IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, 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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–46 and should be submitted by January 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Johnathan G. Katz,

Secretary.

[FR Doc. 01–154 Filed 1–3–01; 8:45 am]

BILLING CODE 8010–10–M

[25] 17 CFR 2000.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43767; File No. SR–NYSE–00–18]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Accelerating Approval of Amendment Nos. 1 and 2, on a Pilot Basis Ending on December 21, 2001, Relating to NYSe Direct+, the Exchange's Automatic Execution Facility for Certain Limit Orders of 1099 Shares or Less

December 22, 2000.

I. Introduction

On May 1, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change implementing NYSe Direct+, an automatic execution facility for certain limit orders of 1099 shares or less. The proposed rule change was published for public comment in the **Federal Register** on June 15, 2000.[3] The Commission received one comment letter regarding the proposed rule change.[4] The Exchange submitted Amendment Nos. 1 and 2 to the proposed rule change on August 21, 2000[5] and December 21, 2000,[6] respectively. This order approves the proposed rule change on a pilot basis ending on December 21, 2001 and grants accelerated approval to Amendment Nos. 1 and 2. The Commission is also soliciting comment on Amendment Nos. 1 and 2 to the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change establishes a new trading platform, NYSe Direct+, for the automatic execution of certain limit orders of 1099 shares or less (''auto ex'' orders) against trading interest reflected in the Exchange's published quotation. Limit orders priced at or above the Exchange's published offer price (in the case of an auto ex order to buy), and limit orders priced at or below the Exchange's published bid price (in the case of an auto ex order to sell) are eligible for automatic execution via NYSe Direct+. The contra side of the auto ex order would be the trading interest reflected in the Exchange's bid or offer, in accordance with the Exchange's auction market principles of priority and parity codified in Exchange Rule 72. Auto ex orders would receive automatic executions without being exposed to the auction market.[7] However, if the automatic execution feature is not available,[8] the auto ex order would be entered for execution in the Exchange's auction market. Auto ex transactions would be identified on the Consolidated Tape with a unique identifier, and the Exchange's published bid or offer would be automatically decremented to the extent of the size of the auto ex order to reflect the automatic execution.

It would not be mandatory that all eligible limit orders of 1099 shares be entered as auto ex orders NYSe Direct+. Member organizations (or their customers if enabled by the member organization) can choose to use NYSe Direct+ when the speed and certainty of an execution at the Exchange's published bid or offer price is in the customer's best interest. If a customer's interest would best be served by affording the customer's order the opportunity for price improvement, the member (or customer) may enter a limit or market order by means of the SuperDOT system for representation in the auction market, rather than an auto ex order.

The Exchange's proposal would be implemented in proposed Rules 1000 through 1005.[9] Rule 1000 species the types of orders eligible for entry as auto ex orders. In addition, the Rule lists six instances where the automatic execution feature would not be available due to, for example, particular market situations, lack of depth in the published quotation, or inappropriate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42913 (June 8, 2000), 64 FR 55514.

[4] Letter from Craig S. Tyle, General Counsel, Investment Company Institute (''ICI'') to Jonathan G. Katz, Secretary, Commission, dated July 6, 2000 (''ICI Letter'').

[5] Letter from Daniel Parker Odell, Assistant Secretary, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 17, 2000 (''Amendment No. 1''). Amendment No. 1 clarifies several items relating to Rule 1000, 1004, and 1005. With respect to Rule 1000, Amendment No. 1 clarifies that orders that are not automatically executed will be entered in the auction market, and an order entered into the auction market is treated the same as any other limit order entered on the Exchange through the SuperDOT system. Amendment No. 1 also clarifies that proposed Rules 1000(ii) and (v) are, in effect, examples of proposed Rule 1000(iv) because both relate to situations where the Exchange's published bid or offer is 100 shares. The Exchange further explained that to ''gap'' a quotation involves setting the bid and asked prices at a spread wider than normal in a stock in order to alert market participants that a special situation exists. With respect to Rule 1004, Amendment No. 1 clarifies that executions of orders entered in NYSe Direct+ (or ''auto ex orders'') shall elect stop limit orders as well as stop orders and percentage orders electable at the price of such executions. With respect to Rule 1005, Amendment No. 1 clarifies the prohibition on the entry of auto ex orders within 30 seconds for the same customer applies on a per stock basis. Finally, Amendment No. 1 states that the Exchange intends to choose the stocks eligible for participation in the pilot program for NYSe Direct+ based on a number of criteria, including volume, trading characteristics and floor location.

[6] Letter from James E. Buck, Secretary and Senior Vice President, Exchange, to Jack Drogin, Assistant Director, Division, Commission, dated December 20, 2000 (''Amendment No. 2''). Amendment No. 2 replaces the phrase ''is being completed'' with ''has been agreed upon'' in proposed Rule 1003. Amendment No. 2 also deletes the prohibition in proposed Rule 1005 against orders larger than 1,099 shares being broken up in smaller amounts for the purpose of receiving an automatic execution.

[7] To be exposed or entered in the Exchange's auction market means that the order would be treated like orders received from the SuperDOT system. *See* Amendment No. 1, *supra* note 5.

[8] *See* proposed Rule 1000.

[9] The Exchange file a separate proposed rule change to implement Rule 1006, which provides for the automatic execution of coupled orders of 1099 shares or less at a price that is at or within the Exchange's published quotation. Securities Exchange Act Release No. 43110 (August 2, 2000), 65 FR 48776 (August 9, 2000).

pricing of the auto ex order.[10] Rule 1001 sets forth the execution parameters for orders entered in NYSe Direct+, including the contra side interest reflected in the Exchange's published quotation. Rule 1001(a)(iv) provides that the specialist shall be the contra party to any automatic execution of an auto ex order where interest reflected in the published quotation against which the auto ex order was executed is no longer available.[11] Rule 1002 addresses when the system is available for automatic execution each trading day. Rule 1003 governs the application of tick tests to auction market transactions when an auto ex order is reported at a different price after an auction market transaction has been agreed upon, but before the market transaction is reported.[12] This rule provides that any tick test applicable to the auction market transaction will be based on the last reported auction market sale.[13] Rule 1004 provides that auto ex orders may elect stop orders and percentage orders electable at the price of such executions.[14] Rule 1005 prohibits the entry of auto ex orders in intervals of less than 30 seconds on a per stock basis.[15] The Exchange also proposes to amend Exchange Rule 13 to add the definition of auto ex orders and to amend Exchange Rule 476A to add Rules 1000–1005 to the list of rules subject to summary fine procedures.

Interpretive Issues

The Exchange also requested that the Commission approve interpretations of Exchange Rules 123A.40, 91, and 104. These interpretations arise in situations under proposed Rule 1001(a)(iv) where the specialist is required to take the contra side of an auto ex execution against the published quotation, as discussed above. In short, the interpretations provided by the Exchange state that when the specialist is required to take the contra side of an auto ex order pursuant to Rule 1001(a)(iv), the specialist may not be required to fill any stop orders elected by an auto ex execution at the price of the electing sale pursuant to Rule 123A.40; that the transaction confirmation requirements of Rule 91 do not apply; and that in any instance in which the specialist is effecting a direct tick transactions only because he or she has been required to assume the contra side of an auto ex execution, the transaction shall be deemed a ''neutral'' transaction for purposes of Exchange Rule 104.

Commission Rule 10a–1.

As stated in the notice for this proposed rule change, Commission Rule 10a–1 and Exchange Rule 440B do not permit short sales to be effected on a minus or zero minus tick. However, the Exchange proposed that under Rule 1001(a)(iv), the specialist should be permitted to sell short on a minus or zero minus tick when he or she takes the contra side of an auto ex execution because either: (1) the published quotation reflects interest that has received an execution, but the quotation has not been updated to reflect this fact; or (2) the published quotation reflects this fact. The Exchange believes that the specialist should be exempted from Commission Rule 10a–1 under these circumstances because the specialist is required to trade at a price set by other market participants.

In addition, as also set forth in the notice for this proposed rule change, the Exchange has requested an exemption from Commission Rule 10a–1 for Rule 1003. Rule 1003 provides that if a transaction has been agreed upon[16] in the auction market, and an execution involving auto ex orders is reported at a different price before the auction market transaction is reported, any tick test applicable to the auction market transaction will be based on the last reported trade prior to the reporting of the auto ex transaction.

III. Comments

The Commission received one comment letter from the Investment Company Institute (''ICI'').[17] The ICI questioned the purpose and necessity of the 30-second delay between entry of auto ex orders. Specifically, the ICI stated that the delay would ''defeat the purpose of providing investors with a facility to automatically execute limit orders without intervention of a dealer.'' The ICI also strongly supported the idea of increasing the maximum number of shares that can be entered into NYSe Direct+ for automatic execution, and recommended that the pilot program include ''securities representing a substantial portion of the NYSE market, *e.g.,* the top 100 NYSE listed securities, with the remainder chosen from quintiles of NYSE securities.'' In response to the ICI's comments on these particular issues, the Exchange noted that the proposed parameters are appropriate for the initial launch of the pilot program.[18] The Exchange also noted that a primary purpose of the pilot program is to allow the Exchange, NYSe Direct + participants, and the Commission to examine the operation of the system on a controlled basis. Thus, the Exchange believes that the parameters regarding each of the issues noted above are appropriate at this pilot stage.

The ICI also questioned the prohibition on breaking up orders for entry into NYSe Direct+. The ICI noted that it is unclear what type of ''order'' the proposed rules are referring to, and requested clarification whether a broker for an institution asked to ''work'' a large order could utilize NYSe Direct+ to execute all or part of the institution's order. In response, the Exchange has deleted this prohibition from the proposed rule change although it has retained the 30-second interval between orders on a per share basis.[19] The Exchange noted, moreover, that a broker ''working'' an institutional client's order by simply breaking the order up for entry into NYSe Direct+ may not be executing the order consistent with the broker's duty of best execution.[20]

Finally, the ICI recommended that strict price/time priority be applied to the execution of NYSe Direct+ orders, rather than executed in accordance with Exchange Rule 72, which provides for executions pursuant to principles of priority and precedence. Specifically, the ICI noted that applying strict price/time priority would ''rectify, for example, a situation where a market

[10] The Exchange notes that Rules 1000(ii) and (v) are, in effect, examples of proposed Rule 1000(iv). *See* Amendment No. 1, *supra* note 5.

[11] For purposes of Rule 1001(a)(iv), the only circumstances under which interest reflected in the published quotation ''is no longer available'' are either: (1) The published quotation reflects interest that has received an execution, but the quotation has not been updated to reflect this fact; or (2) the published quotation reflects interest that has been cancelled, but the quotation has not been updated to reflect this fact. *See* Letter regarding NYSe Direct+ (December 21, 2000) (''Exemption Letter''). rule 1001(a)(iv) is the subject of an exemption issued by the Commission to the Exchange granting certain relief from Commission Rule 10a–1. *Id.*

[12] *See* Amendment No. 2, *supra* note 6. Rule 1003 is also the subject of an exemption issued by the Commission to the Exchange granting certain relief from Commission Rule 10a–1. *See* Exemption Letter.

[13] *See* Amendment No. 1, *supra* note 5.

[14] Amendment No. 1 clarifies that executions of auto ex order shall elect stop limit orders as well as stop orders and percentage orders electable at the price of such executions. *See* Amendment No. 1, *supra* note 5.

[15] Amendment No. 1 clarifies that the prohibition on entering orders within 30-seconds applies on a per stock basis. *See* Amendment No. 1, *supra* note 5.

[16] *See* Amendment No. 2, *supra* note 6.

[17] *See supra* note 4.

[18] The Exchange responded to these concerns in a phone call between Brian McNamara, Vice President, Market Surveillance, NYSE, Donald Siemer, Director, Market Surveillance, NYSE, Rebekah Liu, Special Counsel, Division, Commission, and Sonia Patton, Attorney, Division, Commission (August 31, 2000).

[19] *See* Amendment No. 2, *supra* note 6.

[20] *Id.*

participant would be able to participate on the contra side of an automatic execution even though another participant may have placed an order in the NYSE earlier in time.'' In response, the Exchange stated that it believes that all orders, including orders entered in NYSe Direct+, executed on the Exchange should be subject to the same execution principles of priority and precedence, as set forth in Exchange Rule 72.[21]

IV. Discussion

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. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act[22] which requires an Exchange to 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 proposed rule change is also consistent with section 11A(a)(1) of the Act[23] which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions and the practicability of brokers executing investor orders in the best market, and to provide an opportunity for investors' orders to be executed without the participation of a dealer.[24]

The Commission finds that by allowing the automatic execution of limit orders against the interest reflected in the Exchange's published quotation, NYSe Direct+ helps to perfect the mechanism of a free and open market by providing a trading venue for customers who value the speed and certainty of automatic execution more than the opportunity for price improvement offered by the Exchange's agency-auction trading floor. NYSe Direct+ also facilitates securities transactions to the benefit of investors by allowing direct access by a member organization, or its customer, to the trading interest reflected in the Exchange's published quotation. The Commission notes that this direct access, in turn, may attract more order flow and increase the depth and liquidity of the Exchange's market to the benefit of investors and the public interest.

The Commission further finds that NYSe Direct+ provides an opportunity for a customer's order to be executed with limited broker participation, consistent with the goals of the Act. Although a member firm must still act as the gateway for any customer wishing to utilize NYSe Direct+, the direct and automatic matching of customer limit orders against the interest reflected in the Exchange's quotation minimizes the involvement of the member firm. The Commission also believes that NYSe Direct+ may have the potential to lower transaction costs, another potential benefit to Exchange customers.

The Commission also finds that operation of NYSe Direct+ is consistent with the protection of investors and the public interest and should help to maintain a fair and orderly market. The proposed rules specifically outline the terms under which a customer's order would be handled by the NYSe Direct+ system, and they provide for the handling of those orders if there is no contra-side interest in the Exchange's published quotation.

The Commission finds that the Exchange has addressed the most significant concerns raised by the ICI Letter.[25] The Commission agrees that the proposed parameters are appropriate for the initial launch of the pilot program. A primary purpose of the pilot program is to allow the Exchange, NYSe Direct+ participants, and the Commission to examine the operation of the system on a controlled basis. Thus, the Commission finds that the proposed parameters by the Exchange for NYSe Direct+ are appropriate at this pilot stage. The Commission notes that it will expect the Exchange to choose stocks eligible for the pilot program based on a number of appropriate criteria, including volume, trading characteristics and floor location.[26]

With respect to the ICI's request for further clarification on the prohibition of breaking up orders of greater than 1099 shares into smaller amounts, the Commission notes that the Exchange amended the proposed rule change to delete the explicit prohibition against breaking up orders for the purpose of receiving an automatic execution. The Commission believes that amended Rule 1005 provides an appropriate mechanism to discourage brokers from breaking up large orders solely to obtain an automatic execution, while allowing brokers acting on behalf of institutions to use NYSe Direct+ to ''work'' large orders, consistent with their duty of best execution. The Commission also finds that for purposes of consistency and uniformity, all bids or offers executed on the Exchange should be subject to the execution principles set forth in Exchange Rule 72.

Interpretative Issues

The Commission also approves the Exchange's interpretation of Exchange Rules 123A.40, 91, and 104.[27] These interpretations all concern a situation where, pursuant to proposed Rule 1001(a)(iv), the specialist is required to take the contra side of an auto ex execution against the published quotation, even though the specialist's interest was not part of the published quotation. In addition, the Commission has granted the Exchange exemptive relief from Commission Rule 10a–1 for purposes of proposed Rule 1001(a)(iv).[28] The Commission therefore finds the requested interpretations are appropriate and necessary for the proper functioning of the NYSe Direct+ trading platform.

Commission Rule 10a–1

Commission Rule 10a–1 and Exchange Rule 440B did not permit short sales to be effected on a minus or zero minus tick. As discussed above, the Exchange has requested an exemption from Rule 10a–1 when a specialist is required to take the contra side of an auto ex execution pursuant to Exchange Rule 1001(a)(iv). In addition, the Exchange has requested an exemption to

[21] *Id.*

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1(a)(1).

[24] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] *See supra* Section II and note 4.

[26] This is consistent with the Exchange's representations in Amendment No. 1, *supra* note 5.

[27] The interpretations of these Rules are as follows:

Exchange Rule 123A.40. The specialist shall not be required to fill any stop orders elected by an auto ex execution at the price of the electing sale in any instance where the specialist was required by Rule 1001(a)(iv) to take the contra side of an auto ex execution.

Exchange Rule 91. As the specialist does not accept an auto ex order for execution or act as agent for such order, the transaction confirmation requirements of Rule 91 will not apply in any instance where the specialist is the contra party to an auto ex execution.

Exchange Rule 104. Exchange Rule 104 contains the specialist's affirmative and negative obligations, and restricts the specialists' ability to purchase stock on direct plus ticks, and sell stock on direct minus ticks. The Exchange is proposing that any instance in which the specialist is effecting such a direct tick transaction only because he or she has been required to assume the contra side of an auto ex execution as described above shall be deemed to be a ''neutral'' tranaction for purposes of Rule 104, and shall be deemed not to be in violation of the rule. The Exchange believes that this interpretation is appropriate because the specialist is not setting the price, but is simply being required to trade at a price set by other market participants.

[28] *See* Exemption Letter.

permit floor brokers to effect short sales in the auction market based upon the last reported transaction at the time of the agreement to the auction market trade, and irrespective of auto ex trades that are reported while the transaction is being completed, as contemplated by Rule 1003. In a letter dated December 21, 2000, the Commission granted to the Exchange certain exemptive relief from Commission Rule 10a–1 regarding these Exchange rules for the duration of the pilot, subject to the conditions described in the letter.[29] Consequently, the Commission finds that in light of the relief granted from Rule 10a–1, Rule 10a–1 does not prohibit implementation of NYSe Direct+ as discussed in this order, during the pilot program. If the Exchange decides to continue the program, the Exchange would be required to submit a proposed rule change extending, or requesting permanent approval of, the pilot, and another request for relief from Commission Rule 10a–1.

Accelerated Approval for Amendment No. 1

The Commission finds good cause for accelerating approval of Amendments Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that these Amendments provide useful clarifications to the proposed rules. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) of the Act,[30] and section 19(b) of the Act[31] to accelerate approval of Amendments Nos. 1 and 2 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments Nos. 1 and 2, including whether the amendments are 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 Commissions 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 the File No. SR–NYSE–00–18 and should be submitted by January 25, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NYSE–00–18), as amended, is approved on a pilot basis until December 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–155 Filed 1–3–01; 8:45 am]

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[29] *See* Exemption Letter. The exemption granted with respect to proposed rule 1001(a)(iv) is limited to situations where the specialist is required to take the contra side of an auto ex execution against the published quotation, even though the specialist's interest was not part of the published quotation, because: (1) The published quotation reflects interest that has received an execution, but the quotation has not been updated to reflect this fact: or (2) the published quotation reflects interest that had been cancelled, but the quotation has not been updated to reflect this fact. The no-action relief with respect to proposed Rule 1003 is subject to certain limitations. First, when an auto ex trade is reported between the time that the auction market short sale is agreed upon and when it is reported, and the auto ex trade report is at a price that would result in the auction market trade being reported as a minus or zero-minus tick, the auction market short sale must be presented to an NYSE floor official. In addition, the NYSE floor official must: (a) Find that the short sale was presented for reporting immediately after agreement to the trade; (b) find that the short sale was priced in compliance with Rule 10a–1 at the time that the floor brokers agreed to the trade; (c) find that the short sale price is not lower than the best bid displayed in the auction market at the time the transaction is reported; and (d) direct that the trade be reported as a ''sold sale.'' Finally, the NYSE must keep records of all floor brokers' transactions relying upon this exemption, and present this information upon request to the Division.

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78s(b).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43771; File No. SR–NYSE–00–33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Amending NYSE Rule 15A Relating to the Intermarket Trading System

December 22, 2000.

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 July 18, 2000, 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. On November 30, 2000, the Exchange filed an amendment to the proposed rule change.[3] As amended, the proposal is effective upon filing with the Commission, pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder.[5] 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 Exchange proposes to amend NYSE Rule 15A with respect to the definition of ''ITS/CAES Market Maker.'' Below is the text of the proposed rule change. Additions are italicized and deletions are in brackets.

NYSE Rule 15A(a)(6)

''ITS/CAES Market Maker'', as that term is used in the Rule, means a NASD member that is registered as a market maker with the NASD for the purposes of the Applications with respect to one or more specified *System securities* [''ITS/CAES securities'' as more fully described in the ITS Plan].

II. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 30, 2000 letter from James E. Buck, Corporate Secretary, NYSE, to Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, the NYSE asked the Commission to consider the proposal pursuant to Section 19(b)(3)(A) of Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b–4(f)(6). The Commission has agreed to accept the original proposal as satisfying the 5-day pre-filing requirement pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). For purposes of calculating the 60-day abrogation period, the Commission considers the period to begin as of the date the Exchange filed Amendment No. 1, November 30, 2000.