

complicated issuer or proxy materials or to vote proxies. These investors, in particular, may feel frustrated when they receive unwanted issuer materials. Furthermore, the Commission believes that the proposed rule change will permit the investment adviser to make more expedient, informed investment decisions, thereby facilitating securities transactions in accordance with the Act. For these reasons, the Commission believes that the proposed rule change appropriately gives investors the freedom to choose whether to receive proxy and related issuer materials and vote the proxies or to designate an investment adviser to perform these functions on their behalf.

The Commission also believes that amending the Interpretation to allow a member that is the investment manager for an ERISA Plan to vote proxies on behalf of the ERISA Plan is consistent with the policies embodied in Section 15A(b)(6) because the amendment would conform the Interpretation to NYSE Rule 450(1) and will permit the member to vote proxies in accordance with its ERISA Plan fiduciary responsibilities. The Commission notes that in voting proxies as a plan fiduciary, an investment manager must consider those factors which would affect the value of the plan's investment and is prohibited from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. In addition, the Commission believes that the rule change should prevent potential conflicts between NASD rules and ERISA guidelines.¹²

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR-NASD-95-06 be, and hereby is, approved.

¹² In an interpretive letter dated February 23, 1988, the Pension and Welfare Benefits Administration of the United States Department of Labor ("Department") set forth its view regarding proxy voting by fiduciaries of employee retirement plans subject to ERISA. In the interpretive letter, the Department stated that the fiduciary act of managing plan assets which are shares of corporate stock would include the voting of proxies appurtenant to those shares of stock. The Department stated its position that, with respect to the inquiry set forth in the request for interpretation (*i.e.*, a proposal to change the state of incorporation of a corporation in which a plan owned shares, and a proposal to rescind "poison pill" arrangements, the decision as to how proxies should be voted are fiduciary acts of plan asset management. The Department concluded that, to the extent that the plan permits a named fiduciary to appoint an investment manager to manage, acquire and dispose of plan assets, and the named fiduciary has not expressly reserved the voting rights to itself, there would be an ERISA violation if, during the duration of such delegation, any person other than the investment manager were to decide how to vote any proxy with respect to shares owned by the plan. See Department Letter on Proxy Voting By Plan Fiduciaries, dated February 23, 1988, BNA Pension Reporter, February 29, 1988, vol. 15, p. 391.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35687; File No. SR-NYSE-95-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Specialists Displaying the Full Size of Certain Orders

May 8, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 21, 1995, 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 self-regulatory organization. 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 proposed rule change consists of an Information Memo which discusses procedures under Exchange rules with respect to specialists displaying orders received through the SuperDOT order routing system and the full size of orders received by specialists manually which are subsequently entered into the electronic book.

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 self-regulatory organization 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 self-regulatory organization 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 Exchange is proposing to issue an Information Memo outlining its policy with respect to displaying certain orders received by a specialist.¹ The policy requires specialists to display the full size² of all orders received through the SuperDOT order routing system and the full size of all orders received by specialists manually which are subsequently entered into the electronic book. This requirement includes increasing the size of a quotation for orders at the same price as the current bid or offer. The policy also sets forth the specialist's responsibility when a member who gives an order requests that less than the full size of the order be shown in the quotation. In that situation, a specialist is only responsible to enter in the electronic book and show the size requested. The portion not requested to be shown will be handled manually as a "held" order, but will be last in terms of time priority to all other orders on the specialist's electronic book at that price. If the specialist is subsequently requested to show an additional portion, or the remainder, of the order, the specialist would enter the price and size into the electronic book, with the order so entered having priority on the book *vis-a-vis* other orders as of the time of entry on the book. The specialist would increase the quotation size to reflect the additional amount entered on the book.

The Exchange believes that this policy is consistent with Exchange Rule 104, which requires the effective execution of agency orders received by specialists, and with NYSE Rule 60(e).³ The Exchange expects that specialists would display *as soon as practicable* any order which, in relation to current market conditions in a particular security,

¹ In Information Memo No. 93-12, the Exchange has previously advised specialists that, pursuant to NYSE Rule 79A.10, all orders received by specialists through the SuperDOT system are deemed to be accompanied by an instruction that they be quoted at the limit price on the order when such limit price is better than the current quotation.

² Currently the Exchange is capable of displaying quotations up to 99,900 shares. The Exchange plans to expand this capability in the future.

³ NYSE Rule 60(e) requires a specialist to promptly report the highest bid and lowest offer made in the trading crowd and the associated quotation size that he wishes to make available to quotation vendors. The rule also requires a specialist to promptly report whenever a bid, offer or quotation size he previously reported is to be revised and whenever a bid and/or offer he previously reported is to be cancelled or withdrawn.

represents a material change in the supply or demand for that security. For example, if the market in XYZ security is 20 bid to 20¼ offered, 1,000 shares bid and 1,000 shares offered, and the specialist receives an order to sell 10,000 shares at 20¼, the specialist would be expected to change the size of the offer to 11,000 shares as soon as he or she becomes aware of the order. If the quotation already reflects significant supply (demand), and the specialist receives an order that is relatively *de minimis* in relation to such supply (demand), the specialist may take a reasonable period of time, which should not generally exceed two minutes, before updating the quotation, so as to avoid constant revisions of quotations that do not reflect material changes in supply and demand. For example, if the market in XYZ security is 20 bid to 20¼ offered, 5,000 shares bid and 50,000 shares offered, and the specialist receives an order to sell 200 shares at 20¼, the specialist would be permitted to wait a reasonable period of time before changing the size of the offer to 50,200 shares.

Under exceptional circumstances, the specialist would not necessarily display the full quotation size. For example, as noted in Information Memo 94-32, when a member proposes to effect a block transaction at a significant premium or discount from the prevailing market and the specialist is aware of interest on the contra side, it may be more appropriate for the specialist and Floor Official(s) to gap the quotation in a security for a brief period, generally not exceeding five minutes, with a view toward contacting and/or attracting contra market interest. In such case, the bid or asked price should touch the prior sale price and reflect size of 100 shares by 100 shares. The same principles would also apply to a situation where there is a sudden influx of market orders on one side of the market which would be likely to result in a significant price change.

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. The policy with respect to displaying full size of orders received by specialists enhances the purposes of the Act by assuring that accurate and complete information with respect to the current market on the

Exchange for any stock is available to market participants.

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

No written comments were either solicited or received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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 self-regulatory organization consents, the Commission will:

(A) by order approve the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-95-17 and should be submitted by June 2, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

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Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the Philadelphia Stock Exchange, Inc., the American Stock Exchange, the Pacific Stock Exchange, Incorporated, the Chicago Board Options Exchange, Incorporated, and the New York Stock Exchange, to Adopt a 2½ Point Strike Price Pilot Program

May 5, 1995.

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 February 6, March 8, March 15, and March 22, 1995, respectively, the Philadelphia Stock Exchange, Inc. ("Phlx"), the American Stock Exchange ("Amex"), the Pacific Stock Exchange, Incorporated ("PSE"), the Chicago Board Options Exchange, Incorporated ("CBOE"), and the New York Stock Exchange ("NYSE") (collectively the "Exchanges") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Exchanges. Additionally, the Committee on Options Proposals ("COOP") filed a letter with the Commission endorsing the Exchanges' proposed rule changes.³ The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to establish a pilot program, whereby the Exchanges may select a certain number of their listed options for inclusion in a twelve month pilot program for the listing of strike prices at 2½ point intervals.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Michael Schwartz, Chairman, COOP, to Jonathan G. Katz, Secretary, Commission, dated April 5, 1995.

⁴ The Exchanges amended the original proposals to extend the pilot program, from six to twelve months. See Letters from Michael Pierson, Senior Attorney, PSE, dated March 24, 1995 ("PSE Amendment No. 1"), and Timothy Thompson,