SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34–44139; File No. SR–NYSE–94–34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 6 to the Proposed Rule Change by the New York Stock Exchange, Inc. Amending Rule 92 To Permit Limited Trading Along With Customers

March 30, 2001.

I. Introduction

On September 27, 1994, the New York Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 92 to permit limited trading along with customers. On December 20, 1994, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published in the **Federal Register** on January 3, 1995 (''Original Proposal'').[4] On February 1, 1995, in response to requests from several self-regulatory organizations (''SROs''),[5] the Commission published a notice of filing to extend the comment period for the Original Proposal.[6] The Commission received ten comment letters on the Original Proposal.[7]

On July 13, 1995, the NYSE submitted Amendment No. 2 to the proposed rule change, which was published in the **Federal Register** on July 28, 1995.[8] The Commission received five comment letters on Amendment No. 2 to the proposed rule change.[9]

On June 28, 1996, the NYSE submitted Amendment No. 3 to the proposed rule change, which was published in the **Federal Register** on July 18, 1996.[10] The Commission received three comment letters on Amendment No. 3 to the proposed rule change.[11]

On December 15, 1997, the NYSE submitted Amendment No. 4 to the proposed rule change, which was published in the **Federal Register** on February 18, 1998.[12] The Commission received six comment letters on Amendment No. 4 to the proposed rule change.[13]

On October 28, 1999, the NYSE submitted Amendment No. 5 to the proposed rule change, which was published in the **Federal Register** on December 20, 1999.[14] The Commission received three comment letters on Amendment No. 5 to the proposed rule change.[15] Given the public's interest in the proposed rule change and the Commission's desire to give the public sufficient time to consider Amendment No. 5 to the proposal, the Commission extended the comment period to Amendment No. 5 for an additional 14 days.[16]

On March 13, 2001, the NYSE submitted Amendment No. 6 to the proposed rule change.[17] This order approves the proposed rule change, as amended. The Commission also seeks comment from interested persons on Amendment No. 6.

II. Background

Currently, NYSE Rule 92 prohibits members from personally buying or selling (or initiating the purchase or sale) of any security on the Exchange at the same or better price at which they hold executable customer orders. The rule does not contain any exceptions for any type of proprietary transactions. In addition, the current rule does not apply to member organizations or transactions by members or member organizations in market centers other than the Exchange.

According to the Exchange, Rule 92 reflects fundamental concepts of agency law—that an agent must place its customer's interest ahead of its own proprietary interest. While this concept remains true today, the Exchange believes that trading practices have evolved in a manner that requires that the rule be amended. Specifically, the rule was drafted and promulgated before the advent of block positioning [18] and the proliferation of upstairs proprietary trading by member organizations. Thus, the Exchange decided to evaluate the rule's application, which currently only applies to trading practices engaged in by floor members, in light of member organizations' new off-floor trading practices. According to the Exchange, in amending Rule 92 to address these off-floor trading practices, it sought to strike

---

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

[2] 17 CFR 240.19b–4.

[3] *See:* letter to Glen Barrentine, Team Leader, Division Vice President and Secretary, NYSE dated December 16, 1994 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 35139 (December 22, 1994), 60 FR 156.

[5] *See* letters to Katherine A. Simmons, Division, SEC, from Robert P. Ackerman, The Cincinnati Stock Exchange (''CSE''), dated January 23, 1995; and David P. Semak, Vice President Regulation, Pacific Stock Exchange, Inc. (''PCX''), dated January 23, 1995.

[6] Securities Exchange Act Release No. 35274 (January 25, 1995), 60 FR 6330. Pursuant to Section 19(b)(2) of the Act, the NYSE consented to the additional twenty-one day public comment period. *See* letter to Katherine Simmons, Division, SEC, from Donald Siemer, Director, Market Surveillance, NYSE, dated January 24, 1995.

[7] *See* letters to Jonathan G. Katz, Secretary, SEC, from Roger D. Blanc, Wilkie, Farr & Gallagher, dated February 21, 1995 (''Blanc Letter No. 1'') and March 30, 1995; Joan Conley, Corporate Secretary, National Association of Securities Dealers, Inc. (''NASD''), dated March 6, 1995; Peter A. Ianello, *et al,* SBC Capital Markets Inc., dated March 13, 1995; J. Craig Long, Foley & Lardner, dated May 3, 1995; and letters to Margaret H. McFarland, Deputy Secretary, SEC from William W. Uchimoto, General Counsel, Philadelphia Stock Exchange (''Phlx''), dated February 15, 1995 (''Phlx Letter No. 1'') and April 4, 1995; Frederick Moss, Chairman of the Board of Trustees, CSE, dated February 16, 1995; David P. Semak, Vice President Regulation, PCX, dated February 17, 1995 (''PCX Letter No. 1''); and George W. Mann, Senior Vice President and General Counsel, Boston Stock Exchange, Inc. (''BSE''), dated February 27, 1995.

[8] Securities Exchange Act Release No. 36015 (July 21, 1995), 60 FR 38875.

[9] *See* letter to Jonathan G. Katz, Secretary, SEC, from David P. Semak, Vice President Regulation, PCX, dated September 8, 1995; letters to Margaret H. McFarland, Deputy Secretary, SEC, from William W. Uchimoto, First Vice President and General Counsel, Phlx, dated August 11, 1995 and October 27, 1995; and David Colker, Executive Vice President and Chief Operating Officer, CSE, dated February 15, 1996; and letter to Brandon Becker, Director, Division, SEC, from Roger D. Blanc, Wilkie, Farr & Gallagher, dated November 22, 1995.

[10] Securities Exchange Act Release No. 37428 (July 11, 1996), 61 FR 37523.

[11] *See* letter to Jonathan G. Katz, Secretary, SEC, from Roger D. Blanc, Wilkie, Farr & Gallagher, dated August 2, 1996; and letters to Margaret H. McFarland, Deputy Secretary, SEC, from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, dated August 8, 1996; and Adam W. Gurwitz, Director of Legal Affairs, CSE, dated August 13, 1996.

[12] Securities Exchange Act Release No. 39634 (February 9, 1998), 63 FR 8244.

[13] *See* letters to Jonathan G. Katz, Secretary, SEC, from Roger D. Blanc, Wilkie, Farr & Gallagher, dated March 10, 1998; Robert C. Errico, President, Securities Industry Association, dated March 24, 1998; Karen A. Aluise, Vice President, BSE, dated March 12, 1998; Paul A. Merolla, Vice President–Associate General Counsel, Goldman Sachs, dated March 18, 1998; letter to Margaret H. McFarland, Deputy Secretary, SEC, from Adam W. Gurwitz, Vice President Legal and Corporate Secretary, CSE, dated March 11, 1998; and letter to Howard L. Kramer, Assistant Director, Division, SEC, from Julius R. Leiman-Carbia, Goldman Sachs, dated May 21, 1998.

[14] Securities Exchange Act Release No. 42224 (December 13, 1999), 64 FR 3515.

[15] *See* letters to Jonathan G. Katz, Secretary, SEC, from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C., dated January 10, 2000 (''Archipelago Letter''); Sam Scott Miller, Orrick, Herrington & Sutcliffe, LLP, dated January 25, 2000 (''Orrick Herrington Letter''); Richard T. Sharp, Solomon, Zauderer, Ellenhorn, Frischer & Sharp, dated March 10, 2000 (''Solomon Zauderer Letter'').

[16] Securities Exchange Act Release No. 42330 (January 11, 2000), 65 FR 3515 (January 21, 2000).

[17] *See* letter to Belinda Blaine, Associate Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated March 9, 2001 (''Amendment No. 6'').

[18] Block positioning is an activity engaged in by certain broker-dealers whereby a broker-dealer acts as principal in taking all or part of a block order placed with the broker-dealer by a customer to facilitate a transaction that might otherwise be difficult to effect in the ordinary course of floor trading.

an appropriate balance between permitting block facilitations and preserving customer protections.

Accordingly, the Original Proposal [19] sought to extend the restrictions of the rule by treating proprietary transactions entered by member organizations in the same manner as proprietary trades of individual members on the floor of the Exchange. However, to accommodate the block facilitation business, the Exchange proposed to permit members and member organizations to trade along with customers when liquidating block facilitation positions, subject to certain conditions.

In the Original Proposal, the Exchange also sought to extend the trading restrictions imposed by Rule 92 to trades effected by NYSE members that occurred on ''any other market center.'' The Exchange believed that the broad concepts of agency law and fiduciary duties owned by agents to their customers applied to all agency relationships irrespective of the market center. Thus, it believed that its members should be subject to the rule's restrictions regardless of whether their transactions occurred on the NYSE.

Finally, the Exchange clarified the rule by proposing that members or employees of members or member organizations engaged in proprietary trading for the member or member organization would be imputed with knowledge of customer orders unless the member organization had created a functional separation between its proprietary trading desks and its other trading desks.

In Amendment No. 2,[20] the Exchange revised the Original Proposal to reflect some of the issues raised in the comment letters.[21] Several commenters raised concerns about extending the rule to cover member organizations and to transactions occurring on other market centers. The Exchange reiterated its belief that the rule should be extended to apply to member organizations. According to the Exchange, while most trading along situations occur when the same floor broker represents both agency and proprietary orders, it would be unacceptable for a member to enter a proprietary order with a different broker, who could then compete directly with the member firms's broker representing the member firm's customer.

The Exchange, however, proposed to amend the ''other market center'' provision of the Original Proposal by excluding transactions in securities not listed on the NYSE, transactions by a member organization acting in the capacity of a market maker in a security covered by Rule 19c–3 [22] under the Act, and transactions by a member organization acting in the capacity of a specialist or market maker on a regional exchange, to the extent that the principal trade effected was immediately liquidated at the same price as the customer received on that exchange. The NYSE, however, reasserted its belief that the rule should apply to all agency transactions by its members irrespective of the market center on which a transaction may be executed.

Finally, to accommodate off-floor proprietary trading, the Exchange proposed an additional exception to the rule to permit members or member organizations to trade along with customers when engaging in *bona fide* arbitrage or risk arbitrage, provided that certain conditions were met.

In Amendment No. 3,[23] the Exchange further clarified the scope of the proposed rule change. Specifically, the Exchange amended the provision that excluded regional exchange specialists and market makers from the provisions of the rule when they were acting in the capacity of a specialist or market maker on a regional exchange by deleting the requirement proposed in Amendment No. 2 that a regional specialist or market maker immediately liquidate its principal trade at the same price to its customer.

The Exchange also sought to clarify its reason for expanding its enforcement of Rule 92 to other market centers. Specifically, NYSE stated that because Rule 92 was an inventor protection and market integrity rule, its amendments sought to expand the narrow focus on floor activities to encompass member organizations' transaction in NYSE-listed securities irrespective of the market center in which these transactions occurred. The NYSE, nevertheless, amended the proposal to provide that, if another SRO had prohibitions similar to Rule 92, the prohibited activity resulted in transactions effected solely on that other SRO's market, and that SRO was a member of the Intermarket Surveillance Group (''ISG''), the ISG's investigative procedures would apply.

In Amendment No. 4,[24] the Exchange proposed to permit members and member organizations to hedge facilitation positions, provided that the hedging activity met certain conditions.

In addition, the Exchange proposed to included a provision as Supplemental Material .20 concerning the application of the proposed ''any other market center'' language. Specifically, the Exchange proposed to defer the review of transactions, both proprietary and agency, that were executed on another market center, to that other market center's regulatory staff, if the other market center had a trading along prohibition that was ''substantially similar'' [25] to the NYSE's Rule 92. If the other market center did not have a ''substantially similar'' rule, the NYSE rules would govern the review and analysis and the NYSE would pursue the matter. Further, the NYSE proposed that all investigations be coordinated through the ISG procedures.

In Amendment No. 5,[26] the Exchange revised the ''other market center'' provisions by limiting the application of Rule 92 to only those situations in which one or both trades (proprietary or agency) of a customer facilitation transaction were effected on the NYSE. Thus, if neither transaction occurred on the NYSE, Rule 92 would not apply.

In addition, the Exchange proposed a definition for *bona fide* hedge. Specifically, the Exchange proposed to define the creation of a *bona fide* hedge as those transactions that occur so close in time to the completion of the transaction precipitating such hedge that the hedge transactions are ''clearly related.'' Further, the Exchange defined what it considered to be ''clearly related'' for purposes of the hedge exception in proposed Supplemental Material .50.

Finally, the Exchange proposed to permit members and member organizations to trade along with customers when effecting transactions to correct *bona fide* errors.

III. Description of the Proposal [27]

As described above, NYSE Rule 92 currently restricts the ability of a NYSE

[19] *See* note 4 *supra.*

[20] *See* note 8 *supra.*

[21] *See* note 7 *supra.* In addition to submitting Amendment No. 2 to the Commission, the Exchange submitted a letter responding to the issues raises in Blanc Letter No. 1, Phlx Letter No. 1 and PCX Letter No. 1. *See* letter to Brandon Becker, Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE dated March 15, 1995.

[22] 17 CFR 240.19c–3.

[23] *See* note 10 *supra.*

[24] *See* note 12 *supra.*

[25] NYSE proposed that it would consider a rule to be ''substantially similar'' if the difference in the application of the rule was minor and technical and not materially different.

[26] *See* note 14 *supra.*

[27] The Commission notes that the description of the proposal, and thus the proposal approved in this order, reflects the proposed rule language submitted by the NYSE in Amendment No. 6 *See* note 17 *supra.*

member [28] to trade for its own account when the member has knowledge of any unexecuted customer order for the same security that could be executed at the same price. The NYSE has proposed to amend Rule 92 to broaden its applicability to include member organization,[29] and to permit members and member organizations to trade along with some of their customers in limited circumstances, as discussed further below.

As proposed NYSE Rule 92(a) would maintain the restriction regarding NYSE members' ability to enter orders to buy or sell any Exchange-listed security for any account in which such member or member organization or any approved person thereof is directly or indirectly interested, if the person responsible for the entry of the order has knowledge [30] of any particular unexecuted customer order to buy or sell the same security that could be executed at the same price. However, Rule 92, as proposed, will now also place the same trading restrictions on member organizations.

As proposed in NYSE Rule 92(b), members and member organizations will be permitted to enter proprietary orders while representing a customer's order that could be executed at the same price, under limited circumstances, so long as the order is not for the account of an individual investor [31] and the customer has given express permission, which must include an understanding of the relative price and size of allocated execution reports. Consent from the customer will be required for each transaction with which the member or member organization wishes to trade along.[32] Subject to this consent, members and member organizations will be permitted to enter only four types of proprietary orders when representing non-individual investor orders: First, pursuant to proposed NYSE Rule 92(b)(1), members and member organizations will be permitted to liquidate a position in a proprietary facilitation account [33] if their customer's order is for at least 10,000 shares.[34] Second, pursuant to proposed NYSE Rule 92(b)(2), members and member organizations will be permitted to create a *bona fide* hedge [35] so long as (i) the creation of the hedge, whether through one or more transactions, occurs so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related; [36] (ii) the size of the hedge is commensurate with the risk of offsets; [37] (iii) the risk to be offset is the result of a position acquired in the course of facilitating a customer's order; and (iv) the customer's order is for 10,000 shares or more. Third, pursuant to proposed NYSE Rule 92(b)(3), members and member organizations will be permitted to modify an existing hedge if (i) the size of the hedge, as modified, remains commensurate with the risk it offsets; (ii) the hedge was created to offset a position acquired in the course of facilitating a customer's order; and (iii) the customer's order is for 10,000 shares or more. Finally, pursuant to proposed NYSE Rule 92(b)(4), members and member organizations will be permitted to engage in *bona fide* arbitrage [38] or risk arbitrage [39] transactions so long as such transactions are recorded in an account used solely to record arbitrage transactions.

In addition to the current exceptions to the rule for odd-lot dealers to offset odd-lot orders for customers, and orders with delivery terms other than those specified in an unexecuted market or limit order, the Exchange has proposed two other exceptions. First, pursuant to proposed Rule 92(c)(3), transactions by a member or member organization that is acting in the capacity of a market maker or specialist in an NYSE-listed security otherwise than on the Exchange will not be subject to the restrictions of proposed Rule 92.[40] Second, pursuant to proposed Rule 92(c)(4), transactions by members made to correct *bona fide* errors will also be permitted.

In the Original Proposal, the NYSE proposed to extend the application of NYSE Rule 92 to other market centers. In Amendment No. 5, the NYSE withdrew this language but proposed to apply Rule 92 to those situations in which one or both trades (proprietary or agency) of a customer facilitation is effected on the NYSE. If neither segment of a customer facilitation transaction occurs on the exchange, proposed NYSE Rule 92 would not apply.

[28] The NYSE defines the term ''member'' as a natural person who is a member of the Exchange. *See* NYSE Constitution, Article I, Section 3(h).

[29] The NYSE defines the term ''member organization'' as a corporation or partnership, registered as a broker or dealer in securities under, unless exempt by, the Act, approved by the Board as a member corporation or member firm, at least one of whose officers or general partners or employees is a member of the Exchange, or which has the status of a member corporation or member firm by virtue of permission given to it pursuant to the rules of the NYSE. *See* NYSE Constitution, Article I, Sections 3(i), (j), and (k).

[30] In Supplemental Material .10 to proposed NYSE Rule 92, the Exchange proposed to define what constitutes knowledge for the purposes of the rule to provide that a member or employee of a member or a member organization that is responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering proprietary orders.

[31] In Supplemental Material .40 to proposed NYSE Rule 92, the Exchange proposed to define ''an account of an individual investor'' as having the same meaning ascribed to the term in NYSE Rule 80A. NYSE Rule 80A, Supplemental Material .40(c) defines such terms as an account covered by Section 11(a)(1)(E) of the Act, which includes an account of a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person. *See* 15 U.S.C. 78k(a)(1)(E).

[32] According to the Exchange, it intends to inform its members and member organizations that, although the rule does not include express recordkeeping provisions with regard to evidencing customers' consent, members and member organizations will have the burden of proof to demonstrate that consent has in fact been obtained. *See* Original Proposal, note 4 *supra. See also* Amendment No. 2, note 8 *supra.*

[33] In Supplemental Material .40 to proposed NYSE Rule 92, the Exchange proposed to define a ''proprietary facilitation account'' an account in which a member organizations has a direct interest and which is used to record transactions whereby a member organization acquires positions in the course of facilitating customer orders.

[34] The Exchange also clarified that it believed that the exception should be extended to situations where a member organization enters into a binding contract with a customer to buy or sell a specified number of shares of a particular security at the closing price on the same day, with the contract to be completed after the close of trading on that day. According to the Exchange, it would consider such a binding contract, for the purposes of Rule 92 only, as the equivalent of the establishment of a block facilitation position so long as the contract is binding on both the customer and the member organization. In these circumstances, the member organization would be required to memorialize the block facilitation position by an entry or otherwise in a block facilitation account. Thereafter, the member organization could trade along with its customer's order to liquidate that position in accordance with the provisions of proposed paragraph (b) of Rule 92. *See* Amendment No. 6, note 17 *supra.*

[35] In Supplemental Material .40 to proposed NYSE Rule 92, the Exchange proposed to define ''*bona fide* hedge '' as having the meaning ascribed to it in Securities Exchange Act Release No. 15533 (January 29, 1979) (''Section 11(a) Release'').

[36] In Supplemental Material .50 to proposed NYSE Rule 92, the Exchange provided that for the purposes of NYSE Rule 92(b)(2), a hedge will be deemed to be ''clearly related'' if either the first or last transaction comprising the hedge is executed on the same trade date as the transaction that precipitates such hedge. Further, the provision requires a member to mark all memoranda of orders to identify each transaction creating or modifying a hedge as permitted under the rule.

[37] In Amendment No. 4, the Exchange stated that the determination of what constitutes an offset or reduction of risk may be made by the use of any responsible method of calculating the size of the risk and the type of securities, which would appropriately hedge that risk.

[38] In Supplemental Material .40 to proposed NYSE Rule 92, the Exchange proposed to define ''*bona fide* arbitrage'' as having the meaning ascribed to it in the Section 11(a) Release. *See* note 35 *supra.*

[39] In proposed Supplemental Material .40 to proposed NYSE Rule 92, the Exchange proposed to define ''risk arbitrage'' as having the meaning ascribed to it in the Section 11(a) Release. *See* note 35 *supra.*

[40] *See* Amendment No. 6, note 17 *supra.*

IV. Summary of Comments [41]

The Commission received three comments in response to Amendment No. 5.[42] The Exchange responded to the issues raised in these comment letters in Amendment No. 6 to the proposed rule change.[43]

One commenter supported the proposal and believed that it clearly promoted investor protection.[44] Another commenter questioned the reference to transactions by members and member organizations acting in the capacity of market makers pursuant to SEC Rule 19c–3,[45] as proposed in Rule 92(c)(3) in Amendment No. 5.[46] The commenter noted that, as a result of the rescission of NYSE Rule 390, such a distinction would be irrelevant. The Exchange agreed with the commenter's suggestion and subsequently amended the proposal in Amendment No. 6 to delete the reference to SEC Rule 19c–3.[47]

The third commenter raised several issues regarding the language of the proposal.[48] First, the commenter questioned the proposed definition of ''block size'' for purposes of the proposed Rule 92. As proposed, members and member organizations will be permitted to liquidate positions held in facilitation accounts, create *bona fide* hedges or modify existing hedges while representing a customer order if, among other things, their customer's order is for 10,000 shares or more. The commenter proposed that the NYSE adopt the definition set forth by the Commission in its Section 11(a) Release [49] for block orders. The commenter indicated that the Commission defined a ''block order'' for purposes of section 11(a)(1) of the Act [50] as one that ''represents at least 10,000 shares or a quantity of securities that has a current market value of at least $200,000, whichever is greater.'' The commenter believed that the Commission's disjunctive definition would enable members to provide liquidity to their customers by facilitating trades of high-priced securities in amounts less than 10,000 shares.

The Exchange responded that it continued to believe that the 10,000 share threshold for customers' orders is appropriate for the purposes of the limited trading along exceptions permitted by proposed Rule 92.

Second, the commenter proposed that the NYSE permit members and member firms to trade along with their high net worth customers as well as their institutional customers. The commenter believed that, subject to specified conditions, proposed Rule 92 should permit consensual trading along with sophisticated high net worth customers, who are capable of understanding allocations and to consenting to allocations on an informed basis.

The Exchange responded that it continued to believe that the limited trading along exceptions should be available only when the customer is not an individual investor.

Third, the commenter requested that the NYSE clarify the meaning of the phrase in proposed Rule 92(b) that requires a customer to understand the ''relative price and size of allocated execution reports.'' Specifically, the commenter requested that the Exchange clarify that a member or member firm may, with its customer's consent and subject to the other conditions of the proposed rule, allocate shares in any specified size (not to exceed the size of the facilitation position) to the member's or member firm's facilitation account.

The Exchange responded by clarifying that a member organization would not be precluded form allocating executions to its own account before allocating executions to its customer, but that the member organization would be required to inform the customer of this fact in advance and obtain the customer's express permission that it may do so. Further, the member organization must retain appropriate documentation that the customer was informed as to exactly how the execution would be allocated.[51]

Fourth, the commenter sought clarification on the proposed rule's application to program orders. Specifically, the commenter noted that the proposed rule should clarify the difference between an order to buy or sell an entire program and an order to buy or sell a single component security of such a program. The commenter requested that the NYSE specifically note that proposed Rule 92 does not restrict a member firm from executing a proprietary program order when holding a customer order in a component security, nor does it restrict a member firm's ability to execute a proprietary order in an individual security when holding a customer's program order includes that individual security.

The Exchange responded that it considered proprietary program orders to be subject to the restrictions against trading along with customer orders. However, the Exchange recognized that program trading desks at member organizations are typically distinct from trading desks that handle non-program customer orders. Therefore, the Exchange stated that proprietary program orders entered in accordance with the requirements of proposed Supplemental Material .10, which requires members or member organizations to establish a reasonable system of procedures to prevent the misuse of information about customer orders by those responsible for entering proprietary orders, could be entered notwithstanding the fact that the member organization may also be representing customer orders in the same stock executable at the same price.

Fifth, the commenter requested that the NYSE confirm that proposed Rule 92 does not apply to market-on-close (''MOC'') and limit-on-close (''LOC'') orders entered in connection with the Exchange's MOC and LOC policy. According to the commenter, because each MOC and LOC order is executed at the same time at the same closing price by the specialist, there is no opportunity for a member firm to ''front-run'' or otherwise take advantage of the market impact of a customer MOC or LOC order by entering a proprietary MOC or LOC order. Therefore, the commenter believed that MOC and LOC orders do not present the potential for abuse that the rule was designed to protect against and should not be subject to the constraints of the rule.

With regards to MOC orders, the Exchange stated that there would not be any restriction on a member organization entering proprietary MOC orders in the same stock as to which it also had entered a customer MOC order because all MOC order must be executed at the same price. With regards to LOC orders, however, the Exchange stated that, because a LOC order may or may not receive an execution, depending on the depth of contra side interest, a member organization may enter proprietary LOC orders with the same limit price as its customer's LOC order but, if the member organization receives an execution and its customer's

[41] The Commission notes that it received a total of 30 comment letters on the proposal. The Exchange has generally addressed the issues raised in the earlier comments letters by subsequently amending the proposal. Therefore, this discussion only reflects the issues raised in the comment letters received in response to Amendment No. 5.

[42] *See* note 15 *supra.*

[43] *See* Amendment No. 6, note 17 *supra.*

[44] *See* Archipelago Letter, note 15 *supra.*

[45] 17 CFR 240.19c–3.

[46] *See* Orrick Herrington Letter, note 15 *supra.*

[47] 17 CFR 240.19c–3.

[48] *See* Solomon Zauderer letter, note 15 *supra.*

[49] *See* note 35 *supra.*

[50] 15 U.S.C. 78k(a0(1).

[51] The Exchange also reiterated its interpretation regarding consent by stating that consent must be obtained with respect to each order that the member organization intends to trade along with, and that the member organization must retain appropriate documentation evidencing such consent.

order does not, the member organization must give up its execution to its customer.

Sixth, the commenter believed that the ''clearly related'' definition, in proposed Supplemental Material .50 relating to *bona fide* hedges, is unduly restrictive. Pursuant to proposed Rule 92(b)(2), a member or member organization may create a *bona fide* hedge, so long as, the hedge, among other things, is clearly related to the transaction precipitating the hedge. As proposed, a hedge will be deemed ''clearly related'' if either the first or last leg of the hedge is executed on the same trade date as the transaction that precipitates such hedge. According to the commenter, the ''same trade date'' requirement is unduly restrictive. The commenter asserted, as an example, that a derivatives desk needs to have flexibility in creating a hedge when determining whether to facilitate a customer's order, and, if so, at what price. Further, the commenter argued that a block desk that facilitates a customer's order based on a closing price, may hedge such a position as quickly as feasible when the market opens on the next trading day. Therefore, the commenter believed that the ''clearly related'' definition should be amended to permit a member to facilitate a trade if the first or last leg of the hedge is effected ''within one trading day,'' which the commenter proposed to define as the period between the time of the facilitation transaction and the same time on the next subsequent or immediately preceding trading day.

The Exchange believed that the ''same trade date'' condition to be an appropriate limitation on the ability of member organizations to trade along with their customers. The Exchange stated that it intended the hedge exemption to be narrowly construed but noted that, while the initiation of a hedge should be reasonably proximate to the transaction precipitating the hedge, a member organization is not strictly required to complete the hedge on the same trade date as the precipitating transaction. However, the Exchange cautioned that a hedge started on the same trade date as the precipitating transaction but not completed until several days later would not be deemed to be ''clearly related'' unless there were unusual or extenuating circumstances.

In addition to amending the ''clearly related'' definition, the commenter requested that NYSE classify the definition as a safe harbor, and therefore, it a hedge transaction is executed outside of the specified time period, such a transaction will not automatically be deemed to be outside of the ''clearly related'' definition, and thus, in violation of proposed Rule 92.

According to the Exchange, the ''clearly related'' definition is not a safe harbor. Thus, transactions occurring outside of the rule's time limitations would be in violation of the rule.[52]

In relation to the hedge exception, the commenter also noted that Amendment No. 5 deleted the requirement that the risk to be hedged be the result of a ''previously-established position,'' as proposed in Amendment No. 4. According to the commenter, this change signifies the the proposal permits a member firm to create a hedge either prior to, or subsequent to, effecting the facilitation trade. Therefore the commenter suggested revising proposed Rule 91(b)(2)(iii) to reflect this change by reading ''* * * the risk to be offset is the result of a position acquired *or to be acquired* in the course of facilitating a customer's order * * *''.

The Exchange responded that it believed that the hedge exemption is available only to offset the risk of a facilitation position that has been acquired, or that the member knows it will acquire in order to facilitate a specific customer order that it has received. Further, the Exchange stated that the hedge exemption is not available to offset the risk of a position that the member organization believes it will acquire, absent having received a specific customer order that the member organization will be facilitating.

Finally, the commenter, while supporting the Exchange's proposal to use the definitions for ''*bona fide* hedge,'' ''*bona fide* arbitrage,'' and ''risk arbitrage'' that are found in the Section 11(a) Release, suggested that the Exchange consider a flexible approach to their intepretation. Specifically, the commenter requested that the Exchange consider the definitions as capable of being adapted to reflect changing market conditions and evolving trading practices.

The Exchange responded that it was not inclined to adopt a flexible approach to defining these terms. According to the Exchange, adopting flexible definitions could create enforcement and compliance problems. Thus, the Exchange believes that its approach would lead to better and more even-handed enforcement of the rule.[53]

[52] Telephone call between Brian McNamara and Don Siemer, NYSE, and Alton Harvey and Kelly Riley, Division, SEC, on June 26, 2000.

[53] *Id.*

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[54] In particular, the Commission believes the proposal is consistent with the requirements of section 6(b)(5) of the Act,[55] which requires, among other things, that the rules of an exchange be designed to prevent fradulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The NYSE first proposed to amend its Rule 92 in 1994. Since then, the Exchange has repeatedly amended its proposal in order to address the significant policy issues raised by commenters. The Commission recognizes that this time-consuming process has been necessary in order to permit the Exchange to craft its revised Rule 92 in a manner that balances fundamental investor protections with the requirements of evolving trading practices involving institutional investors and member firm proprietary trading operations.

A. Application of NYSE Rule 92 to Activities on Other Market Centers

As originally submitted, the Exchange's proposal was drafted in a very broad manner that cast a wide net over many market participants and transactions that were not connected to the NYSE. Several regional exchanges voiced their opposition to the Original Proposal and the ensuing amendments.[56] For example, in its letter responding to Amendment No. 2, the CSE argued that the proposed rule ''would establish an inappropriate precedent for the extension of NYSE's regulatory jurisdiction beyond the boundaries established by the national market system, section 17(d) of the Act[57] and the ISG Agreement.''[58]

This issue remained controversial throughout the filing process until the NYSE withdrew the ''other market center'' provision in Amendement No. 5.[59] The Commission believes that the

[54] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[55] 15 U.S.C. 78f(b)(5).

[56] *See* comment letters submitted by the BSE, CSE, CHX, Phlx, notes 7, 9, 11, and 13 *supra*.

[57] 15 U.S.C. 78q(d).

[58] *See* note 14 *supra*.

[59] For example, the Phlx reiterated its objection to the NYSE's proposed jurisdiction over orders entered on market other than the NYSE, as

Continued

NYSE has sufficiently narrowed the focus of Rule 92 to be consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, section 6(b)(5) of the Act[60] requires that an exchange's rules not be designed to regulate matters not related to the purposes of the administration of the exchange.

Rule 92, as amended, now applies only to those situations in which one or both trades (proprietary or agency) of a customer facilitation is effected on the NYSE. If neither segment of a customer facilitation transaction occurs on the Exchange, proposed NYSE Rule 92 would not apply. In Supplementary Material .20, the Exchange proposes to apply the rule's restrictions to any agency or proprietary transaction effected on the Exchange if the Exchange transaction is part of a group related transactions that together have the effects prohibited by the rule, regardless of whether one or more transactions occur on other market centers or the Exchange transaction itself had such effects. The Commission believes that this provision is a reasonable measure to ensure that NYSE members and member organizations are not able to circumvent the restrictions of the rule. Further, the Commission notes that the restriction regarding member trading on other market centers is narrowly tailored to be applicable only to orders that have an adequate nexus to activities on the NYSE.

B. Expansion of Rule To Cover Member Organizations

According to the Exchange, Rule 92 was originally adopted to express the agency law principle that an agent must put the interests of its customer ahead of its own proprietary interests. The Commission believes that the Exchange's proposal to expand the applicability of Rule 92 to include member organizations is reasonably designed to enhance investor protection and is consistent with the requirements of the Act. Today, member organizations are accepting customer orders and facilitating their execution. The customers of these member organizations deserve the same types of protections as customers whose orders are represented by members on the floor of the Exchange.

C. Permitted Member and Member Organization Transactions

Today, many member organizations engage in trading for their own accounts in order to facilitate their customers' orders. These trading practices potentially subject the member organizations to significant market risks. The Exchange believes that the restrictions set forth in existing Rule 92 would prevent member organizations from adequately minimizing these market risks if the firm is representing customer orders for the same securities. The Commission believes that the NYSE has struck an appropriate balance in the rule by enabling its member organizations to limit their risk exposure in narrow circumstances involving informed institutional investors while maintaining the basic principles of agency law and investor protections.

The member or member organization will be required to obtain its customer's consent to trade along with the customer and such consent must include the customer's understanding of the relative price and size of the member's or member organization's allocated execution reports. In addition, a member or member organization will be permitted to trade along with a customer with consent only if the customer is not an individual investor as defined by NYSE Rule 80A.[61] A member or member organization will be required to ensure that each of these conditions is satisfied before entering the proprietary transactions permitted by the proposed rule.

The Commission believes that these conditions are reasonable and should preserve investor protections when a member or member organization proposes to trade along with its customers. By requiring affirmative consent, the rule gives the customer the opportunity to decide whether or not to permit its agent to trade for the agent's own accounts while representing the customer's order. The customer will not be required to give consent and a failure to respond to the firm's inquiry will not be deemed to be consent. Of course, if a customer does not consent, the member or member organization may decide not to accept the customer's order. On the other hand, the member or member organization may decide to accept its customer's order and refrain from trading in the same security for its proprietary accounts while representing its customer's order. In either case, revised Rule 92 should provide customer with the disclosure necessary to assist them in making decisions about their broker's order handling practices.[62]

One commenter suggested that members be permitted to trade along with thigh net worth customers, which the Exchange declined to do.[63] The Commission believes that the Exchange has made a reasonable determination to limit a member's or a member organization's ability to enter proprietary orders to those instances where the member or member organization has obtained consent from a customer who is not an individual investor. The Commission believes that the Exchange has reasonably sought to maximize investor protection by limiting consent under Rule 92 to the type of customer that is more likely to have the sophistication and market knowledge needed to fully appreciate the implications of permitting, or not permitting, a broker-dealer to trade along with its order.

Once consent has been obtained, the Exchange has proposed to permit its members and member organizations to enter four types of proprietary transactions while representing their customer orders. As described above, members and member organizations will be permitted, subject to certain restrictions, to (1) liquidate positions held in proprietary facilitation accounts when their customer's order is for at least 10,000 shares;[64] (2) create *bona fide* hedges; (3) modify existing hedges; and (4) engage in *bona fide* arbitrage or risk arbitrage transactions.

The Commission believes that the Exchange's decision to allow members and member organizations to engage in these limited types of transactions,

submitted in Amendment No. 3. *See* note 11 *supra.* Later, the CSE restated its continued objection to the NYSE's proposal by arguing that the NYSE's proposal, submitted in Amendment No. 4, to impose its jurisdiction over CSE matters would be ''overreaching.'' *See* note 13 *supra.*

[60] 15 U.S.C. 78f(b)(5).

[61] *See* note 31 *supra.*

[62] One commenter requested clarification with regards to the consent provision that requires the customer to understand the relative price and size of allocated reports. *See* Solomon Zauderer Letter, note 15 *supra.* The Exchange responded that a member may allocate executions to its own account before its customer so long as the customer consents in advance to the allocation. The Commission believes that the Exchange's determination on this issue is reasonable but expects that the Exchange will monitor its members to ensure that they are adequately explaining the allocation methods to their customers to ensure that customers are readily informed and have a clear understanding upon which to base their consent decisions.

[63] *See* Solomon Zauderer Letter, note 15 *supra.*

[64] The Commission notes that the Exchange proposed to permit limited proprietary trading, except for arbitrage and risk arbitrage transactions, to those instances where the member or member organization holds a block size order, which the Exchange defined as an order for at least 10,000 shares. One commenter suggested that the Exchange modify its definition to recognize orders for higher priced securities that may not be for at least 10,000 shares, which the Exchange declined to accept. *See* Solomon Zauderer Letter, note 15 *supra.* The Commission believes that the Exchange has limited its definition for appropriate regulatory reasons.

subject to their customers' consent, should promote just and equitable principles of trade. Many of these proprietary transactions will add liquidity to the market and help investors receive efficient execution of their orders. Moreover, the Commission believes that members and member organizations should be more willing to facilitate large transactions for customers when they are able to minimize their proprietary risk by entering trades for their proprietary accounts.[65]

The Commission also notes that the facilitation of block size orders is a service needed by many institutional investors. Many orders of block size cannot be executed in the markets as a single order without significantly affecting the price of the security. Thus, these services may contribute to stability in the markets and many contribute to customers being afforded a fair and stable price for their order.

The Commission therefore believes that the proprietary trading exceptions balance the interests of investor protection with the interests of a free and open market. Each type of permitted proprietary transaction has been narrowly drafted to allow only very specific types of member transactions. Moreover, because members and member organizations will be required to obtain customer consent before they enter a facilitation transaction, customers should be protected. In sum, the Exchange has recognized the needs of its members to be able to facilitate their customers' orders by minimizing their proprietary risks, while also reinforcing and maintaining the paramount interests of the investor. The Commission notes that these exceptions do not minimize the importance of the broker-dealers' duty to their customers, which requires broker-dealers to place investors' interests before their own. On the contrary, members and member organizations remain obligated to consider their customers' interest in every customer transaction.

The Commission notes that one commenter raised concerns that the ''clearly related'' definition for *bona fide* hedges was unduly restrictive and requested clarification that the definition was intended as a safe harbor.[66] The Exchange has declined to broaden its definition along these lines or suggest that this provision was designed to act as a safe harbor. Instead, the Exchange has indicated that its proposed interpretation should enable it to enforce compliance in a fair and reasonable manner. The Commission believes that the Exchange's determination in this matter appears to be reasonable and consistent with the requirements of the Act. The Commission notes that, while the definition requires that the initiation of the hedge must be reasonably proximate to the trade precipitating the hedge, the hedge does necessarily need to be completed on the same trade date.

D. Other Transactions

The Exchange proposed two new exceptions to the trading restrictions in proposed Rule 92(c). Specifically, in addition to the current exceptions regarding odd lot transactions and orders with delivery terms other than those specified in an unexecuted market or limit order, the Exchange also proposed to permit (1) transactions by members or member organizations that are acting in the capacity of a specialist or market maker in a security listed on the Exchange that are executed off the Exchange, and (2) transactions made to correct *bona fide* errors. The Commission believes that these new exceptions are appropriate and consistent with the requirements of the Act. The Commission notes that exception transactions by members acting as specialists or market makers executed on markets other than the Exchange from coverage of the rule should ensure that the liquidity created and maintained by these market participants on the regional exchanges and the Nasdaq Intermarket is not compromised. Further, the Commission notes that Exchange would not have the authority to enforce compliance with NYSE trading rules on members trading exclusively on other national securities exchanges, the Nasdaq Intermarket, or the over-the-counter market. Finally, the Commission believes that it is necessary to permit transactions to correct *bona fide* errors, but the Commission expects the Exchange to monitor the activities of its members to ensure that this provision is not abused.

E. Supplementary Material

In Supplemental Material .30, the Exchange clarified that floor members of a member organization will be restricted in the same manner as their member organization when entering proprietary orders. Thus, a floor member of a member organization may not enter a proprietary order at the same or better price as an unexecuted customer order, except to the extent that the member organization could do so under the rule. The Commission believes that this clarification should assist in the enforcement of the rule by providing clear notice of a floor member's prohibited activities.

In Supplemental Material .40, the Exchange has proposed definitions for the terms ''account of individual investor,'' ''Proprietary facilitation account,'' ''*bona fide* hedge,'' ''*bona fide* arbitrage,'' and ''risk arbitrage.'' The Commission believes that these definitions should provide clarity to the rule and should help in member compliance and Exchange enforcement of the Rule.

F. Amendment No. 6

The Commission finds good cause to approve Amendment No. 6 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In addition to responding to the issues raised in the Solomon Zauderer Letter, the Exchange amended the test of the rule to delete the reference to SEC Rule 19c–3[67] securities. The Commission notes that, since the rescission of NYSE Rule 390, this provision is no longer relevant. Therefore, because Amendment No. 6 merely made the rule accurate in light of recent events and did not change the intent or substance of the proposed rule change, the Commission believes that good cause exists, pursuant to sections 6(b)(5)[68] and 19(b)[69] of the Act, to accelerate approval of Amendment No. 6 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 6, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

[65] One commenter requested clarification regarding members' responsibilities and obligations when handling program orders and component stocks of program orders. *See* Solomon Zauderer Letter, note 15 *supra.* As the Exchange noted, the commenter's issue could be resolved by the member using the information barriers permitted in Supplemental Material .10, to restrict the flow of knowledge between a member's program trading desk and those responsible for entering customer orders.

The commenter also requested guidance with respect to MOC and LOC orders. Because of the nature of these orders, the Exchange responded that it did not believe that the rule would restrict MOC orders but would, in some cases, restrict proprietary LOC orders. The Commission believes that this interpretation is consistent with ensuring investor orders are handled appropriately.

[66] *See* Solomon Zauderer Letter, note 15 *supra.*

[67] 17 CFR 240.19c–3.

[68] 15 U.S.C. 78f(b)(5).

[69] 15 U.S.C. 78s(b).

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 other 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 filings also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by April 27, 2001.

VII. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[70] that the amended proposed rule change (SR–NYSE–94–34) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[71]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–8508 Filed 4–5–01; 8:45 am]

BILLING CODE 8010–01–M

[70] 15 U.S.C. 78s(b)(2).

[71] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–121]

Identification of Priority Foreign Country; Initiation of Section 302 Investigation; Proposed Determinations and Action; and Request for Public Comment: Intellectual Property Laws and Practices of the Government of Ukraine

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of identification of priority foreign country; notice of initiation of investigation; proposed determination and action; request for written comments; invitation to participate in public hearing.

SUMMARY: Pursuant to section 182(c)(1)(B) of the Trade Act of 1974, as amended (the Trade Act), the United States Trade Representative (Trade Representative) has identified Ukraine as a priority foreign country due to its denial of adequate and effective protection of intellectual property rights. Pursuant to section 302(b)(2) of the Trade Act, the Trade Representative has also initiated a section 302 investigation of the acts, policies and practices of the Government of Ukraine that resulted in the identification of Ukraine as a priority foreign country. The Office of the United States Trade Representative (USTR) proposes determinations that these acts, policies and practices are actionable under section 301(b) and that the appropriate response includes a full or partial suspension of duty-free treatment accorded to products of Ukraine under the Generalized System of Preferences (GSP). USTR invites interested persons to submit written comments and to participate in a public hearing concerning the proposed determinations and action.

DATES: The identification was made, and the investigation was initiated, on March 12, 2001. Requests to appear at the public hearing are due April 13, 2001; written testimony is due April 20, 2001; a public hearing will be held on April 27, 2001; and written comments and rebuttal comments are due by May 7, 2001.

ADDRESSES: Requests, comments, and testimony should be submitted to Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301–121, Office of the United States Trade Representative, 1724 F Street, NW, Room 217, Washington, DC 20508. The public hearing will be held in the main hearing room of the United States International Trade Commission, 500 E Street, SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Intellectual Property, (202) 395–6864; Richard Driscoll, Director for Central Europe and Ukraine, (202) 395–5190; William Busis, Associate General Counsel, (202) 395–3150; or Stephen Kho, Assistant General Counsel, (202) 395–3581. Inquiries regarding participation in the hearing or the submission of comments should be directed to Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419.

SUPPLEMENTARY INFORMATION:

Section 182 of the Trade Act

Section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242), authorizes the Trade Representative to identify foreign countries that deny adequate and effective protection of intellectual property rights or that deny fair and equitable market access to persons that rely on intellectual property protection. Procedures under section 182 are commonly referred to as ''Special 301.''

Under section 182(d)(2) of the Trade Act, a foreign country is considered to be denying adequate and effective protection of intellectual property rights if it denies adequate and effective means under its laws for persons who are not citizens or nationals of the country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works. Under section 182(b), countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as ''priority foreign countries,'' unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country; and the history of efforts of the United States to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, USTR consults with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officials of the Federal Government, and takes into account information from other sources such as information submitted by interested persons.

Identification of Ukraine as a Priority Foreign Country

Enterprises in Ukraine are engaged in the large-scale production and export of unauthorized optical media (such as CDs, CD–Rs, DVDs, and V–CDs). The Recording Industry Association of America alleges that for each of the last two years, Ukraine has produced and exported between 30 and 40 million pirated CDs. Ukraine reportedly has the annual capacity to produce up to 70 million CDs, while annual domestic demand is only in the range of 1 to 5 million CDs. In short, Ukraine has become a world leader in pirated optical media production.

For over two years, the United States Government has requested that the Ukrainian Government close down the pirate CD production facilities and enact legislation to adequately protect copyrights. The Ukrainian Government has been unwilling to curtail such activities or to enact necessary legislation. During the annual Special 301 review in April 2000, the interagency Trade Policy Staff