

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38478; File No. SR-NYSE-97-11]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Requirements for Notification by Member Organizations of Participation in Distributions

April 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 31, 1997, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing a new rule, Rule 392, and an amendment to existing Rule 460 to require notification by member organizations when they are participating in an offering of securities listed on the Exchange. Proposed new language is in italics; proposed deletions are in brackets.

#### Notification Requirements for Offerings of Listed Securities

*Rule 392. (a) A member or member organization which acts as the lead underwriter of any offering in a listed security, other than a secondary distribution pursuant to Rule 393, shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:*

1. name of security
2. symbol
3. type of security
4. number of shares offered
5. offering price
6. date of pricing
7. time pricing
8. pricing basis (e.g., NYSE or Consolidated close)
9. beginning and ending dates of restricted period under Regulations M (if applicable)

10. syndicate members
11. firm submitting notification
12. name of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require

*(b) Any Exchange member or member organization effecting a syndicate covering transaction or imposing a penalty bid in a listed security shall provide notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.*

#### Rule 460 Specialists Participating in Contests

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#### Supplementary Material

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.20 The restrictions in paragraphs (a) and .10 above shall not apply, except as provided herein, to an approved person entitled to an exemption from this Rule pursuant to Rule 98. The restriction on acquisition of 10% or more of the outstanding shares of any equity security in which an associated specialist is registered, as provided in Rule 460.10, shall apply to such approved person separate and distinct from the restriction as applied to any or all other persons specified in rule 460.10, and positions of the approved person shall not be aggregated with the positions of any one or more other persons specified in Rule 460.10. The same principle applies with respect to the reporting of positions specified in Rule 460.10. An approved person entitled to an exemption from this Rule may engage in business transactions with a company in whose stock an associated specialist is registered, may accept a finder's fee from such company, and may act as an underwriter in any capacity for a distribution of securities issued by such company. [When an approved person entitled to an exemption from this Rule is acting or has agreed to act in any underwriting capacity for a distribution of (i) any security in which an associated specialist is registered; (ii) any security which is immediately exchangeable for or convertible into a security in which an associated specialist is registered; and (iii) any security which entitles the holder thereof immediately to acquire a security in which an associated specialist is registered, the associated specialist member organization shall "give up the book" in the security in which a specialist member of the specialist member organization is

registered to another specialist organization satisfactory to the Exchange which shall serve as a full time relief specialist until such book may, in accordance with this Rule, be reacquired by the member organization that is associated with the approved person. The period during which the member organization shall give up the book as provided above shall commence not later than the date specified in (A), (B), or (C), whichever is applicable, of Rule 10b-6(a)(3)(xi) of the Securities and Exchange Commission under the Securities Exchange Act of 1934 and shall end when the approved person has completed his participation in such distribution in accordance with paragraph (c)(3) of that Rule.]

*.30(a) An approved person associated with a specialist member organization ("Affiliated Specialist") that is entitled to an exemption from certain Exchange rules pursuant to Exchange rule 98 shall notify the Exchange of its participation in any distribution or tender or exchange offer of any security covered by paragraph (b) of this rule, in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:*

1. name of security
2. symbol
3. type of security
4. symbol of reference security or securities (if different from security being distributed)
5. description of distribution or tender or exchange offer
6. distribution price or terms of tender or exchange offer
7. date of pricing
8. time of pricing
9. pricing basis (e.g., NYSE or Consolidated close)
10. beginning and ending dates of the restricted period under Regulation M (if applicable) or, for a tender or exchange offer, the date the offer is publicly announced and its expiration date
11. firm submitting notification
12. name and title of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require

*(b) The notification requirements of this rule are applicable to any security in which the Affiliated Specialist is registered where such security is either:*

*(i) the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 10b-13 under the Securities Exchange Act of 1934; or,*

(ii) a covered security as defined in Rule 100 of Regulation M.

## **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 NYSE 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 III below. The NYSE has prepared summaries, set forth in Sections (A), (B), and (C) below.

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

#### **1. Purpose**

The SEC has adopted Regulation M to replace certain trading practices rules under the Securities Exchange Act of 1934 (the "Act"). Like the rules it replaces, Regulation M proscribes certain activities that offering participants might engage in to manipulate the price of an offered security. However, the six rules adopted under Regulation M represent a streamlined and more flexible approach to regulating conduct during offerings. An essential part of this approach is reliance on surveillance conducted by self-regulatory organizations with respect to offerings of securities traded in their marketplaces.

The Exchange has surveillance procedures in place which monitor markets for various types of manipulative activity. The Exchange is proposing a new rule and an amendment to a rule to require notification by member organizations when they are participating in an offering of securities listed on the Exchange.

#### **Rule 392 (Notification Requirements for Offerings of Listed Securities)**

This rule will require notification to the Exchange whenever a member or member organization acts as a lead underwriter of any offering of a listed security. Such notification will enable the Exchange to monitor trading in the security or any related security traded on the Exchange for possible price manipulation. The data required to be transmitted to the Exchange include the name and type of the security, symbol, number of shares offered, offering price, date, time and basis of pricing, applicable restricted period and syndicate members, as well as the firm,

name and telephone number of the individual submitting the notification.

Rule 392 will also require notification, effective April 1, 1997, to the Exchange of any initial syndicate covering transaction to reduce a short position created in connection with the offering, and the imposition of any penalty bid by a managing underwriter against a syndicate member that has sold any of the securities originally distributed which are subsequently purchased in a syndicate covering transaction. These notifications are required by Rule 104(h) under Regulation M.

#### **Rule 460.30**

Under Regulation M and Exchange Rule 98, specialist organizations associated with an underwriter of their specialty stock will not have to "give-up-the-book" during distributions of such stocks if they have functional separation procedures in place approved by the Exchange. Rule 460.20 is being amended accordingly to reflect this change. However, when such an underwriter is engaged in a distribution of a specialty stock, the Exchange will conduct specific types of surveillance on trading in the security by the specialist and associated underwriter to monitor for possible manipulation of the stock. These surveillance procedures were designed when the Exchange received no-action relief from Rules 10b-6 and 10b-13 under the Act from the requirement for specialists to "give up the book" during participation in a distribution of a specialty stock by an affiliated broker-dealer, and are being carried forward under Regulation M.

Rule 460.30 will require notification to the Exchange, the earlier of two business days prior to pricing the offering or one business day prior to the commencement of the restricted period for a distribution participant as defined in Rule 100 under Regulation M, whenever an approved person associated with a specialist member organization ("Affiliated Specialist") that has a functional separation approved pursuant to Rule 98 participates in the distribution of a security in which the Affiliated Specialist is registered. With respect to tender or exchange offers, notification must be made to the Exchange prior to the commencement of the Rule 10b-13 covered period, i.e., from the time the offer is publicly announced until its expiration. The data elements required are similar to those in Rule 392.

#### **2. Statutory Basis**

The NYSE believes that the proposed rule change is consistent with

provisions of Section 6(b)(5) of the Act<sup>1</sup> in that the proposed rule change is 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.

### **(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 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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 2, 1997.

## **IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

The Commission finds that the NYSE's proposal is consistent with the Act and the rules and regulations thereunder applicable to national securities exchanges. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act which requires that an exchange have rules that are designed to

<sup>1</sup> 15 U.S.C. § 78f(b)(5) (1988).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the Commission believes the Exchange's policy requiring notification by member organizations when they are participating in an offering of securities listed on the Exchange will facilitate compliance of Exchange members with the requirements of Regulation M, SEC Rules 100 through 105, and Rule 10b-13 under the Act. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>2</sup> that the proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SOCIAL SECURITY ADMINISTRATION**

### **Information Collection Activities: Proposed Collection Requests and Comment Requests**

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

#### **I. The Information Collection(s) Listed Below Require(s) Extension(s) of the Current OMB Approval(s) or Are Proposed New Collection(s)**

1. Certification by Religious Group—0960-0093. The information collected by the Social Security Administration on form SSA-1458 is used to determine if the religious group of which an individual is a member qualifies for a

self-employment tax exemption under Section 1402(g) of the Internal Revenue Code. The respondents are spokespersons for religious groups.

*Number of Respondents:* 180.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 45 hours.

2. RSI/DI Quality Review Case Analysis Questionnaires and Annual Earnings Test Questionnaire—0960-0189. The information collected on forms SSA-2930, SSA-2931 and SSA-2932 is used by the Social Security Administration to establish a national payment accuracy rate for all cases in payment status and to serve as a source of information regarding problem areas in the Retirement and Survivors Insurance (RSI) program and Disability Insurance (DI) programs. The information is also used to measure the accuracy rate for newly adjudicated RSI/DI cases. The information collected on form SSA-4659 is used to evaluate the annual earnings test (AET) process to determine the effectiveness of the AET process. The results will be used to develop ongoing improvements in the process. The respondents are RSI and DI beneficiaries.

	SSA-2930	SSA-2931	SSA-2932	SSA-4659
Number of Respondents .....	5,500	2,750	1,375	740
Frequency of Response .....	1	1	1	1
Average Burden Per Response (minutes) .....	20	30	30	20
Estimated Annual Burden (hours) .....	1,833	1,375	688	247

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address:

Social Security Administration, DCFAM,  
Attn: Judith T. Hasche, 6401 Security Blvd.,  
1-A-21 Operations Bldg., Baltimore, MD  
21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

#### **II. The Information Collection(s) Listed Below Have Been Submitted to OMB**

1. Appointment of Representative—0960-0527. The information collected on form SSA-1696 is used by the Social Security Administration to verify the applicant's appointment of a representative. It allows SSA to inform the representative of items which affect the applicant's claim. The respondents are applicants who notify SSA that they have appointed a person to represent them and such representatives when claiming a right or benefit.

*Number of Respondents:* 475,737.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 72,290 hours.

2. Information About Joint Checking/Savings Account—0960-0461. The information collected on form SSA-2574 by the Social Security Administration is used to determine whether a joint bank account should be

counted as a resource of an SSI claimant or applicant in determining eligibility for SSI. The respondents are applicants for and recipients of SSI payments and individuals who are joint owners of financial accounts with SSI applicants/recipients.

*Number of Respondents:* 200,000

*Frequency of Response:* 1

*Average Burden Per Response:* 7 minutes

*Estimated Annual Burden:* 23,333 hours

3. Social Security Non-Applicant, Applicant and Advisor Surveys on the Supplemental Security Income and Social Security Disability Programs—0960-NEW. SSA will conduct a pilot study to obtain information on the factors that motivate individuals to file for disability benefits. The purpose of this project is to provide SSA with an appropriate methodology to conduct a scientific survey of disability applicants, non-applicants and disability advisors to determine the types and sources of

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

<sup>3</sup> 17 CFR 200.30-3(a)(12) (1996).