

dividing the average daily dollar value of the unit's stabilizing purchases and sales by the average daily total dollar value of shares traded in the unit's stocks. This percentage is calculated both for stabilizing trades only and stabilizing plus reliquefying trades. (A reliquefying transaction is one in which the specialist reduces a position in a specialty stock by selling part of a long position on a zero-minus tick, or purchasing to cover part of a short position on a zero-plus tick.) These percentages are provided for base periods (*ie.*, non-volatile periods) and volatile periods (days when there is a change of one percent or more in the S&P 500 Stock Price Index),⁵ and each stock's ten percent most volatile days,⁶ so that performance of a unit relative to other units can be compared as to volatile and non-volatile market conditions.

The capital utilization measure separates stocks into three broad groupings including:

- Stocks included in the top 200 stocks in the S&P 500 Stock Price Index and other stocks that are at least as active (based on average daily dollar value of shares traded).
- The remainder of the S&P 500 and any stocks among the 500 most active on the Exchange.
- All other stocks.

Specialist units are placed alphabetically into three tiers based on their base day and volatile day capital utilization percentages for each of the three groupings of stocks. Within each grouping, a Floor-wide mean capital utilization percentage is calculated. A unit will be in Tier 1 if its capital utilization percentage is more than 1.1 standard deviations above the mean. (A standard deviation is a statistical measure of the distance from the mean.) A unit will be in Tier 2 if its capital utilization percentage is within 1.1

warrants, when-issued stocks, IPOs (for the first 60 days), closed-end funds, stocks selling for \$5 and under, stocks with less than 2,000 shares average daily trading volume, and stocks that have been delisted for more than six months.

⁵ "S&P 500 Stock Price Index" is a service mark of Standard and Poor's Corporation.

The base period calculation includes the total average daily dollar value for the trading days within the twelve month period excluding those days during which there was a change of 1% or more in the S&P 500 Price Index. The volatile period calculation includes the total average daily dollar value for the trading days within the twelve month period during which there was a change of 1% or more in the S&P 500 Price Index.

⁶ The base period calculation include the total average daily dollar value for the days within the twelve month trading period that were not among the 10% most volatile. The volatile period calculation includes the average daily dollar value for the days within the twelve month period that were the 10% most volatile.

standard deviations above or below the mean. A unit will be in Tier 3 if its capital utilization percentage is more than 1.1 standard deviations below the mean.

During the past year, the Allocation Committee has received specialist capital utilization information on a "rolling" 12-month basis. The Allocation Committee has been given information as to a unit's tier in each stock grouping, with the tier data being included with other objective data, such as DOT turnaround performance, stabilization rates and TTV percentages. The specialist units themselves have been given, on a monthly basis for the prior 12 months, their actual capital utilization percentages for each stock.⁷

The Exchange implemented this new measure of specialist performance as a one-year pilot which is due to expire on December 31, 1994. In its July 25, 1994, report on the Allocation and Capital Utilization pilots, the Exchange reviewed the Committee's use of the capital utilization measure in allocation decisions. The measure appears to be a useful addition to the other measures of specialist performance referred to by the Committee. It is proposed that the pilot measure of specialist capital utilization be extended for an additional six months, through June 30, 1995, to be used by the Allocation Committee as described above.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) 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.

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.

⁷ The specialist capital utilization measure is not being added as a basis for initiating a Performance Improvement Action under NYSE Rule 103A. During the pilot period, the Market Performance Committee will receive quarterly reports on the initiative, with a view toward their recommending such enhancements or modifications as may seem appropriate based on actual experience with this measure. Any modifications or enhancements would be filed with the Commission, and would be implemented only with the Commission's approval.

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, NW., Washington, DC 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 other 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 Section, 450 Fifth Street, NW., Washington, DC.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-94-49, and should be submitted by January 27, 1995.

IV. Commission's Findings and Order Granting 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 Sections 6 and 11 of the Act. Section 6(v)(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. Section 11(b) of the Act and Rule 11b-1 thereunder allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. For the reasons set forth below, the Commission continues to believe that the consideration of specialist capital utilization 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.