

enforcement agencies for rule G-8(a)(xvi) to require dealers to keep copies of the Forms G-37/G-38 submitted to the Board so that these forms can be easily retrieved for review. In reviewing the timely submission of the forms, the Board also believes it would be helpful to the enforcement agencies to require dealers to keep the certified or registered mail record or other records indicating dispatch.⁷

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

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

The Board does not believe that the proposed rule change will impose any burden on competition 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

Written comments were neither solicited nor received.

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

Within 35 days of the 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 self-regulatory organization 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.

⁷ Rule G-9, on preservation of records, requires dealers to retain the G-8(a)(xvi) records concerning political contributions and prohibitions on municipal securities pursuant to rule G-37 for a six year period.

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 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 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-96-7 and should be submitted by October 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

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[Release No. 34-37668; File No. SR-NYSE-96-17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of Pilot Programs for Capital Utilization and Near Neighbor Measures of Specialist Performance

September 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 1, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 self-regulatory organization.¹ The Commission is

¹ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Senior Special Counsel, SEC, dated September 10, 1996 ("Amendment No. 1"). The Exchange originally requested that the capital utilization and near neighbor measure pilots be approved for an additional year, until September 10, 1997. In Amendment No. 1, the Exchange amended the filing to request that the pilots only be extended for an additional four months, until January 10, 1997 and requested that the four-month extension be approved on an accelerated basis. The Exchange

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 consists of extending for an additional four months, through January 10, 1997, the pilot programs to use specialist capital utilization and the "near neighbor" approach to measure specialist performance.²

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change, and Amendment No. 1 thereto, prior to the thirtieth day after publication in the Federal Register.³

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently uses several programs to measure specialist

stated that during this time, it expected to seek permanent approval of the programs from its Board of Directors, and to subsequently file such requests with the Commission.

² The SEC notes that these measures currently are only used by the Allocation Committee in making specialist allocation decisions. See *infra* note 4. The SEC initially approved the capital utilization program on a one-year pilot basis in Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993). The SEC approved a six-month extension of 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 SEC approved a subsequent extension of the pilot so that the Exchange and the SEC could evaluate the capital utilization and near neighbor programs concurrently. See Securities Exchange Act Release No. 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) (extending pilot through September 10, 1996). The SEC approved the near neighbor program on a pilot basis in Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35927 (July 11, 1995) (pilot approved through September 10, 1996).

³ See Amendment No. 1, *supra* note 1.

performance including specialist capital utilization and the near neighbor approach, which compares a stock's performance with stocks with similar characteristics. These measures are currently utilized on a pilot program basis in Allocation Committee deliberations.⁴ The pilot programs are scheduled to expire on September 10, 1996.

The capital utilization measure of performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks.⁵ The near neighbor approach compares certain performance measures of a given stock (price continuity, depth, quotation spread and capital utilization) to those of its "near neighbors", i.e., stocks that have certain similar characteristics. The stock is then categorized as either "below mean", "mean", or "above mean" as compared to its near neighbors for a given performance measure.⁶ These measures are presented to the Allocation Committee in summary form for each unit applying for a new listing and are a factor in allocating newly-listed stocks.

The Exchange believes the capital utilization and near neighbor programs provide useful objective measures of specialist performance, and is therefore proposing that the pilot programs be extended for an additional four months, through January 10, 1997. During this time, the Exchange expects to seek permanent approval of these programs from its Board of Directors, and to subsequently file such requests with the Commission.⁷

⁴ The Exchange's Allocation Policy and Procedures ("Allocation Policy") 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 emphasizes that the most significant allocation criterion is specialist performance. In this regard, 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 Securities Exchange Act Release No. 34906 (October 27, 1994), 59 FR 55142 (November 3, 1994) (order approving revisions to the NYSE's Allocation Policy).

⁵ For a comprehensive description of the capital utilization measure of specialist performance, see Securities Exchange Act Release No. 35927, *supra* note 2.

⁶ For a comprehensive description of the near neighbor measure, see Securities Exchange Act Release No. 35927, *supra* note 2.

⁷ See Amendment No. 1, *supra* note 1.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)⁸ 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. The Exchange believes that the proposed rule change is consistent with these requirements in that continuing to develop objective measures of specialist performance would help perfect the mechanism of a free and open 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. 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, N.W., Washington, D.C. 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 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 at the Commission's Public Reference Section, 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 Exchange. All submissions should refer to File No. SR-NYSE-96-17 and should be submitted by [insert date 21 days from date of publication].

⁸ 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated 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. 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 Act⁹ and Rule 11b-1 thereunder,¹⁰ 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 and near neighbor analysis 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.¹¹ 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 objective measures of specialist capital utilization and near neighbor analysis for use in the allocation process to encourage improved specialist performance and market quality.

The Commission believes that extending the pilot period for these two measures is appropriate because the Exchange indicates that it has found these measures useful in providing the NYSE Allocation Committee with objective measures of specialist performance. The NYSE's Allocation Policy emphasizes that the most significant allocation criterion is

⁹ 15 U.S.C. 78k(b).

¹⁰ 17 CFR 240.11b-1.

¹¹ See, e.g., 17 CFR 240.11b-1, NYSE Rule 104.

specialist performance.¹² 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 Securities Exchange Act Release Nos. 33369 and 35927, the Commission has determined to extend the pilot program for these measures through January 10, 1997. The Commission believes that extending the pilot period is appropriate because it will provide the Exchange and the Commission with an opportunity to study further the effects of the use of these measures on the NYSE's allocation process prior to the Exchange's submission of a request for permanent approval of these measures during the four month extension of the pilots. In addition, extending the pilots will permit the measures to run concurrently with the Rule 103A pilot.¹³ During the pilot period, the Commission continues to expect the NYSE to monitor carefully the effects of the near neighbor and capital utilization programs and report its findings to the Commission in order to assist the Commission in considering approval of the pilots on a permanent basis. Specifically, the Commission requests that the Exchange should, for the three month period between April 1, 1996 to June 30, 1996, submit a report that identifies the specialist units, the securities for which they applied, the stocks that were allocated to them, and the specialist units' SPEQ rating as presented to the Allocation Committee.¹⁴ In the report, the Exchange should identify allocations that were made to specialists units with relatively poor tier ratings in the objective measures and discuss the reasons the Allocation Committee made such allocations.¹⁵

¹² See, e.g., Securities Exchange Act Release No. 34906, *supra* note 4.

¹³ In Securities Exchange Act Release No. 37667 (September 11, 1996) (File No. SR-NYSE-96-22), the Commission approved an extension of the NYSE Rule 103A pilot program until January 10, 1997.

¹⁴ The Commission believes that this information will allow it to evaluate the extent to which the Allocation Committee's decisions appear consistent with the relative performance of specialist units according to the objective measures. In this regard, however, the Commission recognizes that the Allocation Committee also considers the SPEQ results and may use its professional judgment in making allocation decisions. See *supra* note 4.

¹⁵ The Exchange may submit one report for both the near neighbor and capital utilization pilots. This report should be submitted to the Commission no later than November 15, 1996, along with any Exchange request for permanent approval of the pilot programs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate because it will enable the Exchange to continue to make use of the capital utilization and near neighbor measures of specialist performance on an uninterrupted basis and will ensure continuity and consistency in the stock allocation deliberation process prior to the Exchange's submission to the Commission of a request for permanent approval of these programs. Further, the initial proposals to adopt both the capital utilization pilot and near neighbor pilot were noticed previously in the Federal Register for the full statutory period and the Commission did not receive any comments on these proposals.¹⁶ Accordingly, the Commission believes good cause exists pursuant to Section 19(b) of the Act to grant accelerated approval of the pilots' extensions.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) ¹⁷ that the proposed rule change (File No. SR-NYSE-96-17), and Amendment No. 1 thereto, is hereby approved on an accelerated basis, through January 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jonathan G. Katz,
Secretary.

[FR Doc. 96-23976 Filed 9-18-96; 8:45 am]

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[Release No. 34-37677; File No. SR-OCC-96-12]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Schedule of Fees

September 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 9, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items

¹⁶ See Securities Exchange Act Release Nos. 33369 and 35927, *supra* note 2.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1) (1988).

have been prepared primarily by OCC. 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 amends OCC's schedule of fees to increase the price at which certain brochures are sold to the public.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC and its five participant exchanges collaborate to write, distribute, and print four generic exchange brochures: the Directory of Exchange Listed Options; LEAPS® (long term equity anticipation securities) (in which the New York Stock Exchange does not participate); Taxes and Investing; and Understanding Stock Options. Currently, these brochures are sold to the public either individually at \$.60 each or at \$.50 each for orders greater than 100. This pricing structure has been in place since the late 1980s.

OCC is proposing to increase the price structure of these brochures to \$1.00 each or \$.90 each for orders greater than 100 in light of rising printing and fulfillment costs. The proposed fee change is based on current average printing and fulfillment costs for these brochures. Accordingly, OCC will amend its schedule of fees to reflect this fee increase.

The proposed rule change is consistent with the requirements of Section 17A of the Act³ in that it allocates reasonable fees in an equitable manner in that it reflects OCC's current

² The Commission has modified parts of these statements.

³ 15 U.S.C. 78q-1 (1988).