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

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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.[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 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 Room. 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–00–02 and should be submitted by March 9, 2000.

[5] The Exchange requested accelerated approval in its filing with the Commission. However, the Exchange retracted its request in a telephone conversation between Amy Bilbija, Counsel, NYSE, and Heather Traeger, Attorney, Division, SEC, on January 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3750 Filed 2–16–00; 8:45 am]

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[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42411; File No. SR–NYSE–99–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 123A.40

February 10, 2000.

I. Introduction

On March 19, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 to amend NYSE Rule 123A.40. The proposed rule change was published for comment in the **Federal Register** on July 22, 1999.[3] On November 1, 1999, the Exchange filed Amendment No. 1.[4] The Commission received no comments on the proposal. This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment No. 1.

II. Description of the Proposal

The proposed rule change would amend NYSE Rule 123A.40 to allow specialists to elect stop orders at a bid or offer that *better's* the market and would eliminate the requirement for specialists to obtain Floor Official approval, unless the price of the specialist's electing transaction is *more than 2/16* point away from the previous sale.[5]

Presently, NYSE Rule 123A.40 generally prohibits a specialist from making a transaction for his or her own account that would result in electing stop orders.[6] However, the rule permits a specialist to be a party to the election of a stop order under two circumstances: (i) when the specialist's bid or offer *betters* the market, is made with the prior approval of a Floor Official, and the specialist guarantee's that the stop order will be executed at the same price as the electing transaction; and (ii) when the specialist purchases or sells stock *at the current bid or offer* to facilitate completion of a member's order at a single price, where the depth of the current bid or offer is not sufficient.

The Exchange proposes to amend part (i) of the rule to allow the specialist to make a bid or offer that *betters* the market at a price that would elect stop orders and eliminate the requirement to obtain Floor Official approval, unless the price of the specialist's electing transaction is *more than 2/16* point away from the previous sale.[7] The rule would retain the requirement that the specialist guarantee that stop orders be executed at the same price as the electing sale.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.[8] In particular, the proposal is

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41623 (July 16, 1999), 64 FR 39547.

[4] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated October 29, 1999 (''Amendment No. 1''). In Amendment No. 1, the Exchange amends the proposed rule change of NYSE Rule 123A.40 to allow specialists to elect stop orders at a bid or offer that *betters* the market without the specialist obtaining Floor Official approval, unless the price of the specialist's electing transaction is *more than 2/16* point away from the previous sale. This amends the original filing which proposed that the requirement for Floor Official approval be eliminated for a specialist's transaction electing a stop order unless the price of the electing transaction was more than 4/16 point away from the previous sale.

[5] The provisions of NYSE Rule 123A.40 that requires specialists to guarantee the price of elected stop orders and requires Floor Official approval when a specialist elects stop orders through his own bid or offer are intended to address, in part, the situation where a specialist has an accumulation of stop orders and desires to ''clean up the book.'' For example, this can be accomplished by the specialist entering a bid that elects all of the stop sell orders at the lowest stop order price, or by electing stop sell orders in a series of descending prices until the lowest order is reached. The specialist could use these stop order election processes to drive the share price down to an artificially low level to obtain cheap stock at the expense of public customers. *See* Securities Exchange Act Release No. 34136 n.10 (May 31, 1994), 59 FR 29461 (June 7, 1994).

[6] A stop order is an order that becomes an executable market order, or limit order, once the specified price (''stop price'') is reached. A stop order is elected when the stock trades at or beyond the stop price and, thus, may not necessarily be executed at that price. *See* NYSE Rule 13.

[7] *See* note 4, *above*.

[8] In approving this proposed rule change, the Commission has considered its impact on

Continued

consistent with Section 6(b)(5) of the Act[9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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 proposed rule change would allow a specialist to make a bid or offer that betters the market at a price that would elect stop orders and eliminate the requirement to obtain prior Floor Official approval, unless the price of the specialist's electing transaction is more than 2/16 point away from the previous sale. The Commission believes that eliminating the requirement of Floor Official approval for such transactions could help to alleviate the administrative burden for Floor Officials and permit the reallocation of useful resources and increase the operational efficiency of Floor Officials and specialist's, while maintaining the requirement of Floor Official approval for the specialist stop order elections that are most likely to warrant Floor Official scrutiny (*i.e.,* where the electing transaction is more than 2/16 point away from the previous sale). An NYSE review of specialist' stop order electing transactions showed that a significant percentage of trades occur at a relatively small or no change in price. For example, an Exchange analysis of the difference between the electing stop price by specialists and the last sale price for September through November 1998 shows that 60% of such electing sales took place 2/16 point or less from the last sale price. Based on these statistics the proposal would eliminate approximately 60% of required Floor Official approvals in this area. Therefore, the Commission believes that the proposed rule change should significantly reduce the administrative burden on Floor Officials. Moreover, the proposal should assist specialists in facilitating fair and orderly markets by not requiring prior Floor Official approval before a specialist can make a bid or offer that would elect stop orders. At the same time, however, the Commission is mindful that the elimination of Floor Official approval in this limited circumstance makes it incumbent upon the NYSE to rigorously surveil for possible violations of NYSE specialists' agency obligations that may be facilitated by the relaxation of the Floor Official requirement. Therefore, the Commission requests that the NYSE provide to Commission staff, no later than nine months from the date of this order, a report discussing the impact this proposal has had on the number of stop orders being elected and any possible violation of Commission of NYSE rules resulting from such transactions. Moreover, the Commission expects that the NYSE will promptly file a proposed rule change with the Commission that conforms this rule to decimals.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register.** Specifically, Amendment No. 1 changes the proposal to eliminate Floor Official approval for transactions that elect stop orders by specialists for transactions that are more than 2/16 point from the last sale, as opposed to more than 4/16 point away from the last sale. Because amendment No. 1 increases the number of specialist stop order election transactions that require Floor Official approval, it should improve the NYSE's ability to surveil for abuses of Commission or NYSE rules that might result from these transactions. Thus, the Commission believes that the combination of Amendment No. 1 to the proposal and the Exchange's surveillance procedures should make stop order election by specialist less susceptible to manipulation and provide adequate protection for investors. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[10] to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 25049–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–10 and should be submitted by March 9, 2000.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[11] the proposed rule change, as amended, (SR–NYSE–99–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5) and 78s(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42389; File Nos. SR–PCX–00–01; SR–Amex–00–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the Pacific Exchange, Inc. and the American Stock Exchange LLC Relating to Exercise Price Intervals and Exercise Prices for FLEX Equity Options

February 7, 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 January 11, and January 27, 2000, the Pacific Exchange, Inc. (''PCX'') and the American Stock Exchange LLC (''Amex'') (collectively the ''Exchanges''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which Items have been prepared by the Exchanges. The Commission is publishing this notice and order to solicit comments on the proposed rule changes from interested persons and to approve the proposals on an accelerated basis.

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

The Amex proposes to remove paragraph (c)(3) from Exchange Rule 903G. Paragraph (c)(3) limits exercise

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

[2] 17 CFR 240.19b–4.