SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51906; File No. SR–NYSE–2004–05]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Amendment No. 5 to a Proposed Rule Change Relating to Enhancements to the Exchange's Existing Automatic Execution Facility Pilot (NYSE Direct+®)

June 22, 2005.

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 June 17, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 5 [3] to a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change as amended by Amendment No. 5 from interested persons.

The proposed rule change was originally filed on February 9, 2004 and amended by Amendment No. 1 on August 2, 2004.[4] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on August 16, 2004.[5] On August 26, 2004, the Commission extended the public comment period with respect to the First Notice to September 22, 2004.[6] On November 8, 2004 and November 9, 2004, the Exchange filed Amendment Nos. 2 and 3, respectively.[7] The proposed rule change, as further amended by Amendment Nos. 2 and 3, was published for comment in the **Federal Register** on November 22, 2004.[8] The Commission has received 26 comment letters with respect to the First and Second Notices.[9]

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

The proposed rule change consists of amendments to the rules of the Exchange governing trading in the NYSE HYBRID MARKETSM (''Hybrid Market''). The Exchange Hybrid Market was originally proposed in SR–NYSE–2004–05 and Amendment Nos. 1, 2, and 3. This Amendment No. 5 supplements the description of aspects of the Hybrid Market described in the First and Second Notices [10] and proposes additional amendments to Exchange rules. In addition, Amendment No. 5 describes the proposed Hybrid Market implementation plan. Below is the text of the proposed rule change, as proposed by Amendment No. 5. Proposed new language is italicized; proposed deletions are in brackets.

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Definitions of Orders

Rule 13

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All or None Order

A market or limited price order [which] *designated all or none may be designated for automatic execution in accordance with, and to the extent provided by Rules 1000–1004. An all or none order* is to be executed in its entirety or not at all, but, unlike a fill or kill order, is not to be treated as cancelled if not executed as soon as it is represented in the Trading Crowd *or routed to the Display Book® for automatic execution.* The making of ''all or none'' bids or offers in stocks is prohibited and the making of ''all or none'' bids or offers in bonds is subject to the restrictions of Rule 61 and Rule 86.

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Auction Limit Order

An auction limit order is an order that provides an opportunity for price improvement.

The limit price of an auction limit order to buy should be at or above the Exchange best offer at the time the order is entered on the Exchange. The limit price of an auction limit order to sell should be at or below the Exchange best bid at the time the order is entered on the Exchange.

An auction limit order to buy with a limit price that is not at or above the Exchange best offer when it arrives at the Exchange for execution or an auction limit order to sell with a limit price that is not at or below the Exchange best bid when it arrives at the Exchange for execution shall be entered into the Display Book® at its limit price and shall be handled as a non-auto ex limit order.

An auction limit order shall be quoted and executed in accordance with Exchange Rule 123F and routed in accordance with Exchange Rule 15A.50.

Auto Ex Order

An auto ex order is*:*

(a) *a market order designated for automatic execution or a limit order to buy (sell) priced at or above (below) the Exchange best offer (bid) at the time such order is routed to the Display Book® or*

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

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated June 17, 2005 (''Amendment No. 5''). The Exchange had submitted Amendment No. 4 to the proposed rule change on May 25, 2005, and subsequently withdrew Amendment No. 4 on June 17, 2005. Amendment No. 5 supplements the description of certain aspects of the Exchange's Hybrid Market and proposes additional amendments to the Exchange's rules.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 20, 2004, and accompanying Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[5] *See* Securities Exchange Act Release No. 50173 (August 10, 2004), 69 FR 50407 (''First Notice'').

[6] *See* Securities Exchange Act Release No. 50277, 69 FR 53759 (September 2, 2004).

[7] *See* Form 19b–4 dated November 8, 2004 (''Amendment No. 2'') and Partial Amendment dated November 9, 2004 (''Amendment No. 3'').

[8] *See* Securities Exchange Act Release No. 50667 (November 15, 2004), 69 FR 67980 (''Second Notice'').

[9] *See* letter to William Donaldson, Chairman, Commission, from Donald E. Weeden, dated August 31, 2004; letters to the Commission from: Kim Bang, President and Chief Executive Officer, Bloomberg Tradebook LLC, dated September 22, 2004; Marc L. Lipson, Associate Professor, the University of Georgia, dated January 4, 2005; and Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company, dated October 26, 2004 and December 8, 2004; letters to Jonathan G. Katz, Secretary, Commission, from: Philip Angelides, Treasurer, State of California, dated November 23, 2004; Ari Burstein, Associate Counsel, Investment Company Institute, dated September 22, 2004 and December 13, 2004; Gregory van Kipnis, Managing Partner, Invictus Partners, LLC, dated December 10, 2004; Donald D. Kittell, Executive Vice President, Securities Industry Association, dated October 1, 2004; Edward S. Knight, The Nasdaq Stock Market, dated January 26, 2005; Ellen L.S. Koplow, Executive Vice President and General Counsel, Ameritrade Holding Corporation, dated September 22, 2004; Bruce Lisman, Bear, Stearns & Co. Inc., dated September 28, 2004; Edward J. Nicoll, Chief Executive Officer, Instinet Group Incorporated, dated October 25, 2004; Thomas Peterffy, Chairman, and David M. Battan, Vice President, the Interactive Brokers Group on behalf of its affiliates Timber Hill LLC and Interactive Brokers LLC, dated September 7, 2004 and December 14, 2004; Lisa M. Utasi, President, and Kimberly Unger, Executive Director, the Security Traders Association of New York, Inc., dated September 22, 2004; Ann L. Vlcek, Vice President and Associate General Counsel, Securities Industry Association, dated December 13, 2004; and letter to Annette L. Nazareth, Director, Division, Commission, and Robert L.D. Colby, Deputy Director, Division, Commission, from Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company, dated August 10, 2004. See email to Nancy Reich Jenkins, Managing Director, Market Surveillance, NYSE, from George W. Mann Jr., Executive Vice President and General Counsel, Boston Stock Exchange, Inc., dated September 22, 2004; and emails to the Commission from: Jose L. Marques, Ph.D., Managing Member, Telic Management LLC, dated September 21, 2004; Junius W. Peake, Monfort Distinguished Professor of Finance, Kenneth W. Monfort College of Business, University of Northern Colorado, dated September 22, 2004 and June 17, 2005; James L. Rothenberg, Esq., dated August 30, 2004; and George Rutherfurd, Consultant, dated March 10, 2005 and April 8, 2005.

[10] *See* supra notes 5 and 8.

(b) an immediate or cancel order designated for automatic execution; or

(c) a stop or stop limit order systemically delivered to the Display Book® that has been elected; or

(d) a buy ''minus'', sell ''plus'', or short sale order systemically delivered to the Display Book®; or

(e) an all or none order; or

(f) an elected or converted percentage order that is convertible on a destabilizing tick and for which the entering broker has granted permission for the specialist to be on parity with the order; or

(g) a part of round lot (PRL) order; or

(h) orders initially eligible for automatic execution that have been cancelled and replaced with an auto ex order in a stock, Investment Company Unit (as defined by paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200), subject to [a limit order of 1099 shares or less priced at or above the Exchange's published offer (in the case of an order to buy) or at or below the Exchange's published bid (in the case of an order to sell), which a member or member organization has entered for] automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000–100*4*[5]*; or*[.]

(i) an intermarket sweep order, as defined in this rule.

[Pursuant to a pilot program to run until December 23, 2004, orders in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipts (as defined in Rule 1200) may be entered as limit orders in an amount greater than 1099 shares. The pilot program shall provide for a gradual, phased-in raising of order size eligibility, up to a maximum of 10,000 shares. Each raising of order size eligibility shall be preceded by a minimum of a one-week advance notice to the Exchange's membership.]

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Immediate or Cancel Order

A market or limited price order [which] *designated immediate or cancel* is to be executed [in whole or in part] *to the extent possible* as soon as such order is represented in the Trading Crowd *or if designated auto ex, is to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004* and the portion not so executed is to be treated as cancelled. [For the purposes of this definition, a ''stop'' is considered an execution.] *An immediate or cancel order may be entered before the Exchange opening for participation in the opening trade. If not executed as part of the opening trade, the order shall be treated as cancelled.*

A ''commitment to trade'' received [on the Floor] through ITS *will be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004,* [shall be treated in the same manner, and entitled to the same privileges, as would an immediate or cancel order that reaches the Floor at the same time] except as otherwise provided in the Plan and except further that such a commitment may not be ''stopped.'' [and the commitment shall remain irrevocable for the time period chosen by the sender of the commitment.] *After trading with the Exchange published bid (offer) to the extent of the displayed volume associated with such bid (offer), any unfilled balance of a commitment to trade shall be automatically reported to ITS as cancelled.*

Intermarket Sweep Order

An ''intermarket sweep order'' is a limit order designated for automatic execution in a particular security, that meets the following requirements:

(i) It is identified as an intermarket sweep order in the manner prescribed by the Exchange; and

(ii) Simultaneously with the routing of an intermarket sweep order to the Exchange, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (as defined in (v), below) in the case of a limit order to sell, or the full displayed size of any protected offer (as defined in (v), below) in the case of a limit order to buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders must be identified as intermarket sweep orders; and

(iii) An intermarket sweep order may be designated as immediate or cancel (IOC).

(iv) An intermarket sweep order is immediately executable by the Exchange pursuant to Rules 1000–1004.

(v) A ''protected bid or offer'' means a quotation in a stock that:

(a) is displayed by an automated trading center;

(b) is disseminated pursuant to an effective national market system plan; and

(c) is an automated quotation that is the best bid or offer of another market center.

Limit, Limited Order or Limited Price Order

An order to buy or sell a stated amount of a security at a specified price, or at a better price, if obtainable, after the order is represented in the Trading Crowd.

A marketable limit order is an order on the Exchange that can be immediately executed; that is, an order to buy priced at or above the Exchange best offer or an order to sell priced at or below the Exchange best bid.

A marketable limit order systemically delivered to the Display Book® is an auto ex order subject to automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000–1004.

Market Order

An order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the Trading Crowd *or systemically delivered to the Display Book®.*

A market order is not an auto ex order unless so designated and if not so designated shall be quoted and executed in accordance with Exchange Rule 123F and routed in accordance with Exchange Rule 15A.50.

A market order designated for automatic execution is an auto ex order and shall be executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.

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Percentage Order

A limited price order to buy (or sell) 50% of the volume of a specified stock after its entry. There are four types of percentage orders:

(a) Straight Limit Percentage Orders-Such an order is elected when a transaction has occurred at the limit price or a better price. Unless otherwise specified, only volume at or below the limit subsequent to the receipt of the order will be applied in determining the elected portion of buy orders. Conversely, only volume at or above the limit will be calculated in determining the elected portion of sell orders.

(b) Last Sale Percentage Orders-The elected portion of an order designated ''last sale'' shall be executed only at the last sale price or at a better price, provided that such price is at or better than the limit specified in the order. If the order is further designated ''last sale-cumulative volume'', the elected portion shall be placed on the [book] *Display Book®* at the price of the electing sale, but if not executed, shall be cancelled and re-entered on the [book] *Display Book®* at the price of the subsequent transactions on the Exchange, provided the price of such subsequent transactions is at or better than the limit specified in the order.

(c) ''Buy Minus''-''Sell Plus'' Percentage Orders-The elected portion of an order to ''buy minus'' shall be executed only on a ''minus'' or ''zero minus'' tick. Orders of this type must also be qualified further by designating a limit price. The elected portion of an order to ''sell plus'' shall be executed only on a ''plus'' or ''zero plus'' tick. Orders so designated are handled in the same manner as an order to sell short. (*See* [¶ 2123A.71] *Rule 123A.71*) Orders of this type must also be further qualified by designating a limit price.

If so instructed by the entering broker(s), percentage orders to buy will be converted into regular limit orders for transactions effected on ''minus'' or ''zero minus'' ticks. Conversely, if so instructed by the entering broker(s), percentage orders to sell will be converted into regular limit orders for transactions effected on ''plus'' or ''zero plus'' ticks.

If further instructed by the entering broker(s), as provided in Rule 123A.30, percentage orders to buy may be converted into regular limit orders for transactions on ''plus'' or ''zero plus'' ticks. Conversely, if so instructed by the entering broker(s), percentage orders to sell may be converted into regular limit orders for transactions on ''minus'' or ''zero minus'' ticks.

(*See also* [¶ 2123A.30] *Rule 123A.30*.)

(d) ''Immediate Execution or Cancel Election'' Percentage Orders-The elected portion of a percentage order with this designation is to be executed immediately in whole or in part at the price of the electing transaction. Any elected portion not so executed shall be deemed cancelled, and shall revert to its status as an unelected percentage order and be subject to subsequent election or conversion.

The converted portion of an immediate execution or cancel election percentage order that is convertible on a destabilizing tick (a ''CAP–DI order'') and which is systemically delivered to the Display Book® will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004, consistent with the order's instructions.

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Sell ''Plus''-Buy ''Minus'' Order

A market order to sell ''plus'' is a market order to sell a stated amount of a stock provided that the price to be obtained is not lower than the last sale if the last sale was a ''plus'' or ''zero plus'' tick, and is not lower than the last sale plus the minimum fractional change in the stock if the last sale was a ''minus'' or ''zero minus'' tick. A limited price order to sell ''plus'' would have the additional restriction of stating the lowest price at which it could be executed.

Sell ''plus'' limit orders and sell ''plus'' market orders designated for automatic execution that are systemically delivered to the Display Book® will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004, consistent with the order's instructions.

A market order to buy ''minus'' is a market order to buy a stated amount of a stock provided that the price to be obtained i[n]s not higher than the last sale if the last sale was a ''minus'' or ''zero minus'' tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a ''plus'' or ''zero plus'' tick. A limited price order to buy ''minus'' would have the additional restriction of stating the highest price at which it could be executed.

Buy ''minus'' limit orders and buy ''minus'' market orders designated for automatic execution that are systemically delivered to the Display Book® will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004, consistent with the order's instructions.

Stop Order

A stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is represented in the Trading Crowd. A stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is represented in the Trading Crowd. *Stop orders that are systemically delivered to the Display Book® will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004, consistent with the order's instructions.*

Stop Limit Order

A stop limit order to buy becomes a limit order executable at the limit price, or at a better price, if obtainable, when a transaction in the security occurs at or above the stop price after the order is represented in the Trading Crowd. A stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the security occurs at or below the stop price after the order is represented in the Trading Crowd. *Stop limit orders that are systemically delivered to the Display Book® will be eligible to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004, consistent with the order's instructions.*

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(Remainder of rule unchanged)

ITS ''Trade-Throughs'' and ''Locked Markets''

Rule 15A

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Supplementary Material:

.10 Nothing in paragraph (d)(2)(B) above is intended to discourage a locking member from electing to ship if the complaint requests him to do so.

.20 The fact that a transaction may be cancelled or the price thereof may be adjusted pursuant to the provisions of paragraph (b)(2) of this Rule 15A, shall not have any effect, under the rules, on other transactions or the execution of orders not involved in the original transaction.

.30 The provisions of this Rule 15A shall supersede the provisions of any other Exchange Rule which might be construed as being inconsistent with Rule 15A.

.40 For the purposes of this Rule:

i. the terms ''Exchange trade-through'' and ''Third participating market center trade-through'' do not include the situation where a member who initiates the purchase (sale) of an ITS security at a price which is higher (lower) than the price at which the security is being offered (bid) in another ITS participating market, sends contemporaneously through ITS to such ITS participating market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center's better-priced offer (bid); and

ii. a trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.

.50 Where a better bid or offer is published by another ITS participating market center in which an automatic execution is immediately available or a published bid or offer is otherwise protected from a trade-through by Securities and Exchange Commission rule or ITS Plan, and the price associated with such published better bid or offer has not been systemically matched by the specialist, the Exchange will automatically route to such other market center a commitment to trade that satisfies such published bid or offer, unless the member entering the order indicates in such manner as required by the Exchange that it is contemporaneously satisfying the better

published bid or offer. If such commitment to trade is not filled or not filled in its entirety, the balance will be returned to the Exchange and handled consistent with the order's instructions, which includes automatic execution, if available. The order entry time associated with the returned portion of the order will be the time of its return, not the time the order was first entered with the Exchange.

.60 Incoming commitments will not trade with any reserve or other non-displayed interest at the Exchange best bid or offer price and will not participate in sweeps as described in Rule 1000(b).

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Rule 36

Communications Between Exchange and Members' Offices

No member or member organization shall establish or maintain any telephonic or electronic communication between the Floor and any other location without the approval of the Exchange. The Exchange may to the extent not inconsistent with the Securities Exchange Act of 1934, as amended, deny, limit or revoke such approval whenever it determines, in accordance with the procedures set forth in Rule 475, that such communication is inconsistent with the public interest, the protection of investors or just and equitable principles of trade.

Supplementary Material:

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.30 Specialist Post Wires-With the approval of the Exchange, a specialist unit may maintain a telephone line at its stock trading post location to the off-Floor offices of the specialist unit or the unit's clearing firm. *A specialist unit may also maintain wired or wireless devices, such as computer terminals or laptops, to communicate during the day with the firm's off-Floor offices to the extent permitted via a wired telephone line and with the system employing the algorithms and with individual algorithms. The wired or wireless device will enable the specialist to activate or deactivate the system employing the algorithms or an individual algorithm or change such system's pre-set parameters.* Such telephone connection, *wired, or wireless device* shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities, but may be used to enter options or futures hedging orders through the unit's off-Floor office or the unit's clearing firm, or through a member (on the floor) of an options or futures exchange. In addition, a specialist registered in an Investment Company Unit (as defined in Section 703.16 of the Listed Company Manual), or a Trust Issued Receipt (the ''receipt'') as that term is defined in Rule 1200 may use a telephone connection or order entry terminal at the specialist's post to enter a proprietary order in the Unit or receipt in another market center, in a Component Security of such a Unit or receipt, or in an options or futures contract related to such Unit or receipt, and may use the post telephone to obtain market information with respect to such Units, receipts, options, futures, or Component Securities. If the order in the Component Security of the Unit or receipt is to be executed on the Exchange, the order must be entered and executed in compliance with Exchange Rule 112.20 and SEC Rule 11a2–2(T), and must be entered only for the purpose of hedging a position in the Unit or receipt.

Each specialist firm shall certify in the time, frequency, and manner as prescribed by the Exchange that its wired or wireless device used to communicate with the system employing the firm's algorithms or an individual algorithm operates in accordance with all SEC and Exchange rules, policies, and procedures.

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Dissemination of Quotations

Rule 60

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(e) Autoquoting of highest bid/lowest offer and automated adjustment of size of liquidity bid and offer. The Exchange will autoquote the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the [specialist's book] *Display Book®* at a price higher (lower) than the previously disseminated highest (lowest) bid (offer). When the NYSE's highest bid or lowest offer has been traded within its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the [specialist's book] *Display Book®* at the next highest (in the case of a bid) or lowest (in the case of an offer) price. The size of any liquidity bid or offer shall be systemically increased to reflect any additional limit orders transmitted to the [specialist's book] *Display Book®* at prices ranging from the liquidity bid or offer price to the highest bid (lowest offer). The size of any liquidity bid or offer shall be systematically decreased to reflect the execution of any limit orders on the specialist's [book] *Display Book®* at prices ranging from the liquidity bid or offer price to the highest bid (lowest offer). However, de minimis increases or decreases in the size of limit orders on the [book] *Display Book®*, as determined by the specialist, will not result in automated augmenting or decrementing of the size of the liquidity bid or offer where such bid or offer continues to reflect the actual size of limit orders on the [book] *Display Book®*.

[In any instance where the specialist disseminates a proprietary bid (offer) of 100 shares on one side of the market, the bid or offer on that side of the market shall not be autoquoted. In such an instance, any better-priced limit orders received by the specialist shall be manually displayed, unless they are executed at a better price in a transaction being put together in the auction market at the time that the order is received.]

(i) Autoquote will be suspended when (A) the specialist has gapped the quotation in accordance with Exchange policies and procedures, (B) a block-size transaction as defined in Rule 127 that involves orders on the Display Book® is being reported manually or (C) when a liquidity replenishment point (''LRP'') as defined in Exchange Rule 1000 (a)(v) has been reached.

(ii) (A) After the specialist has gapped the quotation, autoquote will resume with a manual transaction or the publication of a non-gapped quotation.

(B) Autoquote will resume immediately after the report of a block-size transaction involving orders on the Display Book®.

(C) Autoquote will resume as soon as possible after a sweep LRP as defined in Exchange Rule 1000(a)(v)(A) has been reached, but in no more than five seconds, where the auto ex order that reached the sweep LRP is executed in full, or any unfilled balance of such order is not capable of trading at a price above (in the case of a buy order) or below (in the case of a sell order) the sweep LRP. Where the unfilled balance of an auto ex order is able to trade at a price above (below) the sweep LRP, but the price does not create a locked or crossed market, autoquote will resume upon a manual transaction or the publication of a new quote by the specialist, but in any event in no more than ten seconds. Where the unfilled balance of an auto ex order is able to trade at a price above (below) the sweep LRP and the price creates a locked or crossed market, autoquote will resume upon a manual transaction or the publication of a new quote by the specialist.

(ii) Autoquote will resume as soon as possible after a momentum LRP, as defined in Exchange Rule 1000(a)(v)(B), is reached, but in no more than ten seconds, unless a locked or crossed

market exists. In such case, autoquote will resume upon a manual transaction.

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{**Below Best] Bid*s* [-] *and* [Above Best] Offer*s***

Rule 70

When a bid is clearly established, no bid or offer at a lower price shall be made. When an offer is clearly established, no offer or bid at a higher price shall be made.

All bids made and accepted, and all offers made and accepted, in accordance with *Exchange* Rules [45 to 86] shall be binding.

Supplementary Material:

.10 Any bid *(offer) systemically delivered to the Display Book®* which is made at the same or higher (*lower*) price of the prevailing offer (*bid*) shall result in *an automatic execution* [transaction at the offer price in an amount equal to the lesser of the bid or offer. The same principle shall apply when an offer is made at the same or lower price as the bid.] *in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

.20 (a)(i) A Floor broker may place within the Display Book® system broker agency interest files at multiple price points on both sides of the market at or outside the Exchange best bid and offer with respect to each security trading in the location(s) comprising the Crowd such Floor broker is a part of with respect to orders he or she is representing on the Floor, except that the agency interest files shall not include any customer interest that restricts the specialist's ability to be on parity pursuant to Exchange Rules 104.10(6)(i)(C) and 108(a).

(ii) The requirement that a Floor broker be in the Crowd in order to have agency interest files does not apply to orders governed by Section 11(a)(1)(G) of the Securities Exchange Act of 1934 (''G'' orders).

(b) All Floor broker agency interest placed within files in the Display Book® system at the same price shall be on parity with each other, except agency interest that establishes the Exchange best bid or offer shall be entitled to priority in accordance with Exchange Rule 72. No Floor broker agency interest placed within files in the Display Book® system shall be entitled to precedence based on size.

(c) (i) Floor broker agency interest placed within files shall become part of the quotation when it is at or becomes the Exchange best bid or offer and shall be executed in accordance with Exchange Rule 72.

(ii) A Floor broker shall have the ability to maintain undisplayed reserve interest at the Exchange best bid and offer provided that a minimum of 1,000 shares of the broker's agency interest is displayed at that price.

(iii) After an execution involving a Floor broker's agency interest at the Exchange best bid or offer that does not exhaust the broker's interest at that price, the displayed interest will be automatically replenished from his or her reserve interest, if any, so that at least 1,000 shares of the broker's interest (or whatever amount remains, if less than 1,000 shares) is displayed.

(iv) An automatically executing order will trade first with the displayed bid (offer) and if there is insufficient displayed volume to fill the order, will trade next with reserve interest, if any. All reserve interest will trade on parity.

(d) A Floor broker's agency interest not at the Exchange best bid or offer shall be on parity with orders on the Display Book,® and the specialist layered interest file at that price if executed as part of a sweep in accordance with, and to the extent provided by, Exchange Rules 1000–1004.

(e) A Floor broker may trade on behalf of his or her orders as part of the Crowd at the same price and on the same side of the market as his or her agency interest placed within files only to the extent that the volume traded in the Crowd is not included in the agency interest files.

(f) A Floor broker's agency interest files must be cancelled when he or she leaves the Crowd. Failure to do so is a violation of Exchange rules. If the Floor broker leaves the Crowd without canceling his or her agency interest files and one or more executions occur with the agency interest, the Floor broker shall be held to such executions.

(g) The aggregate number of shares of agency interest in the files at each price shall be made available to the specialist. A Floor broker has discretion to exclude his or her agency interest from the aggregated agency interest information available to the specialist.

(h) Broker agency interest excluded from the aggregated agency interest information available to the specialist is able to participate in automatic executions, but will not participate in a manual execution unless the broker representing this interest verbally trades on its behalf as part of the Crowd. Interest excluded from the aggregated agency information may trade at a price that is inferior to the price of such manual transaction.

(i) The Floor broker is the executing broker for transactions involving his or her agency interest files.

(j) Floor broker agency interest placed within files may participate in the opening trade in accordance with Exchange policies and procedures governing the open.

(k) The ability of a Floor broker to have reserve interest will not be available during the open and during the close. The ability of a Floor broker to exclude volume from aggregated agency interest information available to the specialist will not be available during the open. Floor broker agency interest excluded from the aggregate agency interest information available to the specialist will not participate in the close.

(l) Nothing in this rule shall be interpreted as modifying or relieving the Floor broker from his or her agency obligations and required compliance with all SEC and Exchange rules, policies and procedures.

.30 Definition of Crowd A Floor broker will be considered to be in a Crowd if he or she is present at one of five contiguous panels at any one post where securities are traded.

Priority and Precedence of Bids and Offers

Rule 72

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

Priority of first bid

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

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Precedence of bids equaling or exceeding amount offered

(c) When no bid is entitled to priority under paragraph (a) hereof, (or when a bid entitled to priority or precedence has been filled and a balance of the offer remains unfilled), all bids for a number of shares of stock or principal amount of bonds equaling or exceeding the number of shares of stock or principal amount of bonds in the offer or balance, shall be on [a] parity and entitled to precedence over bids for less than the number of shares of stock or principal amount of bonds in such offer or balance, subject to the condition that*, with respect to bids made as part of the auction market* if it is possible to determine clearly the order of time in which the bids so entitled to precedence were made, such bids shall be filled in that order *except that no bids in Floor broker agency interest files or specialist layered interest files shall be entitled to precedence.*

Precedence of bids for amounts less than amount offered

(d) When no bid is entitled to priority under paragraph (a) hereof (or when a bid entitled to priority or precedence has been filled and a balance of the offer remains unfilled) and no bid has been made for a number of shares of stock or principal amount of bonds equaling or exceeding the number of shares of stock or principal amount of bonds in the offer or balance, the bid for the largest number of shares of stock or greatest principal amount of bonds shall have precedence, subject to the condition that*, with respect to bids made as part of the auction market* if two or more such bids for the same number of shares of stock or principal amount of bonds have been made, and it is possible to determine clearly the order of time in which they were made, such bids shall be filled in that order *except that no bids in Floor broker agency interest files or specialist layered interest files shall be entitled to precedence.*

Simultaneous bids

(e) When bids are made simultaneously, or when it is impossible to determine clearly the order of time in which they were made, *with respect to bids made as part of the auction market,* all such bids shall be on [a] parity subject only to precedence based on the size of the bid under the provisions of paragraphs [(b)] (c) and [(c)] (d) hereof[.], *except that no bids in Floor broker agency interest files or specialist layered interest files shall be entitled to precedence.*

Sale *or cancellation* removes bids from Floor

(f) [Except as provided in .50 below, a] *A* sale *or the cancellation of an entire bid or offer entitled to priority* shall remove all bids from the Floor except that if the number of shares of stock or principal amount of bonds offered exceeds the number of shares or principal amount specified in the bid having priority or precedence, a sale of the unfilled balance to other bidders shall be governed by the provisions of these Rules as though no sales had been made to the bidders having priority or precedence.

Subsequent bids

(g) After bids have been removed from the Floor under the provisions of paragraph [(e)] *(f)* hereof, priority and precedence shall be determined, in accordance with these Rules, by subsequent bids.

* * * * *

Transfer of priority, parity and precedence

(i) A bid may be transferred from one member to another and, as long as that bid is continued for the same account, it shall retain the same priority, parity and precedence it had at the time it was transferred.

II. Offers. Where offers are at the same price the priority, parity and precedence shall be determined in the same manner as specified in the case of bids. An offer may be transferred from one member to another and, as long as that offer is continued for the same account, it shall retain the same priority, parity and precedence it had at the time it was transferred.

III. Sale *or Cancellation of a Bid or Offer Entitled to Priority* ''Clears the Floor''

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

Supplementary Material:

.10 Precedence of bids and offers.—The following examples explain the operations of Rule 72 *in connection with auction market transactions.*

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(Remainder of rule unchanged)

Miscellaneous Requirements on Stock and Bond Market Procedures

Rule 79A

Supplementary Material:

.10 Request to make better bid or offer.—When any Floor broker does not bid or offer at the limit of an order which is better than the currently quoted price in the security and is requested by his principal to bid or offer at such limit, he shall do so.

.15 With respect to limit orders received by specialists, each specialist shall publish immediately (*i.e.*, as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt) a bid or offer that reflects[;]*:*

(i) the price and full size of each customer limit order that is at a price that would improve the specialist's bid or offer in such security; and

(ii) the full size of each limit order that

(A) is priced equal to the specialist's bid or offer for such security;

(B) is priced equal to the national best bid or offer; and

(C) represents more than a de minimis change (i.e., more than 10 percent) in relation to the size associated with the Exchange's bid or offer.

[Each specialist shall keep active at all times the quotation processing facilities (known as ''Quote Assist'') provided by the Exchange. A specialist may deactivate the quotation processing facilities as to a stock or a group of stocks provided that Floor Official approval is obtained. Such approval to deactivate Quote Assist must be obtained no later than three minutes from the time of deactivation.]

Limit orders received by the specialist that improve the Exchange then-current bid or offer or change the size of the Exchange bid or offer, other than de minimis increases or decreases, shall be autoquoted in accordance with Exchange Rule 60(e). The opening trade or opening quotation in each security activates the autoquote facility and thereafter, each specialist shall keep active at all times the autoquote facility provided by the Exchange, except that a specialist may cause the deactivation of the autoquote facility by gapping the quote in accordance with the policies and procedures of the Exchange. Autoquoting will also be automatically suspended when a block-size transaction as defined in Rule 127 that involves orders on the Display Book® being reported manually and a liquidity replenishment point, as defined in Exchange Rule 1000(a)(v), is reached.

The requirements with respect to specialists' display of limit orders shall not apply to any customer limit order that is[;]*:*

(1) executed upon receipt of the order;

(2) placed by a customer who expressly requests, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed;

(3) an odd-lot order;

(4) delivered immediately upon receipt to an exchange or association-sponsored system or an electronic communications network that complies

with the requirements of Securities and Exchange Commission Rule 11Ac1–1 (c) (5) (ii) under the Securities Exchange Act with respect to that order;

(5) delivered immediately upon receipt to another exchange member or over-the-counter market maker that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–4 under the Securities Exchange Act with respect to that order;

(6) an ''all or none'' order;

(7) a limit order to buy at a price significantly above the current offer or a limit order to sell at a price significantly below the current bid that is handled in compliance with Exchange procedures regarding such orders[;] (''too marketable limit orders''); or

(8) an order that is handled in compliance with Exchange procedures regarding *gap quoting or* block crosses at significant premiums or discounts from the last sale.

* * * * *

(Remainder of rule unchanged)

Limitations on Members' Trading Because of Customers' Orders

Rule 92

(a) Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (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 (a ''proprietary order''), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.

* * * * *

(c) The provisions of this Rule shall not apply to:

(1) any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders for customers;

(2) any purchase or sale of any security upon terms for delivery other than those specified in such unexecuted market or limited price order;

(3) transactions by a member or member organization acting in the capacity of a specialist o*r*[f] market maker in a security listed on the Exchange otherwise than on the Exchange*; [and]*

(4) transactions made to correct bona fide errors[.]; *and*

(5) algorithmically-generated messages for the specialist account in accordance with the provisions of Exchange Rule 104.

* * * * *

(Remainder of rule unchanged)

Dealings by Specialists

Rule 104

* * * * *

[(b) Specialists shall have the ability to establish an external quote application interface (''Quote API'') which utilizes proprietary algorithms that allow the specialist, on behalf of the dealer account, to systematically update the Exchange published bid or offer within the Display Book® system in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipts (as defined in Rule 1200). Nothing in this rule shall be interpreted as modifying or relieving the specialist from his or her obligations and required compliance with all Exchange rules, policies and procedures.]

(b) Specialists shall have the ability to establish an external quote application programmed interface (''API''), which will allow the specialist, on behalf of the dealer account, to send algorithmically-generated messages to the Display Book® system to electronically quote and trade.

(i) In reaction to information, including but not limited to, an incoming order as it is entering NYSE systems, the system employing the algorithm may generate messages for any of the following quoting or trading actions, provided such algorithmically-generated trading messages are in reaction to only one order at a time, and only as such order is entering the system:

Quoting Messages:

(A) supplement the size of the existing Exchange published best bid or offer;

(B) place within the Display Book® system specialist reserve interest at the Exchange published best bid and offer as described in (d) below;

(C) layer within the Display Book® system specialist interest at varying prices outside the published Exchange quotation (''specialist layered interest'');

(D) establish the Exchange best bid and offer; and

(E) withdraw previously established specialist interest at the Exchange best bid and offer.

Trading Messages:

(F) provide additional specialist volume to partially or completely fill an order at the Exchange published best bid or offer;

(G) match better bids and offers published by other market centers where automatic executions are immediately available;

(H) provide price improvement to an order subject to the conditions set forth in (e) below; and

(I) trade with the Exchange published best bid or offer.

(ii) Exchange systems shall:

(A) enforce the proper sequencing of incoming orders and algorithmically-generated messages; and

(B) ensure that algorithmic messages to trade with the Exchange published best bid or offer are processed by the Display Book® in such a manner that specialists and other market participants have a similar opportunity to trade with the published quotation.

(c)(i) All algorithmic messages delivered via the API must include a code identifying the reason for the algorithmic action, the unique identifier of the order to which the algorithmic message is reacting, (if any), the unique identifier of the order immediately preceding the generation of the algorithmic message and any other information the Exchange may require. In addition,

(A) Algorithmic messages to trade with the Exchange published best bid or offer, as provided in (b)(i)(I) above, must include the unique identifier for the publicly-disseminated Exchange best bid or offer to which the algorithmic message is reacting.

(B) The Exchange will designate the reason codes, unique identifiers for orders and quotations and the format of any other required information for use in algorithmically-generated messages.

(C) Identification of a particular order and/or quotation in an algorithmic message does not guarantee that the specialist will trade with that order or quotation or that the specialist has priority in trading with that order or quotation.

(D) The Exchange will automatically cancel algorithmic messages that are unable to interact with the order or quotation identified by the message where the reason code and the proposed algorithmic action are inconsistent, where the message activity would create a locked or crossed market, where the identifiers described above in (c) are not designated, and in other similar situations.

(ii) The API will not have access to the following types of information:

(A) Information which identifies the firms entering orders, customer information, or an order's clearing broker;

(B) Floor broker agency interest files or aggregate Floor broker agency interest available at each price; or

(C) cancellation of an order, except for cancel and replace orders.

(iii) Algorithmic messages must comply with all SEC and Exchange rules, policies and procedures governing specialist proprietary trading.

(iv) Algorithmic messages must not create a locked or crossed market, as defined in Exchange Rule 15A.

(v) The Display Book® will not process algorithmic messages during the time a block-size transaction (as defined in Rule 127) involving orders on the Display Book® is being reported pursuant to manual reporting.

(vi) The Display Book® will not process algorithmic messages when automatic executions are suspended, except that when automatic executions are suspended but autoquote is available, the Display Book® will process algorithmic messages to generate a bid or offer that improves the Exchange best bid or offer or supplements the size of an existing best bid or offer.

(vii) The Display Book® shall not process algorithmic messages from the API that will trigger the automatic execution of an auction limit or a market order not designated for automatic execution pursuant to Rule 123F or that will result in such order's execution with an existing contra-side specialist bid or offer. However, the Display Book® will process algorithmic messages to provide price improvement to auction limit and market orders not designated for automatic execution in accordance with the price improvement parameters described in (e).

(d)(i) Specialists shall have the ability to maintain undisplayed reserve interest on behalf of the dealer account at the Exchange best bid and offer provided at least 2,000 shares of dealer interest is displayed at that price.

(ii) After an execution involving specialist interest at the Exchange best bid or offer that does not exhaust the specialist's interest at that price, the specialist's displayed interest will be automatically replenished from the reserve interest, if any, so that at least 2,000 shares of specialist interest (or whatever amount remains if less than 2,000 shares) is displayed.

(iii) Specialist reserve interest will be on parity with Floor broker agency file reserve interest and, like it, shall yield to all other displayed interest eligible to trade at the Exchange bid or offer (See Rule 70.20(c)).

(e)(i) Specialist may provide algorithmic price improvement to all or part of an incoming order including an auction limit order and a market order not designated for automatic execution provided:

(A) The specialist is represented in the bid with respect to price improvement provided to an incoming sell order and in the offer with respect to price improvement provided to an incoming buy order; and

(B) Where the quotation spread is three–five cents, the price improvement to be supplied by the specialist is at least two cents; or

(C) Where the quotation spread is more than five cents, the price improvement to be supplied by the specialist is at least three cents; or

(D) Where the quotation spread is two cents, the price improvement to be supplied by the specialist is one cent.

(f)(i) Each specialist firm shall maintain an electronic log of all algorithmic events, including the date and time of each algorithmic message and such other information as the Exchange shall designate. Such log shall be maintained in accordance with SEC and Exchange rules regarding books and records and shall be capable of being provided to the Exchange upon request, in such time and in such format as the Exchange shall designate.

(ii) Each specialist firm shall notify the Exchange in writing, within such time as the Exchange shall designate, whenever the system employing an algorithm or an individual algorithm is not operating and the time, cause, and duration of such non-operation.

(g) During the day, specialists on the Floor may interact with the system employing the firm's algorithms or an individual algorithm with respect to the securities they are trading by:

(i) Activating or deactivating the firm's algorithms from a group of pre-set algorithms made available by the specialist firm, or

(ii) Adjusting the firm's pre-set parameters guiding algorithm decision-making.

(h) Each specialist firm shall certify in the time, frequency, and manner as prescribed by the Exchange, that the system employing its algorithms and all algorithms operate in accordance with all SEC and Exchange rules, policies and procedures.

Supplementary Material

Functions of Specialists

.10 Regular Specialists

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(6)(i) Transactions on the Exchange by a specialist for his own account in liquidating or decreasing his position in a specialty stock are to be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of the specialist's positions to the immediate and reasonably anticipated needs of the round-lot and the odd-lot market and in this connection:

* * * * *

(C) Transactions by a specialist for his or her dealer account in liquidating or decreasing a position in a specialty security must yield parity to and may not claim precedence based on size over a customer order in the [c]*C*rowd upon the request of the member representing such order, where such request has been documented as a term of the order, to the extent of the volume of such order that has been included in the quote prior to the transaction. *However, this provision shall not apply to automatic executions involving the specialist dealer account.*

* * * * *

(Remainder of rule unchanged)

Rule 108

On Parity

(a) No bid or offer made by a member or made on an order for stock originated by a member while on the Floor to establish or increase a position in such stock for an account in which such member has an interest shall be entitled to parity with a bid or offer made on an order originated off the Floor, except that such a bid or offer shall be entitled to parity with a bid or offer made on an order originated off the Floor and being executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder. *The foregoing shall not apply to specialists, unless at the request of the member representing such order, where such request has been documented as a term of the order, to the extent of the volume of such order that has been included in the quote prior to the transaction.*

On Precedence Based on Size

(b) No bid or offer made by a member or made on an order for stock originated by a member while on the Floor to establish or increase a position in such stock for an account in which such member has an interest shall be entitled to precedence based on size over a bid or offer made on an order originated off the Floor, except that such a bid or offer shall be entitled to precedence based on size over a bid or offer made on an order originated off the Floor and being executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder.

* * * * *

(Remainder of rule unchanged)

Disclosure of Specialists' Orders

Rule 115

A member acting as a specialist may disclose any information in regard to the order entrusted to the specialist:

(i) for the purpose of demonstrating the methods of trading to visitors to the Floor;

(ii) to other market centers in order to facilitate the operation of ITS or any other Application of the System; and

(iii) while acting in a market making capacity, to provide information about buying or selling interest in the market, *including aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest* in response to an inquiry from a member conducting a market probe in the normal course of business. Information regarding stop orders may be provided if the specialist has a reasonable basis to believe that the member intends to trade the security at a price at which stop orders would be relevant. A specialist shall make information available in a fair and impartial manner to any member while on the Floor. A specialist shall not disclose the identity of any buyer or seller represented on [his] *the Display Book*® [book] if expressly requested not to do so by the broker who entered the order with the specialist.

* * * * *

(Remainder of rule unchanged)

Orders of Members To Be in Writing

Rule 117

No member on the Floor shall make any bid, offer or transaction for or on behalf of another member except pursuant to a written *or electronically recorded* order. If a member to whom an order has been entrusted leaves the Crowd without actually transferring the order to another member, the order shall not be represented in the market during his *or her* absence, *except with respect to any portion of his or her agency interest file that was not cancelled before the member left the Crowd, notwithstanding that such failure to cancel an agency interest file is a violation of Exchange rules.*

Supplementary Material:

.10 Absence from Crowd.—When a member keeps an order in his *or her* possession and leaves the Crowd in which dealings in the security are conducted, the *member* is not entitled during his *or her* absence to have any bid, offer or transaction made in such security on his *or her* behalf or to have dealings in the security held up until he *or she* is summoned to the Crowd*, except that the member shall be held to any executions involving his or her agency interest files.* To insure representation of an order in the market during his *or her* absence, a member must therefore actually turn the order over to another member who will undertake to remain in the Crowd. If a member keeps the order in his *or her* possession and during his *or her* absence from the Crowd the security sells at or through the limit of his or *her* order, the *member* will be deemed to have missed the market.

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(Remainder of rule unchanged)

Record of Orders

Rule 123

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(e) System Entry Required

Except as provided in paragraphs .21 and .22 *below,* no Floor member may represent or execute an order on the Floor of the Exchange *or place an agency interest file within the Display Book® system* unless the details of the order *and the agency interest file* have been first recorded in an electronic system on the Floor. Any member organization proprietary system used to record the details of the order *and agency interest file* must be capable of transmitting these details to a designated Exchange data base within such time frame as the Exchange may prescribe.

The details of each order required to be recorded shall include the following data elements, any changes in the terms of the order and cancellations, in such form as the Exchange may from time to time prescribe:

1. Symbol;
2. Clearing member organization;
3. Order identifier that uniquely identifies the order;
4. Identification of member or member organization recording order details;
5. Number of shares or quantity of security;
6. Side of market;
7. Designation as market, *auto ex market,* limit, stop, stop limit, *auction limit, or intermarket sweep order;*
8. Any limit price and/or stop price;
9. Time in force;
10. Designation as held or not held;
11. Any special conditions;
12. System-generated time of recording order details, modification of terms of order or cancellation of order; *and*
13. Such other information as the Exchange may from time to time require.

The Floor member must identify which orders or portions thereof are being made part of the Floor broker agency interest file pursuant to such procedures as required by the Exchange.

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(Remainder of rule unchanged)

Miscellaneous Requirements

Rule 123A

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.30 A specialist may accept one or more percentage orders.—

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(a) The elected or converted portion of a ''percentage order that is convertible on a destabilizing tick and designated immediate execution or cancel election'' (''CAP–DI order'') may be automatically executed and may participate in a sweep.

(i) An elected or converted CAP–DI order on the same side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume associated with the bid (offer) remaining after the electing order is filled in its entirety. An elected or converted CAP–DI order on the same side of the market as an automatically executed electing order that sweeps the Display Book® will participate in a transaction at the sweep clean-up price if there is volume remaining on the Display Book(r) or from contra-side elected CAP–DI orders at that price.

(ii) An elected or converted CAP–DI order on the contra-side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price and the sweep clean-up price, if any.

(iii) When a specialist is providing price improvement to an order pursuant to Rule 104(e), marketable CAP–DI orders on the Display Book® will be automatically converted to participate in this execution in accordance with this rule.

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(Remainder of rule unchanged)

Order Handling—Auction Limit Orders and Market Orders

Rule 123F

(a) Auction Limit Orders

(i) An auction limit order will be automatically executed or routed to another market pursuant to Rule 15A.50 upon entry if there is a minimum variation quotation on the Exchange at the time the order reaches the Display Book® or a better bid (offer) is displayed by another ITS participating market center in which an automatic execution is immediately available and such better

bid (offer) creates a minimum variation market compared with the Exchange best offer (bid).

(ii) If not executed upon entry, an auction limit order to buy with a limit price that is at or above the Exchange best offer when it reaches the Display Book® shall be autoquoted the minimum variation better than the Exchange best bid at the time and an auction limit order to sell with a limit price that is at or below the Exchange best bid when it reaches the Display Book® shall be autoquoted the minimum variation better than the Exchange best offer at that time, thereby becoming the new published Exchange best bid or offer.

The size associated with a subsequent auction limit order to buy with a limit price that is at or above the Exchange best offer when it reaches the Display Book® and market orders to buy will be added to the bid. The size associated with a subsequent auction limit order to sell with a limit price that is at or below the Exchange best bid when it reaches the Display Book® and market orders to sell will be added to the offer.

(iii) The following events shall cause auction limit orders to automatically execute in accordance with and to the extent provided by Rules 1000–1004:

(A) The arrival of a subsequent order on the same side of the market capable of trading at a price better than the auction limit order is bidding (offering);

(B) the execution of an order on the same side of the market as an auction limit order that exhausts some or all of the contra-side volume available in the Exchange quotation;

(C) the cancellation of some or all of the contra-side volume, or a change in the price of the contra-side of the quotation that would enable an execution of the auction limit order with price improvement; or

(D) the auction limit order that has not been executed within 15 seconds after it reaches the Display Book®.

(iv) An auction limit order may be executed at a price inferior to the market price prevailing at the time it was entered.

(b) Market Orders

(i) A market order designated for automatic execution will be automatically executed in accordance with and to the extent provided by Exchange Rules 1000–1004.

(ii) A market order not designated for automatic execution but delivered systemically to the Display Book® will be automatically executed or routed to another market pursuant to Rule 15A.50 upon entry if there is a minimum variation quotation on the Exchange at the time the order reaches the Display Book® or a better bid (offer) is displayed by another ITS participating market center in which an automatic execution is immediately available and such bid (offer) creates a minimum variation market compared with the Exchange best offer (bid).

(iii) If not executed upon entry, such market order to buy shall be autoquoted the minimum variation better than the Exchange best bid and such market order to sell shall be quoted the minimum variation better than the Exchange best offer at that time, thereby becoming the new Exchange best bid or offer.

The size associated with a subsequent market order and/or auction limit order (consistent with the order's limit) to buy (sell) will be added to the bid (offer).

(iv) The following events shall cause market orders to automatically execute in accordance with, and to the extent provided by Rules 1000–1004:

(A) the arrival of a subsequent order on the same side of the market capable of trading at a better price than such market order is bidding (offering);

(B) the execution of an order on the same side of the market as such market order, that exhausts some or all of the contra-side volume available in the Exchange quotation;

(C) the cancellation of some or all of the contra-side volume, or a change in the price of the contra-side of the quotation that would enable an execution of the market order with price improvement; or

(D) the market order has not been executed within 15 seconds after it reaches the Display Book®.

(v) A market order may be executed at a price inferior to the market price prevailing at the time it was entered.

Odd-Lot Orders

Rule 124

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Supplementary Material:

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.50 [The odd-lot portion of PRL (part of round lot) orders will be executed at the same price as the round lot portion and will be processed through the round lot system.] *A part of round lot (PRL) order shall be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

* * * * *

.80 Odd-lot executions will be suspended when automatic executions pursuant to Exchange Rules 1000–1004 are suspended. Odd-lot executions will resume when automatic executions pursuant to Exchange Rules 1000–1004 resume.

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(Remainder of rule unchanged)

Rule 132B (a) Procedures

Order Tracking Requirements

1. With respect to any security listed on the New York Stock Exchange except bonds, each member and member organization shall:

A. immediately following receipt or origination of an order, record each item of information described in paragraph (b) of this Rule that applies to such order, and record any additional information described in paragraph (b) of this Rule that applies to such order immediately after such information is received or becomes available; and

B. immediately following the transmission of an order to another member, or from one department to another within the same member organization, record each item of information described in paragraph (c) of this Rule that applies with respect to such transmission; and

C. immediately following the modification or cancellation of an order, record each item of information described in paragraph (d) of this Rule that applies with respect to such modification or cancellation.

D. identify which orders or portions thereof are being made part of the Floor broker agency interest file pursuant to such procedures as required by the Exchange.

2. Each required record of the time *of* an event shall be expressed in terms of hours, minutes, and seconds.

3. Each member or member organization shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by the Exchange from time to time.

4. Maintaining and Preserving Records

[(]A.[)] Each member and member organization shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a–4(b).

[(]B.[)] The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on ''micrographic media'' as defined in SEC Rule 17a–4(f)(1)(i) or by means of ''electronic storage media'' as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and be maintained and preserved for the required time in that form.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated:

1. an order identifier meeting such parameters as may be prescribed by the Exchange assigned to the order by the member or member organization that uniquely identifies the order for the date it was received;
2. the identification symbol assigned by the Exchange to the security to which the order applies;
3. the market participant symbol assigned by the Exchange to the member or member organization;
4. the identification of any department or the identification number of any terminal where an order is received directly from a customer;
5. where the order is originated by a member or member organization, the identification of the department (if appropriate) of the member that originates the order;
6. the number of shares to which the order applies;
7. the designation of the order as a buy or sell order;
8. the designation of the order as a short sale order;
9. the designation of the order as a market order, *auto ex market order*, limit order, stop order or stop limit order, *auction limit, or intermarket sweep order*;
10. any limit and/or stop price prescribed in the order;
11. the date on which the order expires, and, if the time in force is less than one day, the time when the order expires;
12. the time limit during which the order is in force;
13. any request by a customer that an order not be displayed pursuant to Rule 11Acl–4(c) under the Securities Exchange Act of 1934;
14. special handling requests, specified by the Exchange for purposes of this Rule;
15. the date and time the order is originated or received by a Member or member organization; and
16. the type of account, *i.e.*, retail, wholesale, employee, proprietary, or any other type of account designated by the Exchange, for which the order is submitted.

* * * * *

(Remainder of rule unchanged)

NYSE Direct+®

Automatic Execution*s* [of Limit Orders Against Orders Reflected in NYSE Published Quotation]

Rule 1000

(a) [Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid.] An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange['s] published quotation, *orders on the Display Book®*, Floor broker agency file interest and specialist interest, in accordance with, and to the extent provided by these rules and shall be immediately reported as [NYSE] *Exchange* transactions, unless:

(i) The [NYSE's] *Exchange* published quotation is in the non-firm quote mode;

[(ii) the execution price would be more than five cents away from the last reported transaction price in the subject security on the Exchange];

[(iii)] (ii) with respect to a single-sided auto ex order, a better [price exists] *bid or offer is published* in another ITS participating market center *where an automatic execution is immediately available or where such better bid or offer is protected from a trade-through by Securities and Exchange Commission rule or ITS Plan and the price of such better bid or offer has not been systemically matched on the Exchange, unless the member has entered an intermarket sweep order as defined in Rule 13;*

[(iv) with respect to a single-sided auto ex order, the NYSE's published bid or offer is 100 shares;]

[(v) a transaction outside the NYSE's published bid or offer pursuant to Rule 127 is in the process of being completed, in which case the specialist should publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange];

[(vi)] *(iii)* trading in the subject security has been halted*;* [.]

(iv) the specialist has gapped the quotation in accordance with the policies and procedures of the Exchange;

(v) a liquidity replenishment point has been reached. A liquidity replenishment point (''LRP'') is reached when:

(A) During a sweep described in (b) below, a buy order would be executed at a price above a minimum of five cents from the Exchange best offer, rounded to the nearest five-cent increment or a sell order would be executed at a price below a minimum of five cents from the Exchange best bid, rounded to the nearest five-cent increment, or

(B) an automatic execution reaches a momentum liquidity replenishment point (''MLRP'') or an automatic execution would result in a transaction at a price on that side of the market outside a MLRP range.

(i) A MLRP range is calculated based on high and low transaction prices on the Exchange in a subject security within the prior 30-seconds;

(ii) The greater of twenty-five cents or 1% of the security's price (rounded to the nearest cent) on the Exchange is added to the security's lowest price in a rolling 30-second period; the same amount is subtracted from its highest price within the same period;

(iii) If there is no transaction on the Exchange within 30-seconds, the MLRP range will be based off the last transaction on the Exchange.

(vi) a block-size transaction as defined in Rule 127 that involves orders on the Display Book® is being reported manually; or

(vii) the order is for a security whose price on the Exchange is $300.00 or more.

(b)(i) Auto ex orders to buy shall trade with the Exchange published best offer. Auto ex orders to sell shall trade with the Exchange published best bid.

(ii) Where the volume associated with the Exchange published best bid (offer) is insufficient to fill an auto ex order in its entirety, other than an incoming commitment to trade received through ITS, the unfilled balance of such order (the ''residual'') shall trade with available contra-side interest in the following order:

(A) reserve interest at the Exchange published best bid (offer);

(B) additional specialist volume at the Exchange published best bid (offer); and

(C) if a residual remains, it shall then ''sweep the Display Book®'' as set forth in (iii) below, until it is executed in full, its limit price, if any, is reached, or a liquidity replenishment point is reached, whichever occurs first.

(D) After trading with the Exchange published best bid (offer), the unfilled balance of any incoming commitment to trade received through ITS or any unfilled balance of such commitment to trade shall be automatically cancelled.

(iii) (A) During a sweep, the residual shall trade with the orders on the Display Book® and any broker agency interest files and/or specialist layered interest file capable of execution in accordance with Exchange rules, at a single price, such price being the best price at which such orders and files can trade with the residual to the extent possible, (''clean-up price'').

(B) Orders on the Display Book,® Floor broker agency interest, and any specialist layered interest capable of trading with the residual shall receive the clean-up price.

(C) Any specialist layered interest that remains after the residual has traded at the clean-up price will be cancelled automatically by the Exchange.

(D) Where a bid or offer published by another ITS participating market center in which an automatic execution is immediately available is better than the sweep clean-up price or where such better bid or offer is protected from a trade-through by Securities and Exchange Commission rule or ITS Plan, the portion of the sweeping residual that satisfies the size of such better priced bid or offer will be automatically routed as a commitment to trade to the ITS participating market center publishing such better bid or offer.

(iv) Any residual remaining after the sweep described in (ii) above shall be bid (offered) at the order's limit price, if any, or the LRP whichever is lower, unless the order is designated immediate or cancel, in which case the residual shall be automatically cancelled.

[Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. An auto ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.]

[During a pilot program in 2003, NYSE Direct+ shall not be available in the following five stocks: American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange will announce in advance to its membership the time the pilot will run.]

Execution of Auto Ex Orders

Rule 1001

(a) Subject to Rule 1000, auto ex orders shall be executed automatically and immediately reported. The contra side of the execution shall be [orders reflected in the Exchange's published quotation], as follows:

(i) the first contra side bid or offer at a particular price shall be entitled to time priority, but after a trade clears the Floor, all bids and offers at such price shall be on parity with each other;

(ii) all bids or offers on parity shall receive a split of executions in accordance with *Exchange* Rule 72;

(iii) the [specialist shall be responsible for assigning] *assignment of* the number of shares to each contra side bidder and offer*or* as appropriate, in accordance with *Exchange* Rule 72, with respect to each automatic execution of an auto ex order *shall be done automatically by the Display Book® system;*

(iv) the specialist shall be the contra party to any automatic execution of an auto ex order where interest reflected in the published quotation against which the auto ex order was executed is no longer available, *except with respect to transactions occurring with the Floor broker agency interest files;*

[(v) a universal contra shall be reported as the contra to each automatic execution of an auto ex order.]

[(b) If the depth of the published bid or offer is not sufficient to fill an auto ex order in its entirety, the unfilled balance of the order shall be routed to the Floor and shall be displayed in the auction market.]

[(c)] (*b*) No published bid or offer shall be entitled to claim precedence based on size with respect to executions against auto ex orders.

Availability of Automatic Execution Feature

Rule 1002

[Orders designated as ''a] *A*uto ex[''] *orders* in a particular stock, Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200) shall be eligible to receive an automatic execution if entered after the Exchange has disseminated a published bid or offer, until *the close of regular trading on the Exchange in such security, Investment Company Unit or Trust Issued Receipt* [3:59 p.m. for stocks and Trust Issued Receipts, or 4:14 p.m. for Investment Company Units, or within one minute of any other closing time of the Exchange's floor market]. [Orders designated as ''a] *A*uto ex[''] *orders* in a particular [stock] *security*, Trust Issued Receipt, or Investment Company Unit that are entered prior to the dissemination of a bid or offer [or after 3:59 p.m. for stocks and Trust Issued Receipts, after 4:14 p.m. for Investment Company Units or within one minute of any other closing time,] shall be [displayed as limit orders] *handled as non-auto-ex market or limit orders* [in the auction market] *except that an incoming commitment to trade received through ITS will be cancelled.*

Application of Tick Tests

Rule 1003

If a transaction has been agreed upon in the auction market, and an automatic execution involving auto ex orders is reported at a different price before the auction market transaction is reported, any tick test applicable to such auction market transaction shall be based on the last reported trade *on the Exchange* prior to such execution of auto ex orders *except that this provision does not apply to any security that is part of the Securities and Exchange Commission's Regulation SHO Pilot.*

Election of Stop Orders and Percentage Orders

Rule 1004

Automatic executions of auto ex orders shall elect stop orders, stop limit orders and percentage orders electable at the price of such executions. Any stop orders so elected shall be *automatically* executed pursuant to [the] Exchange['s auction market procedures] *rules*, and shall not be guaranteed an execution at the same price as subsequent automatic executions of auto ex orders.

[Orders May Not Be Broken Into Smaller Amounts]

[Rule 1005

An auto ex order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such order in a stock, Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200), unless the orders are entered by means of separate order entry terminals, and the member or member organization responsible for entry of the orders to the Floor has procedures in place to monitor compliance with the separate terminal requirement.]

* * * * *

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

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

1. Purpose

SR–NYSE–2004–05 and Amendment Nos. 1, 2, and 3 thereto[11] propose

[11] *See supra* notes 5 and 8.

enhancements to the operation of NYSE DIRECT+® (''Direct+''), the Exchange's electronic execution facility, and amendments to other Exchange rules. Together with this Amendment No. 5, these proposals create a unique, integrated market—a hybrid market—that uses technology to improve the speed and efficiency of the auction, while preserving the advantages of human knowledge and expertise that are central to the Exchange market. By increasing the array of available trading choices, the Hybrid Market benefits all customers, from the smallest investors to the largest institutions.

The proposed enhancements to Direct+ offer immediate execution with speed, certainty and anonymity at the Exchange best bid and offer without restrictions on order size or order frequency, to the extent of the displayed volume associated with such bid and offer. The unfilled portion of the automatically executing order, if any, trades with any reserve interest and additional specialist volume at the Exchange best bid or offer, and, if still not filled, sweeps existing orders on the Display Book®[12] (the ''Display Book'' or ''book'') and Floor broker agency interest files and specialist interest files to the extent permitted, until it is filled, its limit price (if any) is reached or a NYSE Liquidity Replenishment Point℠ (''LRP'') is reached.

LRPs are pre-determined price points at which the Hybrid Market briefly converts to auction market trading only. LRPs may be triggered by a sweep or electronic trading that results in rapid price movement over a short period. A LRP converts the Hybrid Market to an auction market only on a temporary basis, in order to moderate volatility by affording an opportunity for new orders and Crowd and specialist interest to add liquidity. This promotes reasonable continuity and fosters the market quality that is a hallmark of the Exchange.

While offering the important benefits of automatic execution, the Exchange Hybrid Market preserves the best aspects of the agency auction. It combines the benefits of specialist and Floor broker expertise with the speed, certainty, and anonymity of electronic execution to create a market system offering maximum choice to customers without eliminating time-tested trading procedures that have proven immensely successful in providing stable, liquid, and less volatile markets.

Interaction between Floor brokers and specialists serves as a catalyst to trading, and both functions are integral to the success of the market. Specialists and Floor brokers will continue to perform their vital functions in the Hybrid Market through the use of Floor broker agency interest files, specialist layered interest files, and specialist algorithmic interaction with orders. As such, both ''electronically-'' and ''manually-'' executed orders will benefit from the value added by specialists in committing capital and providing depth to the market in response to customer demands, and the competition among orders represented by Floor brokers in the Crowd. This will result in the reduced volatility, stable prices, and fair and orderly markets that are a hallmark of the Exchange.

The Hybrid Market ensures that the opportunity for price improvement available in auction market trading continues and is extended to automatic executions. Proposed new orders types—auction limit orders and market orders not designated for automatic execution (''auction market orders'')—specifically incorporate an opportunity for price improvement. In addition, customers may seek price improvement through the use of Floor brokers, who can access the liquidity represented by orders on the Display Book, specialist dealer interest, and the Crowd. The ability of specialists to provide algorithmic price improvement,[13] the sweep functionality, and the ability of Floor broker agency interest files to participate in automatic executions provide a price improvement opportunity regardless of the execution format.

The proposed rules incorporate functionalities to enable specialists and Floor brokers to participate in automatic executions and sweeps. These functionalities, the NYSE Specialist API℠ (*i.e.*, systems that employ algorithms to make trading and quoting decisions on behalf of the specialist), NYSE Specialist Interest Files ℠, and NYSE Floor Broker Agency Interest Files℠, are described in previous amendments. Aspects of their operation are clarified or modified as described below.

All of the proposed functionalities are required to operate in a manner consistent with Commission and Exchange rules governing trading by members and member organizations. For example, Exchange Rule 104(a) prohibits specialists from effecting purchases or sales in any specialty security ''unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market* * *'' The ''reasonable necessity'' requirement is defined in Exchange Rule 104.10, which sets forth standards by which the market necessity of specialist trading can be determined. These rules will continue to apply to specialist trading in the Hybrid Market. The ability of specialists to algorithmically quote and trade pursuant to defined parameters, layer interest, and maintain a reserve file at the best bid and offer, as described in these amendments, is consistent with these requirements. They are merely tools to enable specialists to participate in automatic executions and allow them to replicate electronically that which they do today. All specialist trading, whether ''electronic'' or ''manual,'' must satisfy the requirements governing specialist proprietary trading.

The proposals discussed in these amendments will make for better markets to the benefit of all. They encourage displaying liquidity, which will result in narrower spreads and deeper markets and allow customers to access this liquidity in whatever way best suits their needs. As such, the Exchange's hybrid proposal ensures the continuation of the stable, liquid markets for which the Exchange is known.

Specialist Reserve and Additional Specialist Volume—Exchange Rule 104(d)

Specialists provide significant value to the market, committing capital to narrow quotes, add liquidity, and stabilize prices. To assist specialists in this effort and to enable them to comply more readily with their market-making responsibilities, the proposed rules provide specialists with the ability to implement external application programmed interfaces (''API''), which transmit to the Display Book messages generated by a system employing pre-set proprietary algorithms to quote or trade on behalf of their dealer accounts only in certain, limited ways. By allowing specialists to do electronically that which they are able to do manually today, specialists will provide value and liquidity in the Hybrid Market.

The previous amendments provide that the systems employing algorithms

[12] The Display Book is an order management and execution facility. The Display Book receives and displays orders to the specialist and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. In addition, the Display Book is connected to a variety of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems (*i.e.* the Intermarket Trading System, Consolidated Tape Association, Consolidated Quotation System, etc.).

[13] It should be noted that the Exchange intends to provide Floor brokers with the ability to provide electronic price improvement via a discretionary order type. This will be the subject of a separate filing.

may send messages through the API to, among other things, supplement the size of an existing Exchange best bid and offer, layer specialist interest at prices outside the best bid and offer, and provide a single-priced execution at the best bid and offer. The proposed rules were silent as to the specialists' ability to maintain non-displayed or ''reserve'' interest at the best bid and offer.

Proposed Exchange Rule 104 has been amended to provide that specialists may, but are not required to, have non-displayed ''reserve'' interest at the best bid and offer. As with Floor broker reserve interest described in the previous amendments, the specialist must have a minimum amount of interest displayed at the best bid or offer in order to have reserve interest on that side of the quote. For specialists, this minimum amount is 2,000 shares. Like broker reserve interest, specialist reserve interest yields to displayed interest. Similarly, after an execution, if specialist interest remains at the best bid or offer, the amount of such displayed interest will be replenished by the specialist's reserve interest, if any, so that at least a minimum of 2,000 shares of specialist interest is displayed (or whatever specialist interest remains at the best bid or offer, if less than 2,000 shares).

Automatic executions trade first with all displayed interest at the best bid or offer, in accordance with Exchange Rule 72. If not filled by the displayed interest, the order automatically executes against the non-displayed specialist and Floor broker reserve interest, which participate on parity.

Specialists may also supply additional trading volume at the best bid or offer price beyond the amount in the specialist's reserve, if any. In previous amendments, this was referred to as completing an order to provide a single price execution and required that the specialist buy (sell) the entire amount remaining on an order. Rule 104 is amended to provide that this additional volume, which is not part of the reserve and which is not displayed, may complete an order, thereby providing a single-priced execution, or partially fill the remainder of the order. Additional specialist volume yields to displayed and reserve interest.

For example, if 5,000 shares of an automatically executing sell order remains unfilled after trading with the displayed volume at the Exchange best bid and any reserve interest at that price, the specialist can buy all or some of the 5,000 shares at the same price. If the specialist buys less than the full size remaining, it will sweep the orders on the Display Book and Floor broker agency and specialist interest files to the extent permitted, until filled, its limit, if any, is reached or a LRP is triggered, whichever comes first, as described in previous amendments.

It is appropriate to permit specialists to inject additional liquidity at the best bid or offer price without requiring them to fill the entire order because this additional specialist interest does not trade until all displayed and reserve interest at such bid or offer is exhausted. As there is no other interest at that price available to trade other than the specialist's interest, the specialist should be able to trade in any amount with the order, provided the trading is otherwise consistent with Exchange rules governing specialist proprietary trading.

As noted in previous amendments, automatic executions involving reserve interest and any additional specialist volume will print to the Tape separately from the automatic execution of displayed interest at the best bid or offer.

Specialists' Algorithms—Exchange Rules 104, 92 and 36

The previous amendments describe the various types of actions permitted by specialist systems employing algorithms. This amendment clarifies those provisions and proposes changes to them, as follows. Permissible algorithmic actions are limited in scope and restricted by rules governing specialist proprietary trading.

During the day, specialists on the Floor will be able to interact with the systems employing algorithms in the securities they are trading to manage their risk. They may do this by selecting to activate or deactivate algorithms from a group of pre-set algorithms made available by the specialist's firm or by adjusting the parameters that guide an algorithm's decision-making. However, specialists will not have the ability to affect the processing of algorithmically generated messages by the Display Book. NYSE Rule 104(g) has been amended to reflect this. Specialists will be able to interact with the algorithms via a wired or wireless device, such as a computer terminal or laptop. This wired or wireless device will be able to communicate with the specialist's off-Floor office to the same extent as is permitted today via a telephone line, as set forth in Exchange Rule 36.30.[14] In addition, this wired or wireless device will be able to communicate with the firm's algorithms to implement the Floor specialist's decisions to activate or deactivate an algorithm or change an algorithm's pre-set parameters. Each specialist firm shall be required to certify in the time, frequency, and manner prescribed by the Exchange that such wired or wireless devices operate in accordance with all SEC and Exchange rules, policies, and procedures.

Specialist systems employing algorithms are permitted to send messages to the Display Book via the API to quote or trade only in reaction to specified types of information. Previous amendments described that such systems would employ a minimum of two algorithms with access to different types of information (*i.e.*, one would not have direct access to incoming orders as they are entering Exchange systems) and prescribed different permissible quoting and/or trading functions for each algorithm. This has been amended to provide that a specialist may maintain a system that employs one or more algorithms, all of which can have access to the same information and operate as described below.

Algorithms will have access to the following information:

- specialist dealer position;
- quotes;
- information about orders on the Display Book such as limit orders, percentage orders, stop orders, and auction limit and auction market orders (''state of the book'');
- any publicly available information the specialist firm chooses to supply to the algorithm, such as the Consolidated Quote stream; and
- incoming orders as they are entering NYSE systems.

Algorithms:

- will not have access to information identifying the firms entering orders, customer information, or an order's clearing broker;

[14] NYSE Rule 36.30 provides that ''with the approval of the Exchange, a specialist unit may maintain a telephone line at its stock trading post location to the off-Floor offices of the specialist unit or the unit's clearing firm. Such telephone connection shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities, but may be used to enter options or futures hedging orders through the unit's off-Floor office or the unit's clearing firm, or through a member (on the floor) of an options or futures exchange. In addition, a specialist registered in an * * *(ETF)* * * may use a telephone connection or order entry terminal at the specialists' post to enter a proprietary order in the * * *(ETF) in another market center, in a Component security of such * * *(ETF) or in an options or futures contract related to such* * * (ETF) and may use the post telephone to obtain market information with respect to such * * *(ETFs), options, futures, or Component Securities. If the order in the Component Security of the * * *(ETF) is to be executed on the Exchange, the order must be entered and executed in compliance with Exchange Rule 112.20 and SEC Rule 11a2–2(T), and must be entered only for the purpose of hedging a position in the * * *(ETF).''

• will not have access to order cancellations, except for cancel and replace orders;
• will not be able to delay the arrival of orders at the Display Book;
• will not be able to affect the sequence of orders and messages arriving at the Display Book; and
• will not have access to Floor broker agency interest files or aggregate Floor broker agency interest available at each price.

NYSE systems will ensure that incoming orders and algorithmic messages are processed at the Display Book in their proper sequence. The book will not process an algorithmic message until the order immediately preceding the generation of such message has been processed. The Exchange notes that the specialist algorithm would not be permitted to execute against incoming orders unless providing price improvement or supplementing size. In addition, the specialist algorithm would not be permitted to change its existing quote in response to an incoming order. The specialist algorithm would, however, be permitted to change the quote, as the specialist is permitted to do manually today, once the incoming order is processed. In addition, as described below, algorithmic messages will be required to include certain codes and identifiers for each permissible action. Algorithmic messages without such required information or with codes and identifiers that are inconsistent with the message's quoting or trading action will be cancelled.

As discussed in these amendments, systems employing algorithms will only be able to ''read'' and react to one incoming order at a time. That order will be processed by the Display Book before any algorithmic message in reaction to such order is processed. While there may be times when a system employing an algorithm could ''possess'' more than one order at the same time, the system will only be able to process, *i.e.* ''read'' and react, to only one order at a time, in the sequence in which orders were entered. In addition, there may be times when a permissible algorithmic message has been generated but, before such message has been processed by the Display Book, the system employing the algorithm has ''read'' or ''is reading'' a new order. This new order may be better priced than the algorithmically generated order or otherwise be able to trade with the order to which the algorithmic message reacted but, as a result of proper time sequencing, which will be enforced by the Display Book, the algorithmic message will be processed before such new order. Further, once an algorithmic message has been generated, it cannot be stopped, changed, or cancelled on its way to the book.

Examples:

1. At 10:01:0001, a customer market order to buy is received by the specialist system employing algorithms (Order 1). At 10:001:0002, the system employing algorithms receives a customer market order to sell (Order 2). At 10:01:0003, the system ''reads'' Order 1 and at 10:01:0004 algorithmically generates a message to trade with (sell to) Order 1 (the market buy order). At 10:001:0005, the system generates an algorithmic message to trade with (buy from) Order 2 (the market sell order). At 10:01:0006, the Display Book executes Order 1 (the market buy order) against the specialist's sell interest. At 10:01:0007, the Display Book executes Order 2 (the market sell order) against the specialist's buy interest. Although both the customer buy and customer sell orders are in the specialist's system at the same time, the system processes each order in sequence, ''reading'' and ''reacting'' to Order 1 first before ''reading'' and reacting to Order 2. The algorithmically generated message in reaction to Order 1 cannot be changed or cancelled after the specialist's system ''reads'' Order 2.

2. The Exchange quotation is 20.04 × 20.06. At 10:01:0001, a customer market order to buy is received by the specialist system employing algorithms (Order 1). At 10:001:0002, the system ''reads'' Order 1 and algorithmically generates a message to trade with (sell to) Order 1 at 20.05. At 10:01:0003, before the algorithmic message to trade with Order 1 has been processed by the Display Book, the specialist's system employing algorithms receives a customer market order to sell (Order 2). At 10:01:0004, the Display Book executes Order 1 (the market buy order) against the specialist's sell interest at a price of 20.05. At 10:01:0005, the Display Book executes Order 2 against the Exchange bid, at a price of 20.04.[15]

Based on the information noted above, including an incoming order, specialist systems may algorithmically generate messages to quote or trade, as follows:

Quoting messages:
• supplement the size of the existing Exchange published best bid or offer;
• place within the Display Book system specialist reserve interest at the Exchange published best bid and offer;
• layer within the Display Book system specialist interest at varying prices outside the published Exchange quotation;
• establish the Exchange best bid and offer; and
• withdraw previously established specialist interest at the Exchange best bid and offer.

A quoting message would not interact with the order that preceded it. A specialist algorithm may, however, based on information about the preceding incoming order, decide to move its quote away from the inside market after the preceding order has been processed.

Trading messages:
• provide additional specialist volume to partially or completely fill an order at the Exchange published best bid or offer;
• match better bids and offers published by other market centers where automatic executions are immediately available;
• provide price improvement to an order subject to the conditions outlined below; and
• trade with the Exchange published quotation (''hit bids or take offers'').

To ensure that an algorithmic message to trade with the Exchange published quotation does not possess any informational advantage with respect an incoming order before the incoming order is processed by the Display Book, an algorithmic message to trade with the Exchange published bid or offer must include, among other things, information designated by the Exchange to indicate that such bid or offer has been publicly disseminated, as well as information identifying the order immediately preceding the generation of such algorithmic message. Without these identifiers, the algorithmic message will not be processed.

Additionally, to ensure that an algorithmic message to trade with the Exchange published quotation does not possess any speed advantage in reaching the Display Book, Exchange systems will make certain that such messages are processed by the book in a manner that gives specialists and other market participants a similar opportunity to trade with the Exchange's published quotation. Based upon the average transit time from the Common Message Switch (CMS)[16] system to the Display Book, the Exchange will determine the appropriate amount of time to delay the processing of algorithmic messages to trade with the Exchange published

[15] Specialist algorithmic price improvement is discussed in more detail below.

[16] CMS is a store-and-forward message-switching application that connects member firms to Exchange systems. CMS validates and routes orders from member firms to the SuperDot® system and into the Display Book® system, which then processes them. Algorithmic messages will be delivered to the Display Book via a different set of Exchange systems.

quotation. The delay parameter will be adjusted periodically to account for changes to the average transit time resulting from capacity and other upgrades to Exchange systems.

For example, a buy order arrives at the Exchange with a limit price that is better than the existing best bid, but which is not auto-executable, as its limit is below the existing Exchange best offer. This will become the Exchange's new best bid. The specialist's system employing algorithms ''reads'' this buy order and generates a message to trade with it (*i.e.*, hit the bid). In order for this message to be processed by the Display Book, the message must include a reason code (*e.g.* ''trade with bid''), the designated identifier for the order immediately preceding the generation of the algorithmic message, and the designated identifier of the newly-quoted bid. The Display Book will not process this algorithmic message until a designated period of time has elapsed, to ensure that the specialist does not have a time advantage in the routing of its trading message to the book. The same scenario would apply to an offer to sell where the limit is above the Exchange best bid.

Every algorithmic message delivered via the API must include a code identifying the reason for the algorithmic action (*e.g.* ''match ITS,'' ''price improvement,'' ''hit bid,'' etc.), the unique identifiers of the order to which the algorithm is reacting (where the message is in reaction to an order), the order immediately preceding the generation of the algorithmic message, and any other information the Exchange may require. In addition, as noted above, algorithmic messages to trade with the Exchange published bid or offer must also include the unique designated identifier for the quote to which the algorithm is reacting. The Exchange will designate the reason codes, unique identifiers for orders and quotes, and the format of any other required information for use by the algorithms.

Identification of a particular order or quote by the algorithmic message does not guarantee that the specialist will be able to trade with that order or quote, or that the specialist has priority in trading with that order or quote. The Exchange will automatically cancel algorithmic messages that are unable to interact with the order or quote identified by the message, where the reason code and the proposed algorithmic action are inconsistent, where the identifiers described above are not included, and in other similar situations.

Algorithmic trading and quoting must comply with SEC and Exchange rules, policies, and procedures regarding specialist stabilization and market maintenance requirements. Algorithmic quoting messages must not create a locked or crossed market, as defined in Exchange Rule 15A, and the Exchange will cancel any such algorithmic messages.

As noted in previous amendments, the Display Book will not accept algorithmic messages when automatic executions are unavailable. Proposed Rule 104 is amended to provide that the Display Book will accept algorithmic quoting messages to generate a bid or offer that improves the Exchange best bid or offer or supplements the size of an existing best bid or offer in the infrequent situations when automatic executions are suspended, but autoquote is active. This benefits the market by permitting an opportunity for the specialist to provide liquidity and/or narrow the quote. These situations include:

(i) when the Exchange published quote is such that a NYSE Momentum LRPSM (''MLRP'') will be triggered by a trade at the bid or offer (*see infra*); or

(ii) an order in a high-priced security arrives.[17]

In summary, specialists would have the ability to view information about an incoming order before it is publicly disseminated and, subject to specific limitations and conditions, directly interact with the Display Book on behalf of its dealer account based on such information.

Algorithmic Price Improvement

Previous amendments described the ability of specialists to algorithmically provide price improvement to incoming orders and set forth parameters for such price improvement. This amendment modifies these parameters.[18] Proposed Rule 104(e) is amended to provide that specialists may price improve all or part of an incoming order, as follows:

(i) The specialist is represented in the bid if buying and the offer if selling; and

(ii) where the quotation spread is three–five cents, algorithms must provide price improvement of at least two cents; or

(iii) where the quotation spread is more than five cents, algorithms must provide price improvement of at least three cents; or

(iv) where the quotation spread is two cents, algorithms must provide price improvement of one cent.

Examples:

(1) If the Exchange quotation is 20.10–20.15, and the specialist is represented in both the bid and offer, the algorithm can provide price improvement by buying at 20.12, and selling at 20.13.

(2) If the Exchange quotation is 20.10–20.16, and the specialist is represented in both the bid and the offer, the algorithm can buy at 20.13 and sell at 20.13.

(3) If the Exchange quotation is 20.10–20.12, and the specialist is represented in both the bid and the offer, the algorithm can buy at 20.11 and sell at 20.11.

The Exchange is proposing these parameters in an attempt to balance the goals of preserving incentives for the limit orders on the Display Book to establish the best price and of encouraging price improvement for incoming orders. The Exchange believes that the benefit of providing meaningful price improvement to incoming orders under such circumstances would outweigh the potential disincentives to post aggressive limit orders. The Exchange notes that, under the proposed changes to NYSE Rule 104, specialists would be permitted to algorithmically provide price improvement of only one cent in the relatively frequent situation in liquid stocks when the quotation spread is two cents. The ability of the specialist algorithm to provide price improvement of one cent when the quotation spread is two cents is consistent with federal securities laws and Exchange rules. In addition, it is useful to note that the Exchange intends to provide Floor brokers with the ability to provide electronic price improvement via a discretionary order type. This will be the subject of a separate filing.

Algorithms may price improve NYSE Auction Limit Orders℠ (''AL orders'') and NYSE Auction Market Orders℠ (''AM orders''), consistent with the requirements noted above, by generating a message to trade with the AL or AM order before it is processed by the Display Book, or executing the AL or

[17] Previous amendments define a ''high-priced security'' as one priced above $300. The availability of automatic executions in high-priced securities is discussed *infra.*

[18] Amendment No. 2 provided: ''The algorithms will enable the specialists on behalf of the dealer account to electronically provide price improvement to automatic executions, provided the following conditions are met: (i) the quotation spread is at least three cents; (ii) the specialist is represented in the published bid or offer in a meaningful amount: the lesser of 10,000 shares or 20% of the respective bid (offer) size; (iii) the order receiving price improvement is of ''retail'' order size, *i.e.*, 2,000 shares or less and the specialist fills the order; and (iv) the price improvement provided by the specialist is (a) at least .02 where the quote spread is .03–.05, (b) at least .03 where the quote spread is .06–.10, (c) at least .04 where the quote spread is .11–.20, and (d) at least .05 where the quote spread is more than .20.'' As noted above, this filing amends these parameters.

AM order at its quoted price once the order has been processed by the Display Book. Algorithmic messages that will trigger the automatic execution of AL or AM orders or that will result in such orders trading with the specialist's existing contra-side bid or offer are prohibited.

Priority, Parity, Precedence and Yielding—Exchange Rule 108

Current Exchange Rules 72, 104, and 108 require that specialists, when trading for their proprietary accounts, yield to limit orders on the Display Book and, when establishing or increasing a position, to orders represented in the Crowd, unless, under current practice, the broker permits the specialist to be on parity. In addition, when liquidating or decreasing a position, specialists must yield to the Crowd upon the request of a customer. With respect to limit orders on the Display Book, the specialist must always yield even when the specialist clearly has established the Exchange best bid or offer.[19] Unlike specialists, other market participants are rewarded for establishing the best bid or offer, receiving trading priority in all circumstances at that price for one trade and parity for subsequent trades.

Currently, NYSE Rule 108 prohibits the specialist from trading for its proprietary account on parity with the Crowd in situations where the specialist is establishing or increasing its position. The Exchange proposes to amend NYSE Rule 108 to eliminate that restriction and provide that specialists would be entitled to parity with orders represented in the Crowd and agency interest files when establishing or increasing its position. Other limitations on specialist proprietary trading when establishing or increasing its position, set forth in NYSE Rule 104, including Rule 104.10(5)(i)(A–C), would continue to apply. The proposed change to NYSE Rule 108 would increase the instances in which the specialist would be entitled to trade along with public customers. While this represents a shift from the overall scheme of priorities on the Exchange Floor, the Exchange believes that the proposed change, on balance, would benefit the market by encouraging specialists to add depth and liquidity to the market by initiating proprietary transactions on the Floor of the Exchange and comports with existing practice on the Floor where brokers may voluntarily allow specialists to be on parity with them. A separate filing reflecting this practice will be made shortly.

The rules regarding priority, parity, precedence, and yielding among orders automatically executing on the Exchange are as follows:

- Exchange Rule 72 applies to automatic executions, unless otherwise provided;
- An order that establishes the Exchange best bid or offer is entitled to priority at that price for one trade, except a specialist bid or offer entitled to priority must yield to limit orders on the book;
- Displayed interest at the Exchange best bid and offer always trades first, after the order that established such best bid or offer, but ahead of any reserve and additional specialist interest. All displayed interest (other than displayed interest entitled to priority) is on parity, except that specialist displayed interest yields to limit orders on the book;
- Specialists and brokers may maintain non-displayed reserve interest at the best bid or offer, provided brokers display a minimum of 1,000 shares at that price, and specialists display a minimum of 2,000 shares at that price;
- All reserve interest trades on parity;
- Additional specialist volume, which is not displayed and not included in the reserve, yields to all displayed and all reserve interest; and
- No published bid or offer is entitled to claim precedence based on size with respect to automatic executions (current Exchange Rule 1001(c), which has been re-lettered as Rule 1001(b)), and no electronic interest is entitled to precedence based on size.

In addition, Exchange Rule 108 is amended to reflect that a specialist may not be on parity with the Crowd when establishing or increasing its position, if a customer requests and such request is entered as a term of the order in appropriate Exchange systems. Exchange Rule 70.20(a)(i) is amended to provide that in instances where a customer does not want the specialist to be on parity, such orders may not be entered in Floor broker agency interest files.

The combination of proposals discussed in these amendments—displayed interest always trades first other than specialist displayed interest, which yields to limit orders on the book; minimum display requirements for specialists and brokers in order to have reserve interest; limit orders on the book receiving the ''clean-up'' price during a sweep; and the opportunity for price improvement provided by auction limit and auction market orders—provide a significant incentive to market participants to display orders. The resulting tighter spreads and more liquid market is a significant benefit.

Examples:

The following scenario applies to all of the examples below:

The Exchange quotation is $20.10 - 20.15$ ($5{,}000 \times 8{,}000$). The following interest arrives, in order: The specialist algorithm bids 20.11 for 4,000 shares (thereby establishing the best bid); one Floor broker bids 20.11 for 1,000 shares, with 3,000 shares in reserve; a limit order arrives on the book to buy 4,000 shares at 20.11; and a CAP–DI order arrives to buy 20,000 shares at 20.20.

An auto-ex market order to buy 1,000 shares arrives and is automatically executed at 20.15. This transaction clears the Floor and all bids are deemed re-entered simultaneously. The market is autoquoted $20.11 - 20.15$ ($9{,}000 \times 7{,}000$), with 3,000 shares in reserve at 20.11.

(1) Specialist Yields to the Book and Broker Agency Interest:

An auto-ex order to sell 3,000 shares at 20.11 (or an auto-ex market order) arrives. The broker and the book are on parity and 1,000 shares from the broker and 2,000 shares from the book are executed. (The broker displayed interest trades along with the displayed limit order interest on the book. The undisplayed reserve interest does not trade). The specialist does not participate, as 2,000 shares remain unexecuted on the limit order on the book. The specialist must yield to limit orders on the book even though the specialist's bid for 4,000 shares arrived before the limit order and established the best bid price. The CAP order does not participate, as there is no more sell liquidity at 20.11.

(2) Price Improvement:

If the specialist algorithm determined to provide price improvement to the 3,000-share auto-ex sell order, buying at 20.13 (two cents better than best bid of 20.11 and therefore consistent with the price improvement parameters), the CAP–DI order would be automatically converted (*see* discussion on CAP–DI orders, below). The specialist and the CAP–DI order would each buy 1,500 shares.

(3) Trade with Contra-Side of Quote:

If a sell order arrives at 20.14, which improves the 20.15 offer, the specialist algorithm cannot generate a message to trade with this order until it is quoted as the new best offer, as the algorithmic message must include the identifier of the new quote, among other information, in order to be processed. In addition, the algorithmic message will be delayed by a time factor that places

[19] Specialists establishing the best bid or offer are entitled to priority over the Crowd for one trade.

the specialist on a par with broker and off-Floor electronic access.

(4) Parity with Reserve:

If the specialist also had 3,000 shares to buy in a reserve file (permissible because the specialist has at least 2,000 shares displayed at the best bid), and an auto-ex market order arrives to sell 11,000 shares:

(a) All displayed interest trades before any reserve interest, so the specialist buys 4,000 shares, the broker buys 1,000 shares and the book buys 4,000 shares;

(b) The specialist reserve and broker reserve split the 2,000 shares remaining on the order to sell, each purchasing 1,000 shares.

(c) If the specialist had displayed less than 2,000 shares, the specialist would not have been able to have any reserve interest, so the broker reserve interest would buy the remaining 2,000 shares from the sell order.

(d) If the specialist provided additional volume to facilitate a single-priced execution or to partially fill the order, such volume would yield to all displayed and reserve interest.

(e) If there was no reserve interest and no additional specialist volume and the sell market order was unfilled, it would sweep the book until executed or a LRP is triggered. If it had been a sell limit order, it would sweep until filled, its limit was reached or a LRP was triggered.

Record Requirements and Specialist Algorithms

Previous amendments state that algorithmic messages reacting to incoming orders must identify the specific order to which the algorithm is responding. As discussed above, proposed Rule 104(c) is amended to require that each algorithmic message must also include a code identifying the reason for the algorithmic action, the unique identifier of the order to which the algorithm is reacting (if any), the unique identifier of the last order that the algorithm had access to before generating the message, and any other information the Exchange may require. In addition, algorithmic actions in response to a quotation must also include the unique identifier for the quote to which the algorithm is reacting. The Exchange will designate the reason codes, unique identifiers for orders and quotes, and the format of any other required information for use by the algorithms.

Exchange Rule 132A requires members and member organizations to synchronize the business clocks used to record the date and time of any event that the Exchange requires to be recorded, with reference to a time source as designated by the Exchange. NYSE Rule 132A also requires that members maintain the synchronization of this equipment in conformity with procedures prescribed by the Exchange. Proposed Exchange Rule 104(f)(i) requires specialists to record information regarding algorithmic messages as designated by the Exchange, including the date and time of each algorithmic action. As such, Exchange Rule 132A applies to the algorithms. Further, proposed Exchange Rule 104(f)(i) requires that specialists maintain an electronic log of all algorithmic actions in accordance with Exchange and Commission Rules and that the data and documentation shall be made available to the Exchange upon request, and in a format as designated by the Exchange.

Proposed Exchange Rule 104(f)(ii) requires that specialists notify the Exchange in writing within such time as the Exchange shall designate, whenever an algorithm is not operating and the time, cause, and duration of such non-operation.

Proposed Exchange Rule 104(h) provides that algorithms shall be certified in the manner and frequency designated by the Exchange.

Dissemination of Specialist Interest

Previous amendments provide that specialist interest not at the Exchange best bid or offer will not be disseminated. This amendment clarifies that specialists may choose to have their interest at prices away from the Exchange best bid or offer included in information disseminated via NYSE OPENBOOK® or another Exchange data distribution channel.

NYSE Floor Broker Agency Interest File℠—Exchange Rule 70.20

Previous amendments describe NYSE Floor Brokers Agency Interest Files℠, which will enable Floor brokers to electronically represent agency interest at various prices at or outside the Exchange quote with respect to orders they are handling. This functionality allows customers to reap the benefits of Floor broker knowledge and trading expertise combined with the efficiencies of automatic executions.

Proposed Rule 70.20(b) has been amended to clarify that all interest at the same price in the agency interest files is on parity with each other, unless entitled to priority in accordance with Exchange Rule 72, and that none is entitled to invoke precedence based on size.

Proposed Rule 70.20(c)(iv) has been amended to provide that Floor brokers may enter interest at various prices in their agency interest files regardless of their location prior to the opening of the Exchange, for participation in the opening trade, with respect to the orders they have received, provided they have complied with the requirements of Exchange Rule 123(e).[20] There will be no reserve capability for broker agency interest entered into the files before the open, and brokers will not have the option to exclude such interest from the specialist before and during the open. Broker agency interest entered into files before the open may participate in the opening trade on parity with the book, as the Crowd does today, in accordance with the policies and procedures governing the open. However, brokers must be in the Crowd at the open in order to participate, and any file interest entered prior to the open in securities that are not part of such Crowd must be cancelled. After the open, the reserve capability and the ability of brokers to exclude agency interest from the aggregate agency interest information available to the specialist will be available.

Similarly, the broker reserve file will not be available at the close. Broker agency interest files will participate at the close on parity with the book, as the Crowd does today; however, broker agency interest that has been excluded from the aggregate information available to the specialist will not participate in the close.

Proposed Exchange Rule 70.20 has been amended to clarify that brokers are permitted to have agency interest files at multiple price points on both sides of the market in all securities trading within the area constituting the Crowd, provided the broker has orders in such securities and has complied with the requirements of Exchange Rule 123(e).

Proposed Rule 70.20(i) clarifies that a Floor broker whose agency interest participates in an execution will be deemed to be the executing broker for that transaction.

Transactions that "Clear the Floor"—Exchange Rule 72 (III)

This amendment also proposes to modify Exchange Rule 72 (III). The rule currently provides that a transaction "clears the Floor," after which all bids and offers are deemed resubmitted simultaneously and are on parity, except that specialists must yield to limit orders on the book. The rule is amended to add that a cancellation of an entire bid or offer entitled to priority

[20] Exchange Rule 123(e) (Records of Orders) requires that all orders in any security traded on the Exchange be entered into an electronic system ("Front-End Systemic Capture" or "FESC") before they can be represented in the Exchange market.

under the rule[21] clears the Floor, after which all bids and offers are deemed to be re-entered and are on parity. This amendment is warranted because a cancellation of a bid or offer that was entitled to priority has the same effect as a trade.

''G'' Order Interest in Floor Broker Agency Interest Files—Exchange Rule 70.20(a)

This is to clarify that the provisions regarding priority, parity, and yielding will be incorporated into the programming of the Exchange's systems governing automatic executions and interest files. This includes yielding requirements for ''G'' orders, which are proprietary orders represented pursuant to Section 11(a)(1)(G) of the Act.[22] Accordingly, proposed Exchange Rule 70.20(a) is amended to permit ''G'' order interest to be included in Floor broker agency interest files.

Availability of Direct+—Exchange Rule 1002

Exchange Rule 1002 currently provides that automatic executions in securities and Trust Issued Receipts (defined in Exchange Rule 1200) are available until 3:59 p.m. and in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) until 4:14 p.m., or until one minute of any other closing time of the Exchange's Floor market.

Rule 1002 is proposed to be amended to provide that automatic executions continue to be available through the close of regular trading for that product (*e.g.,* 4:00 p.m. / 4:15 p.m.). Extending automatic executions through the close will contribute to more efficient closes and provide customer choice during a significant part of the trading day.

NYSE Auction Limit Orders ℠ (''AL'') and NYSE Auction Market Orders℠ (''AM'')—Exchange Rule 123F

Previous amendments describe two new order types—AL and AM orders. These orders provide customers with an opportunity for price improvement while retaining the possibility of automatic execution in the event the specialist is unable to obtain price improvement for the order within a reasonable period.

This amendment clarifies that Exchange systems may execute AL and AM orders at a price (consistent with the AL order's limit) that matches immediately accessible better away bids or offers.

For example, the NYSE quote is 20.15 bid, offered at 20.20. Another market is posting the national best offer of 20.18. An AL order to sell, limited to a price of 20.10 arrives. This AL order will be automatically offered at 20.19, one penny better than the Exchange best offer existing at the time the AL order arrived. The NYSE quote is now 20.15 bid, offered at 20.19. An order arrives on the Exchange to buy at a limit of 20.19. The order will automatically execute against the AL order at a price of 20.18, providing price improvement to the limit order and matching the better offer away.

In addition, the Exchange is clarifying the sequence in which orders will execute when a trade causes an automatic execution of an AL or AM order and also elects stop orders and CAP–DI (convert and parity percentage) orders. The AL or AM would be executed first, followed by stop orders and CAP–DI orders. AL and AM orders execute first because they are executable at the time of entry but seek an opportunity for price improvement. Unlike AL and AM orders, CAP–DI and stop orders are contingent orders, not executable until elected. As such, it is more appropriate for AL and market orders not designated for automatic execution to be executed first.[23]

Immediate or Cancel Orders—Exchange Rule 13

In previous amendments, the Exchange proposed to define an Immediate or Cancel (''IOC'') order as a: ''market or limited price order designated immediate or cancel is to be executed to the extent possible as soon as such order is represented in the Trading Crowd or automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004, and the portion not so executed is to be treated as cancelled.''

The above definition is amended to provide that IOC orders would be able to be entered before the Exchange opens for participation in the opening trade. Once the stock has opened, an IOC order that is not executed on the opening will be treated as cancelled.

Intermarket Sweep Order—Exchange Rule 13

Consistent with Commission Rule 600(6)(30) of Regulation NMS,[24] the Exchange proposes to amend Rule 13 to adopt a new order type—an intermarket sweep order. An intermarket sweep order is a limit order designated for automatic execution, that meets the following requirements: (1) the limit order is identified as part of an intermarket sweep in the manner prescribed by the Exchange, and (2) simultaneously with the routing of the intermarket sweep order to the Exchange, one or more additional intermarket sweep orders are routed by the entering party to execute against the full displayed size of all other protected bids (offers) in that security. These additional orders must be marked as intermarket sweep orders. The Exchange will automatically execute an intermarket sweep order on its receipt. In addition, the Exchange proposes that the customer may designate an intermarket sweep order sent to the Exchange as IOC.

The Exchange intends to identify Tape prints involving intermarket sweep orders to reflect that such transaction did not trade through better bids and offers published by other markets that were entitled to trade-through protection.

CAP–DI Orders—Exchange Rule 123A.30

Exchange Rule 123A.30 provides that specialists have the ability, subject to certain restrictions noted in the rule, to convert CAP–DI orders to participate in transactions or to bid or offer without an electing trade.

Rule 123A.30 is proposed to be amended to provide that when a specialist algorithmically price improves an order in accordance with the provisions of proposed Rule 104(e), any CAP–DI orders that have been entered and that are capable of trading at that price will be automatically converted and will trade along with the specialist in accordance with Exchange rules governing executions of converted CAP–DI orders.

Momentum LRP (''MLRP'')—Exchange Rule 1000(a)(v)(B)

Proposed Exchange Rule 1000(a)(v)(B) is amended to clarify the operation of MLRPs. Automatic executions may occur at prices at or within the MLRP range. Automatic executions that could occur at prices outside the MLRP range would cause the suspension of Direct+, as described in the previous amendments. The MLRP range is calculated by adding the greater of twenty-five cents or 1% of a security's

[21] Cancellation of part of an order retains priority for the uncancelled portion of such order. However, canceling an order and replacing it with a larger order would result in a loss of priority for the original order.

[22] 15 U.S.C. 78k(a)(1)(G).

[23] Amendment No. 2 described the execution order of CAP–DI and stop orders elected by automatic executions. *See supra* note 7.

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 17 CFR 200, 201, 230, 240, 242, 249, and 270.

price[25] to its lowest price within a rolling 30-second period and subtracting that amount from its highest price within the same period. Where there are no trades within a 30-second period, the last sale price will be used in calculating the MLRP.

Odd-Lot Orders—Exchange Rule 124.80

Exchange Rule 124 provides that odd-lot orders shall be received, processed, and executed by means of the Exchange system designated for such purpose. Odd-lot orders are executed by this system with the specialist as the contra-party at the price of certain round-lot transactions, as set forth in the rule. As such, the odd-lot execution system provides a type of automatic execution, but odd-lot trading is governed by Exchange Rule 124, not the rules governing Direct+. For this reason, prior amendments provide that odd-lot orders are ineligible for automatic execution via Direct+.

This amendment clarifies that when automatic executions are suspended, odd-lot executions also will be suspended. This will prevent odd lots from trading at prices unrelated to round-lot orders in the same security and will provide consistency in the availability of automatic executions.

Autoquoting—Exchange Rule 79A.15

Exchange Rule 79A.15 governs limit order display and provides for the autoquoting of limit orders in accordance with the rule. The rule also describes the way in which the Exchange autoquote facility is activated.

Previous amendments provide that the Exchange shall activate the autoquote facility in each security by initiating a NYSE LIQUIDITYQUOTE.® Rule 79A.15 is proposed to be amended to clarify that the opening trade or opening quotation, rather than a liquidity quote, activates the autoquote facility. This will ensure that autoquoting for each security is operational with the opening of the Exchange market.

Availability of Automatic Executions on Only One Side of the Market

This is to clarify that in the following situation, automatic executions will be available on only one side of the market: when the Exchange published quote is such that a NYSE MLRP will be triggered by a trade at the bid or offer.

For example, the market is 20.05 bid, offered at 20.10, the last sale is 20.08, and the MLRP range is 19.80–20.09 (based on high and low trades within the operative 30-second period). A trade could take place at the bid price because it falls within the MLRP, but a trade cannot take place at the offer price (20.10) because it falls outside the MLRP range. As a result, automatic executions would be suspended on the offer side, but continue on the bid side. However, autoquoting would continue, and orders and cancellations will update the book.[26]

Availability of Automatic Executions in High-Priced Securities

Previous amendments defined a high-priced security as one priced above $300 and noted that automatic executions would not be available for high-priced securities. This amendment clarifies that automatic executions will be unavailable in such securities priced at $300 or more. If the price of a security dips below $300 during the trading day, automatic executions continue to be unavailable that day. If the security closes below $300, automatic executions will be available the next trading day, even if the price during that day rises to $300 or above.

Incoming Commitments to Trade—Exchange Rule 15A.60

Previous amendments provide that an auto ex order trades against the displayed interest in the quote and any reserve interest at the bid or offer price, before sweeping. Proposed Rule 15A.60 is amended to clarify that incoming commitments to trade from other market centers will trade only with the displayed bid or offer. Incoming commitments will not trade with any reserve interest at the bid or offer price, or additional specialist volume and will not participate in sweeps.

Record of Orders/Order Tracking—Rules 123(e) and 132B

Rule 123(e) provides that an order may not be represented for execution on the Floor or placed within an agency interest file within the Display Book® system, as proposed in previous amendments, unless certain details of the order and the agency interest file have been first recorded in an electronic system on the Floor.

Rule 123(e)(7) provides that the type of order be designated: market, limit, stop, and stop limit. Previous amendments provided that auction limit be added to this list. This amendment proposes to provide that an auto ex market order be added to the rule.

Rule 132B prescribes requirements and procedures with respect to orders in any security listed on the Exchange received or originated by a member. It requires a member to immediately record data elements as detailed in the rule. If an order is transmitted to another member or is transmitted to another department of the same member, or is modified or cancelled, information detailed in the rule must be recorded. Additionally, the recipient of the order must record the order details as provided in the rule.

Similar changes to Rule 132B(b)(9) with regard to the designation of an order are proposed. Similarly, Rule 132B(a)(1)(D) is proposed to be amended to require that member and member organizations must identify which orders or portions thereof are being made part of the agency interest file pursuant to such procedures as required by the Exchange. This conforms Rule 132B with a change made in previous amendments to Rule 123(e).

Conclusion

In these rule amendments, including this Amendment No. 5, the Exchange has proposed significant changes to its systems that seek to more fully integrate the auction market with automatic trading, including changes that facilitate the participation of the specialist in the Hybrid Market. The Exchange has attempted to enable many of the functions that the specialist performs on the Floor to be conducted in the Hybrid Market. For example, specialists would establish electronic connections to the Display Book that ''see'' certain limited information before other market participants, and the specialist would be permitted to make a range of specified quoting and trading decisions based on that information designed to permit the specialist to supply greater depth and liquidity to the market. In particular, specialists could provide price improvement to incoming orders in a similar manner as they do today on the Floor.[27]

In addition, the Exchange proposes to modify the ability of the specialist to trade for its own account by amending NYSE Rule 108 to permit the specialist to trade electronically on parity with the Crowd and Floor Broker agency interest files when establishing or increasing its position in a way not currently permitted by Rule 108, but which

[25] When calculating 1% of a security's price, the result will be rounded to the nearest cent using usual rounding conventions. For example, if a security is trading at $26.49, and 1% of its price is calculated, this would be rounded down to 0.26. If a security is trading at $26.53, and 1% of its price is calculated, this would be rounded up to 0.27.

[26] *See* Amendment No. 2, *supra* note 7.

[27] As noted above, the Exchange intends to provide Floor brokers with the ability to provide electronic price improvement via a discretionary order type.

comports with existing practice on the Floor where brokers may voluntarily allow specialists to be on parity with them. The Exchange believes that this change would provide incentives for the specialist to actively participate in the Hybrid Market, which should increase liquidity and reduce volatility.

The Exchange recognizes that the Hybrid Market represents a significant change to the operation of its market by providing greater electronic access and executions within the context of the continuing benefits of the auction market. The Exchange also recognizes that views of various market participants may differ on how the ideal market should operate as a business matter. Nevertheless, the Exchange believes that the rules proposed for the Hybrid Market comply with the Act and the rules and regulations thereunder.

Hybrid Market Implementation Plan

The Exchange proposes to implement the changes described in these amendments in four phases over a period of months leading into the spring of 2006. This will help ensure proper functioning of Exchange, specialist, broker and vendor-based systems, and hybrid-related functionalities, and will promote the seamless integration of hybrid facilities into the market place. In addition, this phased implementation plan will provide time for market participants to become familiar with the different functions and features, so that they will be adequately prepared to employ them properly once the Hybrid Market is fully functional. Within each of the four phases, the various functions that will become operational during that phase will be made available over a period of several weeks.

Phase 1—Broker Agency Interest Files, Specialist Interest Files, Systemic Integration of Priority, Parity and Yielding Requirements

During the first phase of Hybrid Market implementation, the Exchange contemplates activating the Floor broker agency file to permit brokers to enter their interest at or outside the best bid and offer. This will enable brokers to gain experience using this tool. Brokers will be able to populate the reserve file, but it will be visible to the specialist in this phase. The feature permitting brokers to exclude their interest from the aggregate information available to the specialist will not be available in the phase. As noted below, the Exchange contemplates making the exclusion feature operational in Phase 2. In addition, commencing in Phase 2, broker reserve interest will not be visible to the specialist if chosen as an option by the broker.

Specialists will be able to manually layer their interest at and outside the best bid and offer during the first phase. However, they will not be able to disseminate this information via NYSE OPENBOOK® or another Exchange data distribution channel until Phase 2, as noted below. The API will not be activated during Phase 1; so specialists will not be able to use algorithms to layer their interest or to otherwise trade or quote, nor will the specialist's reserve capability be operational.

During Phase 1, the systemic programming of priority, parity, and yielding requirements, as proposed by these amendments, other than the yielding requirements for additional specialist interest, will be completed, enabling ''G'' order interest to be included in Floor broker agency files and to be handled by the book. Lastly, other system changes will be made to enhance systemic reporting of transactions and associated audit trail, such as eliminating specialist responsibility for allocation of volume in automatic executions (current Exchange Rule 1001(a)(3)).

During Phase 1, Direct+ will continue to operate as it does under the current rules and will be subject to the same restrictions and availability as set forth in Exchange Rules 1000–1005. Accordingly, the Exchange anticipates that most trading will continue to be effected in the auction market, subject to the same rules and conditions as trading on the Exchange today.

Phase 2—Specialist API and Reserve Files

Phase 2 will see the introduction of the specialist API and algorithmic functionalities for the specialists. During this phase, the specialist's systemic trading and quoting abilities, as described in these amendments, will become operational. For example, the specialist will be able to provide algorithmic price improvement pursuant to the formula described in these amendments regardless of the size of the incoming order. Algorithmic trading with the bid and offer, algorithmic ability to make new bids and offers and to withdraw previously made bids and offers, to add size to an existing bid and offer, to match better bids and offers away, to layer specialist interest at prices outside the best bid and offer, and to add size to the bid and offer will also be available. Reserve file capability and the yielding requirements for additional specialist interest will become operational during this phase. In addition, specialists will be able to disseminate information regarding their layered interest via NYSE OPENBOOK® or another Exchange data distribution channel. Specialist algorithmic interaction with auction limit and auction market orders will not yet be available. It is anticipated that this feature will become operational in Phase 3 when these new order types are introduced.

Brokers' reserve files and their ability to exclude their interest from the aggregate information available to the specialist will become operational during this phase and will no longer be visible to the specialist, if that option is chosen by the broker.

As in Phase 1, Direct+ will continue to operate according to the same restrictions and availability as set forth in Exchange Rules 1000–1005 today, and the Exchange anticipates that most trading will continue to be effected in the auction market.

Phase 3—Automatic Routing of Orders, Elimination of Direct+ Restrictions, Sweeps, LRPs, New Order Types, ''Slow'' Market Indicators, Gap Quoting

During Phase 3, most of the remaining changes discussed in these amendments will be capable of implementation:

- Automatic routing of orders to markets posting better bids and offers;
- Implementation of the sweep functionality for automatic executions;
- Activation of LRPs (both sweep and momentum), and the publication via NYSE OPENBOOK® or another Exchange data distribution channel of the most restrictive LRP;
- Availability of new order types—auction limit and auction market orders, and intermarket sweep orders;
- Availability of IOC orders for automatic executions;
- Use of indicators to identify quotations that are not immediately available for automatic executions;
- Use of indicators to identify an execution involving an intermarket sweep order;
- Implementation of gap quoting consistent with these amendments;
- Elimination of size restrictions for automatic executions;
- Elimination of 30-second restriction on the entry of auto ex orders on orders from the same person;
- Availability of automatic executions through the close;
- Elimination of Direct+ availability only to straight limit orders;
- Elimination of Direct+ suspensions due to price (*i.e.*, a trade at a price that would be more than five cents from the last trade in the stock on the Exchange);
- Elimination of Direct+ suspensions due to size (*i.e.*, a 100-share published bid or offer);

• Conversion of marketable limit orders automatically to auto ex orders; and

• Automatic executions of market orders so designated (*i.e.*, an ''NX'' market order).

In addition, the ability of specialists to have algorithmic interaction with auction limit and auction market orders will become operational.

Not all of these features will be made available at the same time during this phase, and they will be made available in all securities over a period of time.

Phase 4—New Reporting Templates, Elimination of Suspensions of Autoquote and Automatic Executions

Finally, Phase 4 will see the implementation of new reporting templates and the elimination of the suspension of autoquoting and automatic executions (when the bid or offer decrements to 100 shares), except as otherwise provided in these amendments.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [28] 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 a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of section 11A(a)(1) [29] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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

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

Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

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 Exchange 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, including whether the proposed rule change, as amended by Amendment No. 5, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–05 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2004–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–05 and should be submitted on or before July 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3386 Filed 6–28–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51909; File No. SR–Phlx–2005–37]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Payment for Order Flow and Directed Orders

June 22, 2005.

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 June 2, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Exchange. The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 Phlx proposes to modify its equity options payment for order flow program in order to establish a payment for order flow program that takes into account Directed Orders [5] pursuant to

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[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78k–1(a)(1).

[30] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange states that the term ''Directed Order'' means any customer order to buy or sell which has been directed to a particular specialist, Remote Streaming Quote Trader (defined below), or Streaming Quote Trader (defined below) by an Order Flow Provider (defined below). The provisions of Rule 1080(l) are in effect for a one-year pilot period to expire on May 27, 2006. *See* Securities Exchange Act Release No. 51759 (May