August 31, 1993.[5] The temporary approval subsequently was extended through August 31, 1995.[6] The current filing requests an extension of the temporary approval order until such time as NSCC implements its same-day funds settlement system.[7]

As discussed in detail in the approval order of September 4, 1992, the rule change permits NSCC members to satisfy their settlement obligations to NSCC and permits NSCC to satisfy its settlement obligations to its members by means of electronic intrabank funds transfers between members' accounts and NSCC's accounts at various settlement banks. Under the proposal, two types of intrabank funds transfers are available: (1) Electronic transfers whereby on settlement day NSCC pays a member by check for next-day value and the member pays NSCC by NSCC directing the settlement bank to make an irrevocable transfer from the member's account to NSCC's account for next-day availability or whereby a member pays NSCC by check and NSCC effects payment by electronic transfer (''one-way electronic transfers'') and (2) electronic transfers whereby on settlement day both NSCC and a member pay by NSCC directing the settlement banks to make irrevocable transfers for next-day value without any netting (''two-way electronic transfers'').

As a prerequisite to either NSCC or any of its members making a settlement payment by an electronic funds transfer, the rule change imposes three requirements. First, any such payment must be effected on a next-day funds availability basis.[8] Second, any such payment must be in conformity with an agreement, which must be executed by NSCC and any bank that acts as a payment intermediary, which stipulates that any such funds transfer must be effected on an irrevocable and final basis.[9] Third, any bank that acts as an intermediary for such funds transfers must meet NSCC's standards for letter of credit issuers.[10]

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[11] Section 17A(a)(1) of the Act[12] encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. Moreover, Section 17A(b)(3)(F) of the Act[13] requires that the rules of clearing agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible. As set forth in its original approval order of September 4, 1992, the Commission agrees with NSCC that substantial marketplace efficiencies should be achieved by authorizing NSCC and its members to effect electronic intrabank funds transfers to satisfy their settlement obligations. The Commission recognizes that the exchange of checks is labor-intensive and that physical movement of checks can involve loss or delay. Intrabank funds transfers should, therefore, enhance the proficiency of the transferring and the safeguarding of funds. Moreover, earlier finality of settlement provides certainty to the marketplace and serves to increase investor confidence in the markets.

The Commission is temporarily approving this proposed rule change in order that NSCC may continue the program until such time as NSCC implements its same-day funds settlement system. Furthermore, the Commission notes that this order relates only to intrabank transfers of funds available on a next-day basis. If and when NSCC desires to implement an interbank funds transfer program whereby same-day funds are transferred, NSCC will be required to submit for Commission approval a separate and comprehensive Rule 19b–4 filing.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[14] that the above-mentioned proposed rule change (File No. SR–NSCC–95–11) be, and hereby is, approved until such time as NSCC implements its same-day funds settlement system.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

[FR Doc. 95–26544 Filed 10–25–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36399; File No. SR–NYSE–95–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Permanent Approval of Its Pilot Program for Stopping Stock under Amendments to Rule 116.30

October 20, 1995.

I. Introduction

On March 31, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to approve permanently amendments to Exchange Rule 116.30 that would permit specialists to stop stock in minimum variation markets.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35908 (June 28, 1995), 60 FR 34564 (July 3, 1995). The Commission received a total of three comment letters opposing the proposal, two of which were from the same commenter.[3] The NYSE submitted one letter supporting its proposal and responding to the Peake March 1, 1995

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[5] Securities Exchange Act Release No. 31157 (September 4, 1992), 57 FR 42602 [File No. SR–NSCC–90–21].

[6] Securities Exchange Act Release No. 32836 (September 2, 1993), 58 FR 47483 [File No. SR–NSCC–93–08]; Securities Exchange Act Release No. 34573 (August 22, 1994), 59 FR 44443 [File No. SR–NSCC–94–17].

[7] It is anticipated that same-day funds settlement will be instituted in early 1996.

[8] The term ''next-day funds'' refers to funds paid today that will be available tomorrow. By contrast, ''same-day funds'' refers to funds that are immediately available.

[9] The September 4, 1992, order noted that on March 24, 1992, NSCC filed with the Commission a letter representing that NSCC: (1) Will submit for Division approval the current form of any agreement pursuant to which intrabank funds transfers are to be made and (2) will notify the Division of the identity of each bank that enters into any such contract. Letter from Peter J. Axilrod, Associate General Counsel, NSCC, to Jerry Carpenter, Branch Chief, Division, Commission (March 23, 1992).

[10] For a bank or trust company to be approved by NSCC to issue letters of credit on behalf of members for purposes of clearing fund requirements, the bank or trust company must meet specific standards in terms of: (1) Minimum levels of stockholders' equity and (2) certain credit ratings for its short term obligations as determined by Standard and Poor's Corporation or Moody's Investor Service, Inc. NSCC Rule 4, Section 1; Securities Exchange Act Release No. 29444 (July 16, 1991), 56 FR 34081 [File No. SR–NSCC–91–03] (order approving NSCC's revised standards for approved issuers of letters of credit for clearing fund purposes).

[11] 15 U.S.C. 78q–1 (1988).

[12] 15 U.S.C. 78q–1(a)(1) (1988).

[13] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Junius W. Peake, Monfort Professor of Finance, University of Northern Colorado, to Secretary, SEC, dated March 1, 1995 (''Peake March 1, 1995 Letter''); letter from Junius W. Peake, Monfort Professor of Finance, University of Northern Colorado, to Secretary, SEC, dated July 21, 1995 (''Peake July 21, 1995 Letter''); letter from Morris Mendelson, Professor Emeritus of Finance, The Wharton School of University of Pennsylvania, to Jonathan Katz, Secretary, SEC, dated August 2, 1995 (''Mendelson Letter''). Two of the letters were submitted by one commenter, with the later letter responding to NYSE's response to the commenter's first letter. *See infra* note 4. *See also infra* notes 13–15 and accompanying discussion.

Letter.[4] For the reasons discussed below, the Commission has decided to approve the NYSE's proposal.

II. Description of Proposal

The practice of stopping stock refers to a guarantee by a specialist that an order the specialist receives will be executed at no worse a price than the contra side price in the market when the order was received, with the understanding that the order may obtain a better price. Prior to the proposed rule change, Exchange Rule 116.30 permitted a specialist to stop stock only when the quotation spread was at least twice the minimum variation (*i.e.*, for most stocks ¼ point), with the specialist then being required to narrow the quotation spread by making a bid or offer, as appropriate, on behalf of the order that is stopped.

In March 1991, the Commission approved on a pilot basis [5] amendments to Exchange Rule 116.30 that permitted a specialist to stop stock in a minimum variation market (*i.e.*, an ⅛-point market currently).[6] The Commission subsequently has extended the Exchange's pilot program several times without any modifications.[7] The most recent extension of the pilot program is scheduled to expire on October 21, 1995.

The pilot program amends Rule 116.30 to permit a specialist, upon request, to stop individual orders of 2,000 shares or less, up to an aggregate total of 5,000 shares for all stopped orders (*i.e.*, multiple orders) in ⅛ point markets. A specialist may stop an order of a specified larger order size threshold, or a larger aggregate number of shares after obtaining Floor Official approval. For a specialist to stop an order in a minimum variation market, there must be a significant disparity between the bid and ask size (on the opposite side of the market from the order being stopped) that suggests the likelihood of price improvement.[8] In the 1991 Approval Order, first approving the pilot, the Commission noted that a large imbalance on the opposite side of the market would help ensure that stops in a minimum variation market occur only when the likelihood of the benefits to the customer's order being stopped far exceeds the possibility of harm to customers' orders on the limit order book.[9]

Under these limited circumstances, the pilot permitted a specialist to stop a buy (sell) order at the market upon request and guarantee that the order will receive no worse than the best then-prevailing offer (bid) price. The specialist would then increase the bid (offer) size to reflect the stopped order.[10] If the pre-existing volume at the bid (offer) is exhausted and a seller (buyer) hits the bid (offer) made on behalf of the stopped order, the buyer's (seller's) stopped order would obtain price improvement. If, however, before that event occurs another buyer's (seller's) order is executed at the offer (bid), then the specialist would execute the stopped order at the stopped price.

In the order approving the pilot procedures, the Commission requested that the Exchange study the effects of stopping stock in minimum variation markets and collect certain data to allow the Commission to evaluate fairly and comprehensively the pilot program.[11] In the Commission's 1994 Approval Order extending the pilot program until March 21, 1995, the Commission requested that the Exchange submit a fourth monitoring report on the stopping stock pilot.[12] The NYSE subsequently submitted its fourth monitoring report. The Commission then approved an extension of the pilot until October 21, 1995, so that the Commission would have additional time to evaluate the information provided in the fourth monitoring report and to ensure that Rule 116.30, as amended, provides a benefit to investors through the possibility of price improvement to customers whose orders are granted stops in minimum variation markets while unduly harming public customer limit orders on the specialist book.

III. Summary of Comments

The Commission received three negative comment letters regarding the permanent approval of the Exchange's procedures for stopping stock in minimum variation markets.[13] Two of the letters were submitted by the same commenter, Junius Peake. The NYSE Letter was in support of its proposal and in response to the Peake March 1, 1995 Letter.[14] The third negative comment letter was submitted in support of the position in the Peake letters.[15] The issues raised therein are discussed below.

Professor Peake states that the NYSE's proposal should not be approved and that all rules allowing specialists to stop stock should be repealed. In his initial letter, Professor Peake states that a specialist has inherent conflicts of interest as auctioneer, fiduciary (or agent for investors on each side of the market), and provider of immediate liquidity. Professor Peake argues that the practice of stopping stock aggravates a specialist's conflict of interest by pitting the specialist's obligation as agent to the investors who have entrusted him with limit orders against his obligation to a market order that normally would be filled against such limit orders.

Moreover, Professor Peake states that when the specialist is the only source of the quotation against which the stop is given, the specialist is improving his chance of avoiding an unwanted trade because the specialist is hoping that another customer order will arrive at a better price than at which the specialist is willing to trade. Professor Peake also asserts that a specialist as a competitor in the stocks in which he makes a market should not be given such latitude in setting execution prices.

Professor Peake believes that the conflicts inherent in the specialist's role could be avoided and the need for the stopping stock rules obviated if the

[4] *See* letter from James Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, SEC, dated July 17, 1995 (''NYSE Letter '').

[5] *See* Securities Exchange Act Release No. 28999 (Mar. 21, 1991), 56 FR 12964 (Mar. 28, 1991) (File No. SR–NYSE–90–48) (''1991 Approval Order'').

[6] NYSE Rule 62 sets forth the minimum variations for stocks traded on the Exchange. This Rule provides that bids or offers in stocks above one dollar per share shall not be made at a less variation under ⅛ of one dollar per share; in stocks below one dollar but above ½ of one dollar per share, at a less variation than 1⁄16 of one dollar per share; and in stocks below ½ of one dollar per share, at a less variation than 1⁄32 of a dollar per share. This Rule also provides that the Exchange may fix variations of less than the above for bids and offers in specific issues of securities or classes of securities.

[7] *See* Securities Exchange Act Release Nos. 30482 (Mar. 16, 1992), 57 FR 10198 (Mar. 24, 1992) (File No. SR–NYSE–92–02) (''1992 Approval Order''); 32031 (Mar. 22, 1993), 58 FR 16563 (Mar. 29, 1993) (File No. SR–NYSE–93–18) (''1993 Approval Order''); 33792 (Mar. 21, 1994), 59 FR 14437 (Mar. 28, 1994) (File No. SR–NYSE–94–06) (''1994 Approval Order''); 35309 (Jan. 31, 1995), 60 FR 7247 (Feb. 7, 1995) (File No. SR–NYSE–95–02) (''January 1995 Approval Order''); 36009 (July 21, 1995), 60 FR 38878 (July 28, 1995) (''July 1995 Approval Order'').

[8] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated December 27, 1990; 1991 Approval Order, *supra* note 5; NYSE information memo #1809, dated September 12, 1991.

[9] The 1991 Approval Order also noted NYSE's representation and the Commission's understanding that specialists would not routinely use such procedures or that Floor Officials would not routinely authorize the specialists to exceed the parameters of the proposal.

[10] The stopped order would be placed behind the existing limit orders at the bid (offer) for priority purposes.

[11] *See supra* notes 5 and 7.

[12] *See* 1994 Approval Order, *supra* note 7.

[13] *See* Peake March 1, 1995 Letter, *supra* note 3; Peake July 21, 1995 Letter, *supra* note 3: Mendelson Letter, *supra* note 3. Although the comment letters referred to File No. SR–NYSE–95–02, the Commission will treat them as comments to this rule proposal because the comments relate to the permanent approval of amendments to NYSE Rule 116.30.

[14] *See* NYSE Letter, *supra* note 4.

[15] *See* Mendelson Letter, *supra* note 3.

competitiveness of the exchanges and the over-the-counter markets was increased. Professor Peake believes that the easiest method to accomplish this would be to reduce the minimum price variation between trades to one cent. Professor Peake also believes that the entire limit order book should be displayed and accessible to all market participants.

In response to Professor Peake, the Exchange characterizes his letter as a broad attack on the concept of stopping stock that fails to analyze the specific aspects of the Exchange's proposal.[16] The Exchange argues that, notwithstanding Professor Peake's assertions of a theoretical conflict of interest in a specialist's role in representing both buyer and seller, the procedures utilized in the pilot have proven effective in providing opportunities for price improvement. The Exchange states that its studies show that more than half of eligible orders (*i.e.*, orders for 2,000 shares or less) stopped in minimum variation markets received price improvement, resulting in savings of millions of dollars to public investors. The Exchange reiterates that the proposal enables specialists to better serve investors through the ability to offer price improvement to stopped orders while having relatively little impact on the other orders on the book.

In response to the NYSE Letter, Professor Peake states that contrary to the NYSE's position, a specialist stopping stock faces conflicts of interest. Moreover, Professor Peake argues that for every investor for whom price is improved when stock is stopped, there is always another investor who will receive a worse price or be unable to complete the trade at all. Professor Peake suggests that the Commission might be able to remedy the situation by conditioning approval of the NYSE's proposal on requiring neutral exchange employees, rather than specialists, to take the responsibility for stopping stock against other investors' orders. Professor Peake admits, however, that this alternative might be awkward and overly expensive.

Finally, in his letter, Professor Mendelson agrees with Professor Peake and believes that the proposed rule change permits the specialist to violate his fiduciary responsibility. Moreover, he believes that the proposed rule change hampers price discovery because a stop delays the execution of an order.

IV. Discussion

After careful consideration of the comments, the NYSE response thereto, and the data submitted by the NYSE over the course of the pilot, the Commission has determined to approve permanently the proposed rule change. For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5)[17] and Section 11(b)[18] of the Act.

Historically, the Commission has had mixed reactions about the practice of stopping stock. The 1963 Report of the Special Study of the Securities Markets found that unexecuted customer limit orders on the specialist's book might be bypassed by the stopped orders.[19] The Commission, nevertheless, has allowed the practice of stopping stock in markets where the spread is at least twice the minimum variation because the possible harm to orders on the book is offset by the reduced spread that results and the possibility of price improvement.

Although the procedures for stopping stock in minimum variation markets do not reduce the spread between the quotes the Commission has allowed, on a pilot basis, the practice in limited circumstances where there is a substantial imbalance on the opposite side of the market from the order being stopped. This limitation is intended to assure that specialists would stop stock in minimum variation markets only in situations where the likelihood of price improvement outweighs the possibility that contra-side limit orders would be bypassed.[20] Moreover, the order size restrictions would act to ensure that most stops are granted to public customers with small orders, whose orders could most benefit from the professional handling by specialists.[21] In addition, limiting the total stops to 5,000 shares is intended to ensure that the amount of stopped stock does not become so large that there would, in effect, cease to be an imbalance on the opposite side of the market from the order being stopped (*i.e.*, less likelihood of price improvement for the stopped orders). Finally, although the spread cannot be reduced by stopping stock in minimum variation markets, specialists must change the quote bid or offer size to reflect the size of the order being stopped. This should ensure that the stopped stock will be shown in the quote.

To examine whether specialists have been using the pilot program as intended, the Commission had asked the Exchange to provide data on the stopping stock program in a minimum variation market.[22] The Exchange has submitted to the Commission four monitoring reports regarding the amendments to Rule 116.30. The commission believes that the monitoring reports, especially, the fourth (and latest) monitoring report, provide useful information regarding the effectiveness of the program during the pilot period.

Specifically, according to the NYSE's fourth report, approximately half of eligible orders (*i.e.*, orders for 2,000 shares or less) stopped in minimum variation markets received price improvement. Moreover, according to the NYSE report, stops in minimum variation markets generally have been granted when there was a significant disparity (in both absolute and relative terms) between the number of shares bid for and the number offered. In particular, the Exchange reports that for a substantial majority of stops granted, the size of the stopped order was less than, or equal to, 25% of the size of the opposite side quote. The Exchange also reports that only approximately a third of the limit orders on the opposite side of the market from all market orders stopped in eighth point markets were

[16] *See* NYSE Letter, *supra* note 4.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78k.

[19] *See* SEC, Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess., Pt. 2 (1963) (''Special Study'').

When stock is stopped, limit book orders on the opposite side of the market do not receive an immediate execution. Consequently, if the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

[20] As for limit book orders on the same side of the market as the stopped stock, the Commission believes that Rule 116.30's requirements make it unlikely that these limit orders would not be executed. Under the NYSE pilot program, an order can be stopped only if a substantial imbalance exits on the opposite side of the market. In those circumstances, the stock would probably trade away from the large imbalance, resulting in execution of orders on the limit order book.

[21] As part of its initial proposed rule change, the NYSE provided the following example illustrating the relationship between quote size imbalance and the likelihood of price improvement: Assume that the market for a given stock is quoted 30 to 30⅛, with 1,000 shares bid for and 20,000 shares offered. The large imbalance on the offer side of the market suggests that subsequent transactions will be on the bid side. Accordingly, the NYSE states that it might be appropriate to stop a market order to buy, since the delay might allow the specialist to execute the buyer's order at a lower price. After granting such a stop, under NYSE rules the specialist would be required to increase his quote by the size of the stopped buy order, thereby adding depth to the bid side of the market.

[22] *See supra* notes 5 and 7.

not executed by the end of the day.[23] Finally, with respect to Floor Official approval of waivers to the numerical limitations, the Exchange reports that, after some problems in the earlier phases of the pilot, a very high percentage of orders requiring Floor Official approval received such an approval.

The Commission, therefore, believes that the data on stopping stock in minimum variation markets show that the pilot has operated as intended and should be approved permanently. Moreover, for the reasons discussed below, the Commission believes that the commenters' criticisms of the proposals have been adequately addressed.

First, although the Commission recognizes that a specialist potentially may have multiple responsibilities with respect to limit orders on the book and to market orders, the stopping stock program in minimum variation markets is a reasonable approach to the balancing of interests.[24] The program attempts to maximize the possibility of price improvement for market order customers while minimizing the possibility that limit orders may be bypassed. This is accomplished by permitting the use of the stopping stock procedures in minimum variation markets in limited circumstances: Where the disparity between the bid and offer size appears to be significant enough that there is likelihood of price improvement. Moreover, as discussed above the data indicates that the pilot has fulfilled its expectations in that customers, for the most part, have been stopped only in markets with substantial disparities and have received price improvement in many of these situations.

Second, the Commission disagrees with Professor Peake that the specialist is using the stopping stock procedures to avoid making an unwanted trade with his own quote. The requirement that there be a large imbalance on the opposite side of the stopped order for a specialist to stop stock makes it unlikely that the specialist would be the only source of a quote.

Third, Professor Peake states that the specialist should not be given latitude in setting execution prices through stopping stock. Given that there must be a significant imbalance between the bid and offer that strongly suggests the likelihood of price improvement, the Commission does not believe that a specialist stopping stock and providing price improvement is provided with unfettered discretion in setting prices or unduly influencing market trends.[25]

Fourth, Professor Peake suggests that the decimalization of quotes and full disclosure of the limit order book would make the practice of stopping stock unnecessary.[26] Such a possibility, however, should not preclude the NYSE from developing price improvement procedures based upon existing spread parameters. Moreover, in regard to market structure concerns over order handling and transparency, the Commission recently proposed rules designed, among other things, to improve the display of limit orders.[27] The Commission does not believe that the proposed stopping stock procedures for minimum variation markets should be disapproved pending further action on the other proposals.

Fifth, Professor Mendelson states that the practice of stopping stock hampers price discovery because a stop delays the execution of an order. The Commission believes that although stopping stock might delay the execution of an order somewhat, the opportunity for price improvement for the order that is stopped outweighs concerns regarding the delay of an order execution. Moreover, the Commission believes that the practice of stopping stock may further the price discovery process of a stock because the stopped stock may receive an improved price, which might be a more accurate reflection of the interests in the market.

For all of the above reasons, the Commission believes that the NYSE proposal is consistent with Section 6(b)(5) of the Act. In addition to a determination that the NYSE proposal is consistent with Section 6 of the Act and adequately addresses the commenters' concerns, the Commission also believes that the proposal is consistent with the prohibition in Section 11(b) against providing discretion to a specialist in the handling of an order.[28] Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual role as agent and principal in executing stock transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders.[29] The Commission has stated that, pursuant to Section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by specialists.[30]

As previously noted in the 1991 Approval Order, the Commission believes that it is appropriate to treat stopped orders, even those under the pilot procedures, as equivalent to limit orders. The NYSE's rules define a limit order as an order to buy or sell a stated amount of a security at a specified price, or at a better price if obtainable.[31] The Commission believes that stopped orders are equivalent to limit orders, in this instance, because the orders would be automatically elected at the best bid or offer, or better if obtainable. Although the proposed amendments permit the specialist to employ his judgment to some extent, the Commission believes that the requirements imposed on the specialist for granting stops in minimum variation markets provide sufficiently stringent guidelines to ensure that the specialist will only implement these provisions in a manner consistent with his market making duties and Section 11(b).[32]

In permanently approving the stopping stock procedures for minimum variation markets, the Commission is relying on three aspects of the program and expects the NYSE to reiterate these requirements in an Information Memo to members. *First*, the Commission continues to believe that the requirement of a sufficient market imbalance is important to the proper application of the program. This

[23] The NYSE report finds that approximately 40% of the limit orders on the opposite side of the market from the stopped orders were canceled and approximately 30% were executed by the end of the day.

[24] *Cf.* Securities Exchange Act Release No. 36310 (Sept. 29, 1995), 60 FR 52792, 52807 (Oct. 10, 1995), where the Commission requests comment on order exposure procedures in minimum variation markets and how price improvement procedures would operate in such situations.

[25] The Commission notes that to the extent there is a large price discrepancy between sequential orders, the NYSE surveillance procedures would review whether orders were executed consistent with price parameters for continuity and depth.

[26] *See* Securities Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 36262 (Oct. 13, 1993) (seeking comment regarding decimal pricing in the Commission's proposal to require disclosure of payment for order flow).

[27] *See* Securities Exchange Act Release No. 36310 (Sept. 29, 1995), 60 FR 52792 (Oct. 10, 1995) (proposing a minimum standard for all markets that would require the display of customer limit orders under certain circumstances). In addition, as noted above the stopping stock pilot provides, to a certain extent, market transparency by requiring that the stopped orders be reflected in the quote. *See also* Division of Market Regulation, SEC, ''Market 2000, An Examination of Current Equity Market Developments'' (Jan. 1994) (''*Market 2000*'') Study IV at 5–6.

[28] Section 11(b) permits a specialist to accept only market or limit orders.

[29] *See* H. Rep. No. 1383, 73d Cong. 2d Sess. 22, S. Rep. 792, 73d Cong. 2d Sess. 18 (1934).

[30] *See* Special Study, *supra* note 19.

[31] *See* NYSE Rule 13.

[32] Moreover, stopped orders as ''limit orders'' would not bypass pre-existing limit orders on the same side of the market. Under the NYSE's procedures, specialists may not execute a stopped order before the limit order interest on the Exchange (at the same price as the stopped order) is exhausted. *See supra* note 20.

requirement should help the NYSE ensure that stops are only granted in a minimum variation market when the benefit (*i.e.*, price improvement) to orders being stopped far exceeds the potential for harm to orders on the specialist's book. *Second*, the Commission expects the NYSE to take appropriate action in response to any instance of specialist non-compliance with the stopping stock procedures in minimum variation markets. *Third*, the Commission emphasizes that Floor Official approval of an increase in the size of the stopped order or stopping more than 5000 shares must not be routine. The Commission expects the NYSE to continue to monitor compliance with these aspects of the stopping stock program through its special surveillance procedures.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NYSE–95–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–26575 Filed 10–25–95; 8:45 am]

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[33] 15 U.S.C. 78s(b0(2).

[34] 17 CFR 200.30–3(a0(12).

[Release No. 34–36395; File No. SR–PHLX–95–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Trader Registration and the Use of the Series 7A Examination

October 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 22, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' of ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 6, 1995 the Exchange submitted Amendment No. 1 to the proposed rule change.[1] 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, pursuant to Rule 19b–4 of the Act, proposes to adopt paragraph (d) to Rule 604, Registration and Termination of Registered Representatives, to require registration of persons who solicit or handle business in securities and are compensated by a member or participant organization for which the Phlx is the Designated Examining Authority (''DEA''). Only persons not otherwise required to register with the Exchange would be subject to Rule 604(d). Registration pursuant to the proposed rule would require filing Form U–4, Uniform Application for Securities Industry Registration or Transfer, with the Exchange. The Phlx also proposes to amend paragraph (c)(ii) of Rule 604, which names the Series 7A as the examination appropriate for Limited Registration/Floor Members,[2] to clarify that this is the appropriate examination for such members only, not all members who conduct a public business from the equity trading floor.

The text of the proposed rule change is as follows [new text is italicized]:

Rule 604 Registration and Termination of Registered Representatives

(c) Limited Registration/Floor Members

* * *

(ii) The appropriate examination *for a floor member* to conduct a public business from the equity trading floor is the Series 7A examination.

(d) Every person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the Designated Examining Authority (''DEA'') for the solicitation or handling of business in securities, including trading securities for the account of the member or participant organization, whether such securities are those dealt in on the Exchange or those dealt in over-the-counter, who is not otherwise required to register with the Exchange by paragraph (a) of this rule or another rule shall file Form U–4, Uniform Application for Securities Industry Registration or Transfer, with the Exchange.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Currently, the 600 series of rules generally govern registration of members.[3] Rule 604(a) requires Series 7 Registered Representatives to register with the Exchange on Form U–4. In addition, the Exchange requires Limited Registration/Floor Members to register pursuant to Rule 604(c). However, there is no requirement for proprietary ''upstaires'' traders (*i.e.*, those who trade for the firm's own account) to register with the Exchange. This proposal adopts such a requirement as Rule 604(d).

The Commission recently noted the absence of such a requirement during a Commission oversight examination of a Phlx participant organization. The Exchange has thus determined to require a firm's proprietary traders to register with the Exchange and believes that this requirement will enhance the Exchange's examination program. Specifically, Exchange files would contain a complete record of those trading for a member of participant organization, not just persons handling customer accounts. The Form U–4 would provide background information on such traders as well as a basis for further Exchange research if needed.

Similar to Rules 604(a) and (c), the proposal would require registration on Form U–4. This form is currently used in the Exchange's membership application process for prospective members or participants, as well as the officers, shareholders and directors of such organizations. In order to prevent duplicative registration, the proposal would not apply to persons who are otherwise registered with the Exchange.

The proposal also seeks to amend paragraph (c)(ii) of Rule 604. The

[1] *See* letter from Gerald O'Connell, First Vice President Market Regulation and Trading Operations, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated October 3, 1995. In Amendment No. 1 the Exchange explained the purpose of its proposed amendment to Rule 604(c)(ii).

[2] A Limited Registration/Floor Member is a member who conducts a public business that is limited to accepting orders from professional customers for execution on the trading floor. The Series 7A examination is a module of the Series 7 (the General Securities Registered Representative Examination) developed to test the knowledge of relevant securities laws and Exchange rules required of such members. *See* Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993) (File No. SR–NYSE–93–10).

[3] *See, e.g.*, Rule 600, Addresses of Members.