

under the Act to register an indefinite amount of shares under the Securities Act of 1933.

2. An investment company that has filed a declaration under rule 24f-2 must file annual notices with the SEC and pay share registration fees for shares sold in the previous fiscal year. If the rule 24f-2 notice is filed within two months after the close of the investment company's fiscal year, the amount of the registration fee is based on net sales (new sales minus redemptions) in the year in question. If the rule 24f-2 notice is not filed within two months, the registration fee is based on gross sales (with no credit for redemptions). At the latest, the rule 24f-2 notice along with the appropriate registration fee must be filed within six months after the end of an investment company's fiscal year. A.T. Ohio's fiscal year ends August 30, and the Fund's fiscal year ends August 31.

3. A.T. Ohio transferred all of its assets to the Ohio Municipal Money Market Portfolio (the "Portfolio") of the Fund on August 30, 1994. The Portfolio was established to continue the operations of A.T. Ohio as a series portfolio of the Fund. Applicants assert that there was uncertainty as to how the applicants' fees should be calculated because of the reorganization. Thus, the amounts of the registration fees were unsettled until after the New York banks were closed October 28, 1994, and applicants' administrator had to obtain a certified check in the amount of the Fund's net fee payment on October 31, 1994, the last day of the two month filing deadline.

4. A.T. Ohio and the Fund submitted their rule 24f-2 notices for the fiscal year ending August 30 and 31, 1994, respectively, to a same day courier service on October 31, 1994. Because A.T. Ohio had net redemptions during the fiscal year, no registration fee was due with the 24f-2 notice. The Fund, however, had net sales during the fiscal year. That notice, therefore, was accompanied by \$109,700.69, the fee payable to register the shares sold by the Fund in excess of redemptions. The filing arrived at the SEC's filing desk after 5:30 p.m. on October 31, 1994. As a result, the filing was made on November 1, 1994, but was rejected as having been filed too late to be eligible for a registration fee based on net sales. Thus, absent relief, applicants owe registration fees based on gross sales. For A.T. Ohio's fiscal year ending August 30, 1994, this would amount to an additional \$429,084.50 and for the Fund's fiscal year ending August 31, 1994 this would amount to an additional \$1,997.07.

Applicants' Legal Analysis

1. Section 6(c) permits the SEC to exempt any person, security, or transaction from any provisions of the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In addition, the SEC must find that an investment company was not at fault to grant an exemption from the two month filing deadline of rule 24f-2.¹

2. A.T. Ohio and the Fund believe that they made a good faith effort to file the rule 24f-2 notices on a timely basis by same-day courier. Applicants state that the delay in receipt of their filings was caused by a series of delays precipitated by the same-day courier service.

3. Applicants believe that the requested relief meets the section 6(c) standards. Thus, applicants request an exemption under section 6(c) from rule 24f-2 to permit them to pay registration fees based on net sales.

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

Margaret H. McFarland,

Deputy Secretary.

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Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Six-Month Extension of the Pilot for the Capital Utilization Measure of Specialist Performance

December 29, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 22, 1994, 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

¹ See Decision of the Comptroller General of the United States, File No. B-239769.2 (July 24, 1992).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

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 six months the pilot to use a measure of specialist performance which focuses on a specialist unit's use of its own capital in relation to the total dollar volume of trading activity in the unit's stocks. This capital utilization measure (described in detail below) would be used by the Allocation Committee ("Committee") in allocating newly-listed stocks.

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 and is 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

In recognition of the importance of dealer participation, particularly in volatile markets when such participation is viewed as providing "value added" in maintaining fair and orderly markets, the Exchange has developed a measure of specialist performance dealing with utilization of capital for market-making. This 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.

On December 22, 1993, the Commission approved, on a pilot basis ending December 31, 1994, the Exchange's proposed rule change to adopt capital utilization as an additional measure of specialist performance.³ The Exchange is now seeking to extend that pilot for an additional six months, through June 30, 1995.

Under the pilot, a capital utilization percentage is derived for each eligible stock⁴ and the specialist unit overall by

³ See Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (File No. SR-NYSE-93-30).

⁴ The following are not included in any grouping of eligible stocks: foreign stocks, preferred stocks,