattern.

The petition disagreed with the proposed requirement that funds deposited to meet day-trading margin calls must remain in the account for two full business days. It noted that such a rule will increase the day trader's ability to further day trade with the deposited funds for additional days, will expose the lender to needless risk, and will needlessly penalize the customer for the use of funds, including the use of their own funds.

In addition, the petition opposed the restriction on the use of cross guarantees to meet day-trading margin requirements on the basis that it constituted discrimination against the day trader margin investor and violates his or her constitutional right to trade and to enter into agreements with others.

The NASD believes that the proposed rule change is appropriate to address the additional risks inherent in leveraged day-trading activities. The NASD also believes that the proposed rule change will provide greater financial stability to a day trader's account and will provide a more accurate indicator of the financial means and resources of each individual day-trading customer than is provided under current rules.

### **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 date if it finds such longer period to be appropriate and publishes its reasons for so finding, or

(ii) as to which the NASD consents, the Commission will:

A. by order approve the 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 change is consistent with the Act. In particular, commenters are invited to address the following issues: (1) Is the requirement that a firm "knows or has a reasonable basis to believe" that a customer will engage in pattern day trading too difficult to apply in practice? (2) Does the 6% minimum requirement within the definition of a "pattern day trader" appropriately address trading by institutional accounts or would a different standard, including a possible blanket exemption for institutional accounts, be more appropriate? (3) Is the requirement that funds remain in the account for two business days appropriate? (4) Should a customer be provided an opportunity (e.g., one business day) to meet a day-trading margin call prior to imposing the two times maintenance margin excess requirement based on the customer's daily total trading commitment? (5) Would it be more appropriate to immediately require a day trader that exceeds his or her day-trading buying power to trade on a cash available basis only until the day-trading margin call is met? (6) Should customers be permitted to use cross-guarantees to meet day-trading margin requirements? Would it be more appropriate to limit the use of cross-guarantees up to a certain multiple of the assets in an account or based on the funds available in an account? (7) Is 90 days the appropriate period for a customer to no longer be considered a pattern day trader, if the customer does no day trading during that period?<sup>6</sup>

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submissions, 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

<sup>6</sup> Cf., Securities Exchange Act Release No. 42343, 65 FR 4005 (January 25, 2000) (SR-NYSE-99-47). A copy of this proposed rule change is also available on the Commission's web-site ([www.sec.gov](http://www.sec.gov)).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3873 Filed 2-17-00; 8:45 am]

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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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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*

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 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").