system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if, consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act [10] and rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimals environment. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Nasdaq. All submissions should refer to file number SR–NASD–2003–89 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14424 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47961; File No. SR–NYSE–2002–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to the Addition of Interpretive Material to Several Exchange Rules

June 2, 2003.

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 August 12, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On March 11, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 21, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change, as amended, consists of the addition of long-standing interpretive material to several NYSE rules.

The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.[5]

Rule 72 Priority and Precedence of Bids and Offers

I. Bids.—Where bids are made at the same price, the priority and precedence shall be determined as follows:

Priority of First Bid

(a) Except as provided in paragraph (b) below, when a bid is clearly established as the first made at a particular price, the maker shall be entitled to priority and shall have precedence on the next sale at that price, up to the number of shares of stock or principal amount of bonds specified in the bid, irrespective of the number of shares of stock or principal amount of bonds specified in such bid.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 10, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 20, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange corrected a typographical omission to the version of NYSE Rule 72(b) provided in Amendment No. 1. The Exchange also amended NYSE Rule 75 in order to reflect that Senior Floor Officials and Executive Floor Officials would be permitted to sit on panels to resolve disputes among members under certain circumstances. In addition, the Exchange amended NYSE Rule 91.10 to clarify that a member may reject a trade as soon as practicable under the prevailing circumstances after receiving an execution report that the member acted as principal. The Exchange also amended NYSE Rule 91.10 to clarify that disputes between members as to whether there was sufficient time to reject a trade would be resolved under NYSE Rule 75. In addition, NYSE Rule 91.50 was amended to make clear that a Floor Official's review of a pattern of a member's rejections does not compromise the unconditional right of the specialist to reject any trade where the specialist trades as principal.

[5] The rule text provided herein includes corrections of typographical errors from the rule text that the NYSE submitted in Amendment No. 2 of the proposed rule change. Telephone conversation between Jeffery Rosenstruck, Senior Special Counsel, Market Surveillance, Rule Development, NYSE, and Tim Fox, Attorney, Division, Commission on May 22, 2003.

Priority of Agency Cross Transactions

(b) When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 25,000 shares or more and are for the accounts of persons who are not members or member organizations, the member may ''cross'' those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 76, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. *Following a transaction at the improved price, the member with the agency cross transaction shall follow the crossing procedures of Rule 76 and complete the balance of the cross.* No member may break up the proposed cross transaction, in whole or in part, at the cross price. No specialist may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant to this paragraph. A transaction effected at the cross price in reliance on this paragraph shall be printed as ''stopped stock''.

When a member effects a transaction under the provisions of this paragraph, the member shall, as soon as practicable after the trade is completed, complete such documentation of the trade as the Exchange may from time to time require.

* * * * *

III. Sale "Clears the Floor"

Following a sale, all bids and offers previously entered are deemed to be re-entered and are on parity with each other. For example, assume that the market in XYZ is 0.20 bid for 5000 shares, with 5000 shares offered at 0.25. On the bid side of the market, Broker A is bidding for 1000 shares and has priority. Brokers B, C, D, and E are each bidding for 1000 shares, with B being ahead of C, C being ahead of D, and D being ahead of E. On the offer side of the market, Broker F is offering 1000 shares and has priority. Brokers G, H, I, and J are each offering 1000 shares, with G being ahead of H, H being ahead of I, and I being ahead of J. Broker K enters the Crowd and sells 1000 shares to Broker A's bid of 0.20. The market then becomes 0.20 bid for 4000 shares, with 5000 offered at 0.25. Brokers B, C, D, and E are now on parity on the bid side of the market, and Brokers F, G, H, I, and J are now on parity on the offer side of the market.

* * * * *

Rule 75 Disputes as to Bids and Offers

Disputes arising on bids or offers, if not settled by agreement between the members interested, shall be settled by a Floor Official. In rendering a decision as to disputes regarding the amount traded, the Floor Official shall give primary weight to statements by any member who was not a party to the transaction and shall also take into account the size of orders held by parties to the disputed transaction, and such other facts as he deems relevant. *If both parties to a dispute agree, and the dispute involves either a monetary difference of $10,000 or more or a questioned trade, the matter may be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, whose decision shall be binding on the parties. As an alternative to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, members may also proceed to resolve a dispute through long-standing arbitration procedures established under the Exchange's Constitution and Rules.*

* * * * *

Rule 91 Taking or Supplying Securities Named in Order

* * * * *

• • • Supplementary Material

.10 Confirmation of transactions.—When a member or member organization is notified to send a [representative] *member* to a *specialist's* post for the purpose of confirming a transaction with another member who has elected to take or supply for his own account the securities named in an order entrusted to him, the member or member organization so notified or a member representing the notified party must respond [promptly] *as soon as practicable under the prevailing circumstances following notification to the member or member organization of the report of execution of the transaction.* The transaction must then be either confirmed or rejected with a member and not with a clerk. [The representative] *Transactions which are not then confirmed in accordance with the procedures above are deemed to have been accepted. If the specialist took or supplied the securities, the member so notified* must initial the memorandum record of the specialist which shows the details of the trade and return it to the specialist. The specialist must keep such memoranda records for a period of three years.

Any disagreement as to whether a member or member organization has taken timely action pursuant to this paragraph shall be resolved in accordance with the principles of Rule 75.

.20 Principal transactions against orders in specialists' possession.—A specialist occasionally may effect a transaction as principal against an order which had been entered for an account carried by the specialist's organization or serviced by someone at his organization. In such cases, [it is desirable that] all specialists *must* follow a uniform procedure. The customer for whom the order had been entered [should] *must* be contacted promptly. The fact that the stock has been taken or supplied as principal against his order [should] *must* be explained to him so that he may then accept or reject the transaction.

* * * * *

.50 Rejection of specialist's principal transactions—If there is a continued pattern of rejections of a specialist's principal transactions, a Floor Official may be called upon and require the broker to review his or her actions. It should be noted, however, that if a customer gives instructions to his or her broker to reject trades with the specialist's name on the other side, this would be a conditional order and should not be entrusted to the specialist for execution.

The foregoing does not compromise the unconditional right of a broker to reject any trade where the specialist trades as principal. In addition, no disciplinary process would be triggered against the broker for exercising his right to reject the trade.

Rule 95 Discretionary Transactions

(a) No member while on the Floor shall execute or cause to be executed on the Exchange, or through ITS or any other Application of the System, any transaction for the purchase or sale of any stock with respect to which transaction such member is vested with discretion as to (1) the choice of security to be bought or sold, (2) the total amount of any security to be bought or sold, or (3) whether any such transaction shall be one of purchase or sale. *The member must receive all material terms of an order, as referenced in (1), (2), and (3), from the member's customer off the Floor, and may not*

simply rely on a general understanding of the customer's intentions and thereby create an order or a material term of an order on the Floor. For example, a member who has purchased stock pursuant to a customer's off-Floor order may not simply rely on an understanding of the customer's strategy to sell the stock if it becomes profitable to do so, but must first obtain a new order to sell entered by the customer from off the Floor. See also Rule 90 and the supplementary material thereto.

* * * * *

Rule 115A Orders at Opening or in Unusual Situations

* * * * *

• • • Supplementary Material

.20 Arranging an opening or price.—

* * * * *

''Pair-offs.''—A specialist who, as provided in (1) above, holds a market order of another member or gives up his own name instead of holding the order, may, in arranging the opening, ''pair-off'' such an order against any order held by the specialist or by another member.

The member who leaves such an order with the specialist should, as promptly as possible after the opening of the stock, return to the Post. The specialist must retain the order slip and must advise the member as to the broker and the name given up on the opposite side of the transaction. The member should proceed as promptly as possible to confirm the transaction with the broker on the opposite side.

Failure to comply with the time periods specified in the paragraph ''Responsibility for Losses'' below shall relieve the specialist from responsibility for any loss that may result.

In the event that the specialist has given up his own name instead of holding a member's order, and, based upon such order, the specialist has effected a ''pair-off'' against an order of another member, the specialist should notify the member to whom he originally gave his own name of the broker and the name given up on the opposite side of the transaction. Such member should proceed as promptly as possible to confirm the transaction with the broker on the opposite side. If the specialist has effected the ''pair-off'' against an order which he handled as a broker, he should send a give-up notice to the member to whom he originally gave his own name.

''Stopping.''—When a specialist has been unable to ''pair-off'' a market order which has been left with him, as provided in (1) above, he may, after opening of the Exchange but before the opening of the stock, ''stop'' at the offer price any such market order to buy, or at the bid price any such market order to sell. In such cases, the specialist should notify the broker who left the order with him that the order is ''stopped'' and inform him of the price at which it is ''stopped.'' In the event that the specialist is unable to execute the order at a better price, he should send for the broker who left such order with him, and allow the broker to consummate the transaction.

Establishing a fair price.—A specialist or other member who holds orders in order to assist in establishing a fair price, as provided in (2) above, should, after the establishment of such price, send for the members whose orders were held for that purpose. Such members should proceed as promptly as possible to confirm the transactions with the brokers on the opposite side.

Responsibility for losses.—A specialist or other member who makes an error in arranging an opening or establishing a fair price shall not be responsible for any loss involved if the member whose order has been held or represented neglects to endeavor to confirm the transaction.

In the event that a member endeavors to confirm a transaction resulting from an order left with the specialist as provided in (1) above, but is unable to do so because of an error made by the specialist in arranging an opening, the specialist shall be responsible for any loss which may be involved, except when:

(1) The broker who left such order fails to return to the Post within 30 minutes after the opening sale; or

(2) The broker who left such order returns to the Post within 30 minutes after the opening sale, but neglects to endeavor to confirm the transaction with the broker on the opposite side within 30 minutes after returning to the Post.

* * * * *

Rule 116 ''Stop'' Constitutes Guarantee

An agreement by a member to ''stop'' securities at a specified price shall constitute a guarantee of the purchase or sale by him of the securities at that price or its equivalent.

If an order is executed at a less favorable price than that agreed upon, the member who agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

• • • Supplementary Material

.10 Reporting ''stops''.—Members and member organizations should report to their customers that securities have been stopped with another member only if the stop is unconditional and the other member had definitely agreed thereto.

.20 ''Stopping'' stock.—The privilege of stopping stock, other than rights, shall not be granted or accepted by a [member] *Floor broker* [in cases where the spread in the quotation is only the minimum variation of trading in the particular stock], except that*, in a minimum variation market,* a [member] *Floor broker* who holds simultaneously an order to buy at the market and an order to sell the same stock at the market may stop such purchase and selling orders against each other and pair them off at prices and in amounts corresponding to those of the subsequent sales in the stock as they occur in the market. This exception will also apply when two [members] Floor brokers, one holding an order to buy at the market and the other holding an order to sell the same stock at the market, arrive in the Crowd at the same time.

For the purpose of the exceptions provided herein, a limited order to buy which is possible of execution at the prevailing offer price or a limited order to sell which is possible of execution at the prevailing bid price may be regarded as a market order.

.30 Restrictions on ''stopping'' stock.—No specialist may stop stock against the book or for his own account at a price at which he holds an order capable of execution at this price except that he may stop stock:

(1) in connection with an opening or reopening;

(2) when there is a broker in the Crowd representing another order at the stop price; or

(3) when a member acting on behalf of either a public customer's account or an account in which such member or another member has an interest makes an unsolicited request that a specialist grant him a stop if:

(a) (i) the spread in the quotation is not less than twice the minimum variation of trading in the stock; or, (ii) where the spread in the quotation is the minimum variation of trading in the stock[,] *and an imbalance in the quotation suggests the likelihood of price improvement for the stopped order,* the size of any order as to which a stop is granted does not exceed 2,000 shares, and the aggregate number of shares as to which stops are in effect does not exceed 5,000 shares, unless a

Floor Official has approved, as appropriate under prevailing market conditions, the granting of a stop for an order or orders of a larger specified size, or the granting of stops as to a larger specified aggregate number of shares as to which stops may be in effect;

(b) after the granting of the stop the spread between the bid and offer is reduced, in any case where, prior to the granting of the stop, the spread in the quotations was not less than twice the minimum variation of trading in the stock;

(c) the specialist does not reduce the size of the market following the stop; and

(d) on the election of the stop the order or orders on the specialist's book entitled to priority will be executed against the stopped stock.

.40 ''Stopping'' stock on market-at-the-close orders.—Notwithstanding any provisions of this Rule or of any other Exchange Rule to the contrary, a member shall execute market-at-the-close orders in a stock as provided below, where the member is holding simultaneously both buy and sell market-at-the-close orders.

(A) Where there is an imbalance between the buy and sell market-at-the-close orders, the member shall, at the close of trading on the Exchange in that stock on that day, execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. (An imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid.) The member shall then stop the remaining buy and sell orders against each other and pair them off at the price of the immediately preceding sale described above. The ''pair off'' transaction shall be reported to the consolidated last sale reporting system as ''stopped stock''.

(B) Where the aggregate size of the buy market-at-the-close orders equals the aggregate size of the sell market-at-the-close orders, the buy orders and sell orders shall be stopped against each other and paired-off at the price of the last sale of the Exchange just prior to the close of trading in that stock on that day. The transaction shall be reported to the consolidated last sale reporting system as ''stopped stock''. *See Rule 123C for discussion of procedures applicable to market-at-the-close and limit-at-the close orders.*

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, as amended, 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

The purpose of this filing is to add explanatory or clarifying material to several NYSE rules. The proposed rule change, as amended, does not constitute a substantive change to any NYSE rule or policy, and is responsive to recommendations made by an Independent Consultant retained by the Exchange.[6]

NYSE Rule 72. The Exchange is proposing to add a sentence to NYSE Rule 72(b) making it clear that a broker must ''recross'' a proposed clean agency cross pursuant to Exchange auction procedures following a transaction which provides price improvement to one side of the cross. The Exchange represents that this is consistent with NYSE auction procedures that require exposure of bids and offers by brokers effecting a cross before a transaction may be completed.

The Exchange is also proposing to specify in the Rule its long standing interpretation of its auction rules that a transaction ''clears the Floor,'' meaning bids and offers not satisfied in the transaction are deemed to be simultaneously re-entered and on parity with each other. This is a fundamental concept that has long been deemed essential to the efficient functioning of the auction market.

NYSE Rule 75. The Exchange is proposing to codify formally in NYSE Rule 75 its long-standing practice that Floor disputes involving $10,000 or more, or questioned trades, can be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof if the parties to the dispute so agree.[7] The decision of the panel is then binding on the parties. This practice, which is essentially a form of expedited arbitration, has proven to be a very efficient means of ensuring timely resolution of Floor disputes.

As an alternative to a panel of three Floor Governors, Executive Floor Officials, and/or Senior Floor Officials (as stated above), members may also proceed to resolve a dispute through long-standing arbitration procedures established under the NYSE's Constitution and Rules.

NYSE Rule 91. The Exchange is proposing to clarify NYSE Rule 91.10 to make clear in the Rule that only a member may confirm a transaction in the situations covered by the Rule. The Exchange is also proposing to add a sentence to the Rule to clarify that transactions which are not confirmed are deemed to have been accepted. The NYSE represents that both of these changes described above reflect consistent Exchange interpretations of NYSE Rule 91.10.

In addition, the Exchange is proposing to replace the term ''promptly'' with the phrase ''as soon as practicable under the prevailing circumstances.'' Specifically, the Exchange proposes to amend NYSE Rule 91.10 to provide that a member receiving a report of execution of a transaction where another member[8] acted as principal triggers the member's unconditional right to reject the trade as soon as practicable, given the prevailing circumstances. In addition, the Exchange is amending NYSE Rule 91.10 to clarify that disputes as to whether there was sufficient time to reject the trade would be resolved under NYSE Rule 75, either through a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, or through arbitration procedures established under the Exchange's Constitution and Rules.[9]

The Exchange represents that the proposed changes, deeming transactions

[6] *See In the Matter of New York Stock Exchange, Inc.,* 70 S.E.C. Docket 106, Securities Exchange Act Release No. 41574 (June 29, 1999), Administrative Proceeding File No. 3–9925.

[7] *See* Amendment No. 2. According to the NYSE, Executive Floor Officials and Senior Floor Officials perform many of the same functions performed by Floor Governors. Executive Floor Officials are former Floor Governors and are empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Governor. Floor officials entering their fifth or sixth year of service as a Floor Official are eligible for appointment as Senior Floor Officials. They are also empowered with the authority of a Floor Governor. *See* Securities Exchange Act Release No. 44673 (August 9, 2001), 66 FR 43279 (August 17, 2001) (SR–NYSE–2001–16).

[8] The Exchange clarified that NYSE Rule 91.10, except the provision dealing with the memorandum record of the specialist, applies to transactions when any member elects to take or supply for his own account the securities named in an order entrusted to him. Telephone conservation between Jeffery Rosenstruck, Senior Special Counsel, Market Surveillance, Rule Development, NYSE, and Tim Fox, Attorney, Division, Commission on May 28, 2003.

[9] *See* Amendment No. 2.

which are not confirmed or rejected as accepted and replacing ''promptly'' with ''as soon as practicable under the prevailing circumstances,'' aim to maintain a degree of flexibility in the Rule to accommodate various situations occurring during the trading day. Given today's enormous volume of trading on the Floor (over 1 billion shares daily), the NYSE believes that it is not practical to impose an affirmative obligation on members to confirm each and every transaction where another member acted as principal, nor does the Exchange believe that it is practical for members to have to obtain the confirmations. Thus, if no action is taken by a member to confirm a transaction, the transaction would be deemed confirmed under the proposed Rule.[10]

In NYSE Rule 91.20, the Exchange is proposing to replace the term ''should'' with ''must,'' to reflect the mandatory nature of the procedures outlined.

NYSE Rule 91.50 is proposed to be added to explain the rejection of specialist's principal transactions. The proposed language states that if there is a continued pattern of rejections of a specialist's principal transactions, a Floor Official may be called upon to require the broker to review his actions. However, if a customer gives instructions to his broker to reject trades with the specialist's name on the other side, this would be a conditional order and should not be entrusted to the specialist for execution.

The Exchange states that a Floor Official's reviewing a pattern of rejections of a specialist's principal transactions and requiring a broker to review his or her actions do not compromise the unconditional right of a broker to reject any trade where the specialist trades as principal. If a customer gives a continued pattern of rejection instructions to a Floor broker to reject any trade where the specialist acted as principal, a Floor Official would be able to review the appropriateness of the continued pattern of rejections by the broker, to make sure he is representing his customer as fiduciary and not giving the specialist, in effect, a kind of conditional order that is not recognized under Exchange rules. If a continued pattern of rejections does occur because the customer will not accept executions with the specialist as contra party, the Floor broker should represent the order himself or herself to ensure appropriate representation of the order in accordance with the broker's fiduciary responsibility to the customer. Because the right to reject a trade pursuant to NYSE Rule 91 is unconditional, no disciplinary process would be triggered by the broker exercising his or her right to reject a trade.[11]

NYSE Rule 95. Under NYSE Rule 95, an Exchange Floor broker cannot effect a transaction if that broker has discretion regarding the choice of security to be bought or sold, the total amount of the security to be bought or sold, or whether the transaction shall be a purchase or a sale. The Exchange is proposing to add material to NYSE Rule 95(a) making clear that members may not create an order or a material term of an order, but must receive an order from off the Floor, regardless of how familiar they are with a customer's strategy. This is a long-standing interpretation of NYSE Rule 95 and the Exchange believes is reasonably and fairly implied by the text of the existing Rule.

NYSE Rule 115A. NYSE Rule 115A, among other matters, provides procedures for members to confirm transactions on openings. The Rule provides in one place that members should confirm transactions as promptly as possible, and in another place states that a specialist shall not be responsible for losses if the broker does not return to the specialist's post within 30 minutes after the opening sale. The Exchange is proposing to add to the Rule a cross reference to make clear that while a broker should confirm a transaction as promptly as possible, the specialist is not responsible for losses thirty minutes after the opening. This is a simple cross-referencing point that the Exchange believes is reasonably and fairly implied by the text of the current Rule.

NYSE Rule 116. The Exchange is proposing three changes to NYSE Rule 116. Exchange Rule 116.20 would be revised to directly state a prohibition against a Floor broker ''stopping'' stock. This is not a new prohibition, as section 11(a) of the Act[12] and NYSE rules regulating on-Floor trading would have the effect of prohibiting a broker from effecting an on-Floor proprietary trade to execute the order at the ''stop'' price if other market interest traded with the bid or offer against which the broker's order was stopped and the broker was thus obligated to effect a proprietary trade to fulfill the ''stop.'' The Exchange has consistently interpreted NYSE Rule 116.20 in this manner.

The Exchange is also proposing to amend NYSE Rule 116.30(3)(a) to make clear in the Rule that a specialist should ''stop'' an order in a minimum variation market only when there is an imbalance in the quotation suggesting the likelihood of price improvement for the ''stopped'' order. This proposed rule change to NYSE Rule 116.30(3)(a) has been the Exchange's consistent interpretive position. In addition, the Exchange is proposing to add to NYSE Rule 116.40 a cross reference to new NYSE Rule 123C,[13] which codifies in detail the Exchange's policies regarding execution of market-on-close and limit-on-close orders.

2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[14] in general, and further the objectives of Section 6(b)(5),[15] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanisms of a free and open market and a national market system 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, as amended, 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

Written comments on the proposed rule change, as amended, were neither solicited nor received.

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 NYSE consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

[10] *Id.*

[11] *Id.*

[12] 15 U.S.C. 78k(a).

[13] *See* Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31).

[14] 15 U.S.C. 78f(b).

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

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, as amended, 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 filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–32 and should be submitted by June 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–14369 Filed 6–6–03; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47955; File No. SR–Phlx–2003–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. for a Six-Month Extension of its Pilot Systems Change to its Automatic Execution Feature (AUTO–X)

May 30, 2003.

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 April 18, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Item I below, which was prepared by the Phlx. On May 5, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 30, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, on an accelerated basis, as amended, for an additional six-month period, to expire on November 30, 2003.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for an additional six months, its pilot program effecting a system change to the Exchange's Automated Options Market (''AUTOM'') System,[5] whereby AUTO-X is disengaged for a period of 30 seconds after the number of contracts automatically executed in a given option meets the specified disengagement size for the option (the ''pilot''). As explained further below, the Exchange also proposes to amend the pilot by replacing the phrase ''AUTO–X guarantee'' with the phrase ''specified disengagement size.''[6] The text of the proposed rule change, as amended, is as follows:

Proposed new language is *italicized*; proposed deletions are in [brackets].

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080

(a)–(b) No change.

(c) (i)–(iii) No change.

(iv) (A)–(H) No change.

(I) When the number of contracts automatically executed within a 15 second period in an option (subject to a pilot program until [May] *November* 30, 200[2]*3*) exceeds the [AUTO–X guarantee] *specified disengagement size*, a 30 second period ensues during which subsequent orders are handled manually.

(v) No change.

(d)—(j) No change.

* * * Commentary:

.01—.05 No change.

.06 RESERVED

.07 The specified disengagement size set forth in Rule 1080(c)(iv)(I) is subject to the approval of the Options Committee and shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option. The specified disengagement size for each option shall be posted on the Exchange's Web site.

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 Phlx 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 III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, PHLX, to Marc McKayle, Special Counsel, Division of Market Regulation (''Division''), Commission, dated May 2, 2003. (''Amendment No. 1''). In Amendment No. 1 the Exchange, among other things, clarifies that it proposes to replace the phrase ''AUTO–X guarantee'' with the phrase ''specified disengagement size.'' The Exchange also represents that, if the quotation in the option series that exhausts the specified disengagement size is revised (either by Auto-Quote or manually by the specialist) prior to the expiration of the 30-second period during which AUTO–X is disengaged, AUTO–X will be re-engaged for that option upon such revision. If the quotation in such an option series is not revised during the 30 second period during which AUTO–X is disengaged, the responsible broker or dealer is firm for the disseminated price, up to the disseminated size, pursuant to Exchange Rule 1082. In such a circumstance, AUTO–X is reengaged automatically after 30 seconds. The Exchange currently engages in surveillance for occurrences in which responsible brokers or dealers do not comply with the Firm Quotation requirements of Exchange Rule 1082, including during the 30-second AUTO–X disengagement period that is the subject of this proposed rule change.

[4] *See* letter from Richard S. Rudolph, Director and Counsel, PHLX, to Marc McKayle, Special Counsel, Division, Commission, dated May 29, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange adds Commentary .07 to Phlx Rule 1080 to clarify that ''[t]he specified disengagement size set forth in Rule 1080(c)(iv)(I) is subject to the approval of the Options Committee and shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option.'' Further, Commentary .07 states that ''[t]he specified disengagement size for each option shall be posted on the Exchange's web site.''

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[6] *See* Amendment No. 1, note 3 *supra*.