

zone throughout the trading day;
and

—Have disaster recovery facilities for its computer network and software.

The Committee will assess these responses in considering the proposed combination.

The Policy is proposed to be amended to require that the unit in a Tier 2 or Tier 3 review must have a real-time surveillance system that monitors specialist trading and uses exception alerts to detect unusual trades or trading patterns.

Public Interest

The Policy (section c(1)(a)(iv)) provides that specialist units that are involved in a Tier 2 or Tier 3 review must “demonstrate that, if approved, the proposed combination is otherwise in the public interest.” The Exchange proposes to add to the Policy a guideline outlining what the QOMC may consider under this provision. This includes: (a) The unit’s efforts to enhance market quality; (b) its capability of maintaining ongoing communications with their listed companies and customers in compliance with Rule 106; and (c) the unit’s commitment to applying for new listings and other activities.

Reasons for a Specialist Combination Review Policy

The Exchange views the Policy as a necessary mechanism for the review of proposed specialist combinations that may lead to a level of concentration within the specialist community that may be of concern to the Exchange and the quality of its markets. The Exchange recognizes that some specialist organizations seek to grow or attract capital through mergers or acquisitions. The Policy offers a structured approach for reviewing proposed combinations that may raise concentration-related issues. The amendments to the Policy proposed in this filing are part of the Exchange’s continued effort to see that the Policy addresses these issues. As the Commission noted in its approval of the Exchange’s filing first proposing the Policy, “the Commission believes it is appropriate for the NYSE to adopt a policy that authorizes it to monitor specialist combinations to determine their impact upon the competitive environment necessary to maintain an orderly market.”¹²

Other Matters

Specialists Ability to Monitor Real Time Trading

The larger specialist units, representing a significant portion of listed stocks and trading volume, have the capability to monitor the unit’s trading on a real-time basis, and use exception alerts to identify unusual trading patterns.

Statistical Information

- There are currently 10 specialist firms, including 3 firms that are registered solely in Exchange-Traded Funds (“ETFs”).
- There are currently 460 members registered as specialists.
- At the end of June 2002, there were 2,796 companies that had common and preferred issues listed on the NYSE.

1. Statutory Basis

The NYSE believes the proposed rule change is consistent with section 6(b)(5)¹³ of the Act, which requires 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 a national market system and, in general, to protect investors and the public interest. The NYSE believes the proposed amendments are consistent with these objectives in that they address concerns about capitalization, and operational efficiency where proposed combinations would result in large-sized specialist units.

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

Within 35 days of the date of 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 Exchange consents, the Commission will:

(A) By order approve such 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, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR-NYSE-2002-41 and should be submitted by April 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[License No. 03/73-0228]

Toucan Capital Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Toucan Capital Fund II, L.P., 7600 Wisconsin Ave, 7th Floor, Bethesda, MD 20814, a Federal Licensee under the Small Business Investment Act of 1958, as amended (“the Act”), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financialings

¹² See Securities Exchange Act Release No. 24411 (April 29, 1987), 52 FR 17870 (May 12, 1987).

¹³ 15 U.S.C. 78f(b).

¹⁴ 17 CFR 200.30-3(a)(12).