of Rule 10335—that is, to expedite the arbitration of matters eligible for arbitration between or among members and associated persons.

To give effect to the Rule's intent the NASD notes that under Articles III and IV of the By-Laws, members and associated persons agree to comply with all the provisions of the Association's rules. Rule 10201 of the Code of Arbitration Procedure expressly provides that disputes between or among members and associated persons must be arbitrated at the instance of any member or associated party to the dispute.

Under the Resolution of the NASD Board of Governors concerning the failure to act under the provisions of the Code of Arbitration Procedure, a member's failure to submit a dispute to arbitration may be deemed a violation of the NASD's Rules of Fair Practice. Because the failure to abide by the requirements of Rule 10335 can negate the ability to arbitrate disputes effectively, the NASD believes that the failure of a member or associated person to comply with the requirements of Rule 10335 and seek expedited resolution of a dispute should be considered to be a failure to submit to arbitration under the Code. If the Commission approves the proposed rule change, the NASD will announce to its membership upon the approval that failure to file a claim for permanent relief in compliance with Rule 10335 will constitute a failure to submit to arbitration, subjecting the member or associated person to disciplinary action.

Finally, the NASD is proposing to amend Rule 10335 to clarify that if a party to a dispute required to be submitted to arbitration seeks an injunction in court it must simultaneously file an arbitration claim *with the NASD* under the *NASD's Code*. The NASD is also proposing to amend rule 10335 to provide that if an existing agreement between the parties permits the dispute to be arbitrated in another forum, the dispute may be filed with the other forum only if the other forum will expedite the proceedings and the party seeking the injunction requests and agrees to expedite the proceedings. This provision is intended to recognize the contractual provisions that may permit the parties to arbitrate in another forum; the NASD does not intend to force the parties into the NASD's forum. The provision does intend to place the burden of expediting the proceedings on the party seeking injunctive relief, just as Rule 10335 places the burden on that party.

(2) Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] in that the proposed rule change will facilitate the arbitration process by clarifying the provisions requiring expedited proceedings in intra-industry disputes and emphasizes that the intent of the rule is to expedite such proceedings.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(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

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 self-regulatory organization 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. The Commission requests that, in addition to any general comments concerning whether the proposed rule change is consistent with Section 15A(b)(6) of the Act, commenters specifically address the following issues:

1. The United States Supreme Court has stated that arbitration represents an appropriate form of dispute resolution, ''so long as the prospective litigant effectively may vindicate [his or her] * * * cause of action in the arbitral forum. * * *''[5] The NASD has suggested that the proposed rule change is necessary to provide fair arbitration proceedings. The Commission invites comment on whether parties temporarily enjoined by a court are effectively precluded from vindicating their rights in arbitration if they are not afforded expedited proceedings.

2. If the proposed rule change is adopted, it may affect the operation of arbitration fora sponsored by other SROs. For example, the New York Stock Exchange, Inc. currently offers expedited proceedings to parties in its arbitration forum, but it does not require that they accept them. Would coordinated SRO rulemaking be preferable to this NASD action? If so, should the Commission encourage other SROs to submit similar proposed rule changes?

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 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by November 26, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28315 Filed 11–04–96; 8:45 am]

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[4] 15 U.S.C. 78*o*–3.

[5] *See Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 (1991).

[6] 17 CFR 200.30–3(a)(12)

[Release No. 34–37894; File No. SR–NYSE–96–31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Permanent Approval of Expiration Day Auxiliary Closing Procedures Pilot Program

October 30, 1996.

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 October 23, 1996, 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 seeks to make permanent the pilot program for expiration day auxiliary closing procedures, which was originally filed with the Commission in SR–NYSE–88–37 and amended as described below. The current pilot program is scheduled to expire on October 31, 1996.[3] The rule change set forth in SR–NYSE–88–37 specified auxiliary closing procedures for assisting in handling the order flow associated with the expiration or settlement of stock index futures, stock index options and options on stock index futures in a list of so-called ''pilot'' stocks.[4] These procedures are applicable on the one day a month that the derivative products expire and on the last trading day of each calendar quarter when quarterly index expiration (''QIX'') options expire.

I. 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 III below and is set forth in Sections A, B and C below.

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

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 36404 (October 20, 1995), 60 FR 55071 (approving File No. SR–NYSE–95–28).

[4] The pilot stocks consist of the 50 most highly capitalized Standard & Poor's (''S&P'') 500 stocks and any component stocks of the Major Market Index (''MMI'') not included therein.

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

1. Purpose

Special procedures regarding the entry of market-at-the-close (''MOC'') orders[5] on expiration Fridays[6] were originally adopted in 1986 for quarterly triple expiration of derivative products.[7] Since November 1988, these procedures have been used for each monthly expiration and applied to the so-called ''pilot stocks.''[8] In April 1992, the Exchange modified the pilot procedures and included additional special procedures for handling MOC orders in *all* stocks on expiration Fridays.[9] In March 1993, the Exchange extended the expiration Friday auxiliary closing procedures[10] to days on which quarterly index expiration (''QIX'') options expire.[11] In September 1993, the Exchange again modified the pilot procedures to change the cut-off time for entry, cancellation or reduction of MOC orders to 3:40 p.m.[12] In June 1995, the Exchange put into effect modified MOC procedures for expiration days that set a 3:40 p.m. deadline for the entry of all MOC orders in all stocks, except to offset imbalances that are published on the tape.[13]

The current procedures require that MOC orders in any stock be entered for execution by 3:40 p.m. and that no cancellation or reduction of any MOC order in any stock take place after 3:40 p.m. (except in the case of legitimate error). This applies to MOC orders in all stocks regardless of whether such orders relate to a strategy involving stock index futures, stock index options, or options on stock index futures. In addition, Floor brokers representing any MOC orders must indicate their MOC interest to the specialist by 3:40 p.m.

For the pilot stocks and stocks being added to or dropped from an index, the current procedures require a single publication of imbalances of 50,000 shares or more to be made as soon as practicable after 3:40 p.m. Imbalances of 50,000 shares or more may also be published for other stocks with a Floor Official's approval.[14] After the imbalance publication, MOC orders may be entered only to offset a published imbalance. The entry of MOC orders after 3:40 p.m. to liquidate positions related to a strategy involving expiring derivative instruments is not permitted even if such orders might offset published imbalances. No MOC orders may be entered if there is no imbalance publication.

The auxiliary procedures utilized for expiration days have been in effect on a pilot basis for ten years. During that period the procedures have been refined based on the Exchange's experience and input from constituents. The monitoring reports submitted by the Exchange to the Commission show that these procedures have been effective in minimizing excess volatility at the close

[5] A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. See NYSE Rule 13.

[6] The term ''expiration Friday'' refers to the trading day, usually the third Friday of the month, when various stock index futures, stock index options and options on stock index futures expire or settle concurrently.

[7] See Securities Exchange Act Release No. 24926 (September 17, 1987), 52 FR 24926 (approving File No. SR–NYSE–87–32 and nothing that the MOC procedures described therein had been utilized on a quarterly basis since September 1986).

[8] The NYSE auxiliary closing procedures for expiration Fridays were initially approved by the Commission on a pilot basis for a one-year period beginning in November 16, 1988 and extending through October 1989. The pilot has since been extended each year on a one-year basis. See Securities Exchange Act Release Nos. 26293 (November 17, 1988), 53 FR 47599; 26408 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37); 27488 (November 16, 1989), 54 FR 48343 (approving File No. SR–NYSE–89–38); 28564 (October 22, 1990), 55 FR 43427 (approving File No. SR–NYSE–90–49); 29871 (October 28, 1991), 56 FR 30004 (approving File No. SR–NYSE–91–31); 31386 (October 30, 1992) 57 FR 52814 (approving File No. SR–NYSE–92–30); 32868 (September 10, 1993), 58 FR 48687 (approving File No. SR–NYSE–93–33); 34916 (October 31, 1994), 59 FR 55507 (approving File No. SR–NYSE–94–32); and 36404 (October 20, 1995), 60 FR 55071 (approving File No. SR–NYSE–95–28).

[9] In April 1992, the Commission approved the Exchange's modified pilot MOC procedures on an accelerated temporary basis for the April 1992 expiration Friday. See Securities Exchange Act Release No. 30570 (April 10, 1992), 57 FR 13399 (notice of filing and order granting partial accelerated approval of File No. SR–NYSE–92–09). Thereafter, the Commission approved those modifications for all expiration Fridays during the pilot period. See Securities Exchange Act Release No. 30680 (May 8, 1992), 57 FR 20720 (order approving File No. SR–NYSE–92–09).

[10] See Securities Exchange Act Release No. 32066 (March 30, 1993), 58 FR 17630 (approving File No. SR–NYSE–93–16).

[11] On quarterly expiration days, the ''pilot stocks'' include the ten highest weighted stocks of the S&P Midcap 400 Index (in addition to the 50 highest weighted stocks underlying the S&P 500 Index and any component stocks on the Major Market Index not included in that group).

[12] See Securities Exchange Act Release No. 32868 (September 13, 1993), 58 FR 48687 (order approving File No. SR–NYSE–93–33).

[13] See Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313 (April 17, 1995) (order approving File No. SR–NYSE–94–44). Although approved by the SEC in April, the Exchange did not put these procedures into effect until June 1995. Prior to April 1995, only MOC orders related to a strategy involving derivative index products were required to be entered for execution by 3:40 p.m. on expiration days. See Securities Exchange Act Release No. 34916 (October 31, 1994), 59 FR 55507 (November 7, 1994) (order approving File No. SR–NYSE–94–32).

[14] See Securities Exchange Act Release No. 36404 (October 20, 1995), 60 FR 55071 (order approving File No. SR–NYSE–95–28).

on expiration days.[15] The expiration day procedures have become accepted by the securities industry as an appropriate way of dampening volatility on days in which derivative products expire. The Exchange therefore requests that the procedures described above be made permanent.

The Exchange also states that it continues to believe that concerns about excess market volatility that may be associated with the expiration or settlement of derivative index products would be most appropriately addressed if the expiration or settlement value of all such products were based on the NYSE *opening* rather than the closing price on the last business day prior to the expiration or settlement of the product.

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.[16]

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 or received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any 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, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–31 and should be submitted by November 26, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposed rule change seeking permanent approval of the expiration day auxiliary closing procedures pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[17] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. For the reasons set forth below, the Commission believes that the NYSE's proposal furthers the objectives of Section 6(b)(5) of the Act.

In recent years, the self-regulatory organizations have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions on expiration and non-expiration days. Special procedures regarding the entry of MOC orders on expiration Fridays were first used in 1986 for assisting in handling the order flow associated with the concurrent quarterly expiration of stock index futures, stock index options and options on stock index futures on expiration Fridays. Since November 1988, on a pilot basis, the NYSE has utilized auxiliary closing procedures for MOC orders for each monthly expiration Friday. In March 1993, the Exchange extended the expiration Friday closing procedures to days on which Quarterly Index Expiration options expire. The closing procedures for expiration Fridays and quarterly expiration days (cumulatively, ''expiration days'') require that all MOC orders be entered, reduced or canceled no later than 3:40 p.m. As soon as practicable after 3:40 p.m., the specialist must disseminate any MOC order imbalance of 50,000 shares or more in pilot stocks. After 3:40 p.m., MOC orders may be entered in the pilot stocks, but only to offset the published imbalance. That is, once an imbalance in a pilot stock has been published, MOC orders in such pilot stock will be accepted only to trade on the opposite side of the market in relation to such published imbalance. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response thereto. In October 1995, the Exchange amended the program to allow for publication of MOC order imbalances of 50,000 shares or more not only in pilot stocks but in stocks added to or dropped from an index, and in any other stock if requested by a specialist and approved by a Floor Official.

The Commission believes that these auxiliary closing procedures have enabled market participants to gain a more accurate picture of the buying and selling interest in MOC orders at expiration. By requiring early submission of MOC orders and disseminating significant imbalances (50,000 shares or more) in all stocks, the NYSE has improved its ability to attract contra-side interest to help alleviate imbalances caused by the liquidation of stock positions. Based on the NYSE's experience, the Commission believes that the MOC order handling requirements work relatively well and may result in more orderly markets at the close on expiration days. As noted above, these auxiliary closing procedures have been used by the Exchange since 1988 without significant difficulty. Therefore, the Commission believes that it is appropriate at this time to approve the Exchange's pilot program on a permanent basis.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because there are no changes being made to the current provisions, which originally were subject to the full notice and comment procedures. In addition, accelerated approval would enable the program to continue on an uninterrupted basis.

[15] The NYSE has submitted to the SEC several monitoring reports describing its experience with the closing procedures. The most recent report was submitted to the SEC by the NYSE on August 6, 1996.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change SR–NYSE–96–31 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28387 Filed 11–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37886; File No. SR–PSE–96–26]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Order Approving Proposed Rule Change Relating to Its Minor Rule Plan

October 29, 1996.

I. Introduction

On August 7, 1996, the Pacific Stock Exchange Incorporated (''PSE'' 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[2] thereunder, a proposed rule change to amend the PSE's Minor Rule Plan.

The proposed rule change was published for comment in the Federal Register on August 21, 1996.[3] No comments were received on the proposal.

II. Description of Proposal

As discussed in the Notice, the proposal would amend the PSE's disciplinary rules to provide Exchange staff with the authority to make findings of rule violations and to impose fines pursuant to the Exchange's Minor Rule Plan (''MRP'').

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade. The proposal also is consistent with Section 6(b)(7) in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PSE–96–26) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28308 Filed 11–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37882; File No. SR–PHILADEP–96–10]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding Use of the Institutional Delivery System for Prime Brokers Transactions

October 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 28, 1996 the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PHILADEP–96–10) as described in Items I and II below, which Items have been prepared primarily by Philadep. On September 16, 1996, Philadep filed an amendment to the proposed rule change.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

Philadep proposes to allow its participants to utilize its links with the Depository Trust Company's (''DTC'') Institutional Delivery (''ID'') system for the confirmation and affirmation of securities transactions that are to be settled by prime brokers.[3]

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

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Philadep proposes to allow its participants to utilize the ID system for the confirmation and affirmation of trades that are to be settled by prime brokers.[5] Under the proposed rule, Philadep participants may elect to use a prime broker option on the ID system to accommodate requests from their customers to send certain orders to another broker for execution. Although these orders will be executed by another broker, all such orders subsequently will settle at the prime broker.

Prime broker arrangements typically are designed by full service firms to facilitate the clearance and settlement of securities trades for retail and institutional investors that are active market participants. The prime broker arrangement involves the prime broker, the executing broker, and the institutional customer. The prime broker must be a registered broker-dealer that clears and finances customer trades executed by one or more other broker-dealers (''executing brokers'') on behalf of the customer. Customers place orders with an executing broker. The executing broker maintains an account in the name of the prime broker for the benefit of the customer to accommodate such customer orders. The customer maintains its funds and securities in an account with the prime broker.

When a customer places a trade order, the executing broker buys or sells securities. On the same day (*i.e.,* trade date), the customer will notify the prime broker of the trade made by the executing broker. The prime broker records the customer's order in its books and records and issues a confirmation to the customer. The executing broker will utilize the ID system to confirm the transaction with the prime broker. The prime broker will affirm the trade through the ID system if the trade information submitted by the customer matches the information received from

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[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1994).

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

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 37592 (August 21, 1996), 61 FR 45468.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from J. Keith Kessel, Compliance Officer, Philadep, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (September 13, 1996).

[3] For a complete description of DTC's ID system, refer to Securities Exchange Act Release No. 34779 (October 3, 1994), 59 FR 51465 [File No. SR–DTC–94–13] (notice of filing and order granting accelerated approval on a temporary basis of the ID system).

[4] The Commission has modified the text of the summaries submitted by Philadep.

[5] Prime brokers are ID participating broker-dealers that settle, clear, and finance trades and provide custodial facilities for institutional customers.