

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50114; File No. SR-NYSE-2004-34)

July 29, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. to Amend NYSE Rule 103B with Respect to the Allocation Panel

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 29, 2004 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 Exchange. The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 NYSE proposes to amend Exchange Rule 103B (Specialist Stock Allocation) to update the composition of the Allocation Panel. The Allocation Panel is the group of individuals from which an Allocation Committee is drawn. The Allocation Committee is the group involved in the assignment to specialist organizations of the companies listing

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

on the Exchange. The Exchange proposes to change the number of persons on the Allocation Panel. The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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Rule 103B

Specialist Stock Allocation

Securities listing on the Exchange will be allocated to specialist units according to such policies as are established and made known to the membership from time to time. These policies are stated below.

Allocation Policy and Procedures

I. – II. – No change.

III. ALLOCATION PANEL

Composition

The composition of the Allocation Panel reflects the committee structure and includes 28 Floor brokers, [13] 15 allied members (including the [5] 7 allied members serving on the Market Performance Committee), [9] 11 representatives of institutional investor organizations (including the [5] 7 representatives of institutional investor organizations serving on the Market Performance Committee), the 10 Floor broker Governors who are part of the panel by virtue of their appointment as Governors, and a minimum of 5 Senior Floor Official or Executive Floor Official brokers that have been appointed to the panel.

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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 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

Stocks listing on the Exchange are allocated to specialist organizations by the Allocation Committee pursuant to procedures contained in Exchange Rule 103B. The Allocation Panel is the resource from which the Allocation Committee is assembled. The Allocation Panel is appointed by the Exchange's Board of Directors from among individuals nominated by the Exchange's membership.

Exchange Rule 103B(III) sets forth the composition of the Allocation Panel. The rule currently provides for 13 allied members (including the five allied members serving on the Market Performance Committee ("MPC")) and nine representatives of institutional investor organizations (including the five representatives of institutional investor organizations serving on the MPC). However, the MPC Charter currently authorizes seven allied members and seven representatives of institutional investor organizations to serve on the MPC. In light of this, the Allocation Committee charter also provides for the seven allied members and seven representatives of institutional investor organizations serving on the MPC to be part of the Allocation Panel.

Accordingly, the Exchange proposes a technical amendment to NYSE Rule 103B(III) to conform the number of allied members and representatives of institutional investor organizations authorized in its rule with the number authorized by the Allocation Committee charter. The Exchange represents that the proposed amendment is not substantive in nature and does not change the way in which allocations are made.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act<sup>5</sup> in that it 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 a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these objectives in that it enables the Exchange to further enhance the process by which stocks are allocated to ensure fairness and equal opportunity in the process.

### 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.

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

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>8</sup>

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

#### 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. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSE-2004-34 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-34 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

J. Lynn Taylor  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).