SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47091; File No. SR–NYSE–2002–55]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Dissemination of Liquidity Quotations

December 23, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2], notice is hereby given that on October 28, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 20, 2002, the Exchange filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[4]

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 19, 2002 (''Amendment No. 1''). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, further details on the display of additional quotations in stocks to show market depth.

[4] The Commission has received one comment letter on the proposed rule change. *See* letter from Thomas F. Secunda, Bloomberg, L. P., to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''Bloomberg Letter''). The commenter notes that the NYSE intends to disseminate liquidity quotations under the vendor and subscriber contracts that govern NYSE OpenBook service. The commenter believes that these contracts should be filed as a proposed rule change, pursuant to Section 19(b) of the Act. 15 U.S.C. 78s(b). The commenter also believes that these contracts inappropriately discriminate against vendors and that the dissemination of liquidity quotations under such agreements raises greater substantive issues than those raised by the NYSE's restrictions on redissemination of its NYSE's OpenBook service because liquidity quote information is ''* * * as critical as the national best bid and offer to those wishing to submit orders.''

The Commission notes that in approving the NYSE's OpenBook service, the Commission did not also consider and approve the vendor agreements because such agreements were not a part of the NYSE's OpenBook proposal. Indeed, in its order approving the NYSE's OpenBook service, the Commission stated that the NYSE's restrictions on vendor redissemination and enhancement, integration or consolidation of OpenBook data are on their face discriminatory, and may raise fair access issues under the Act. *See* Securities Exchange Act Release No. 45138 (December 18, 2001), 66 FR 66491 (December 26, 2001). We do not believe that it is necessary to resolve the issue of whether the contracts need to be filed under 19(b) prior to publishing this proposed rule change for comment because the NYSE's proposal on liquidity quotations, like its previous proposal on the OpenBook service, does not include, and therefore does not seek approval of, the agreements to which the commenter objects.

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

The Exchange proposes to amend its rules to permit the display and use of quotations in stocks traded on the Exchange to show additional depth in the market for those stocks. The additional quotations will be referred to as ''liquidity quotes.'' Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

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Dissemination of Quotations

Rule 60 (a)(1) For purposes of this rule, the terms ''quotation vendor'', ''bid'', ''offer'', ''reported security'', ''quotation size'', ''published bid'', ''published offer'', ''published quotation size'', ''make available'', ''aggregate quotation size'' and ''specified persons'' shall have the meaning given to them in SEC Rule 11Ac1–1.

(2) For the purposes of this rule and SEC Rule 11Ac1–1 as applied to the Exchange and members on the Floor, the term ''responsible broker or dealer'' shall mean, with respect to any bid or offer for any reported security made available by the Exchange to quotation vendors, the specialist in such reported security, who shall be the responsible broker or dealer to the extent of the quotation size he specifies.

(b) Each member who is a responsible broker or dealer on the Floor shall, in addition to meeting his obligations as set forth in paragraph (c) of SEC Rule 11Ac1–1 as applicable to such member under this rule, also abide by such rules and procedures adopted by the Exchange, in order to enable the Exchange to meet its quotation dissemination requirements under paragraph (b) of SEC Rule 11Ac1–1 as applicable to the Exchange under this rule.

(c) With respect to paragraph (b) of SEC Rule 11Ac1–1, the Exchange shall, at all times it is open for trading, collect, process and make available to quotation vendors the highest bid and the lowest offer, and the quotation size or the aggregate quotation size associated therewith, in each reported security in accordance with paragraph*s* (e) *and (g)* below (excluding any such bid or offer which is executed immediately after being made in the crowd and any such bid or offer which is cancelled or withdrawn if not executed immediately after being made) except during any period when trading in such reported security has been suspended or halted, or prior to the commencement of trading in such reported security on any trading day. Bids and offers on the Exchange, and associated quotation sizes and aggregate quotations sizes, shall be collected, processed and made available to quotation vendors as follows:

(1) Normal Mode—Unless otherwise designated pursuant to the provisions of subparagraphs (c)(2), the market on the Floor for each reported security shall be considered to be in a ''normal mode''. While such market is in a normal mode, only the specialist shall determine the size to be communicated to the Reporter and shall be deemed the ''responsible broker or dealer'' with respect to any bid or offer made available by the Exchange to quotation vendors.

(2) Non-Firm Mode—With respect to subparagraph (b)(3) of SEC Rule 11Ac1–1, a Floor Governor, Senior Floor Official, or Executive Floor Official (or two Floor Officials in the event a Floor Governor, Senior Floor Official, or Executive Floor Official is not available) shall have the power to determine that the level of trading activity or the existence of unusual market conditions are such that the Exchange is incapable of collecting, processing and making available to quotation vendors bids, offers and quotation sizes with respect to one or more reported securities in a manner which accurately reflects the current state of the market on the Floor. Such officials are sometimes referred to in this subparagraph (2) as the ''Initiating Official(s)''. Upon making of such a determination, the specialist shall designate the market in such security to be in a ''non-firm mode'', which shall remain in effect for a period not to exceed 30 minutes pending review as described below.

Whenever a Floor Governor, Senior Floor Official, or Executive Floor Official or two Floor Officials make any such determination with respect to any reported security, he or they shall immediately notify the Market Surveillance Division of the Exchange. During any period that the market in a reported security is in a non-firm mode, members on the Floor shall be relieved of their obligations under SEC Rule 11Ac1–1 as applicable to such members under this Rule 60 with respect to such reported security, but the specialist shall report bids and offers or revised bids and offers in such reported security, for publication, on a ''best efforts'' basis.

During any period that the market in a reported security is in a non-firm mode, the Initiating Official(s) shall monitor the activity or condition which formed the basis for his or their determination. No more than 30 minutes after such market has been designated to be in a non-firm mode, the specialist shall review the condition of such market with the Initiating Official(s). In the event that the Initiating Official(s) are not available, the specialist shall review such condition with another Floor Governor, Senior Floor Official, or Executive Floor Official (or two Floor Officials if a Floor Governor, Senior Floor Official, or Executive Floor Official is not available). Continuation of the non-firm mode for longer than 30 minutes shall require the reaffirmation of the reviewing Floor Governor, Senior Floor Official, or Executive Floor Official or Floor Officials. Such review and reaffirmation shall occur not less frequently than every 30 minutes thereafter while the non-firm mode is in effect.

When the Exchange is once again capable of collecting, processing and making available to quotation vendors bids, offers, quotations sizes and aggregate quotation sizes with respect to a reported security that is in a non-firm mode in a manner which accurately reflects the current state of the market on the Floor, the Initiating Official(s) or, in the event he or they are not available, another Floor Governor, Senior Floor Official, or Executive Floor Official (or two Floor Officials if a Floor Governor, Senior Floor Official, or Executive Floor Official is not available) shall immediately renotify the Market Surveillance Division and the specialist in such reported security shall designate the market therein to be in a normal mode. Members on the Floor shall thereupon once again be obligated under SEC Rule 11Ac1–1 as applicable to such members under this Rule 60 with respect to such reported security.

(d) *In addition, the Exchange may disseminate a ''liquidity bid'' (at a price and size below the highest bid) and/or a ''liquidity offer'' (at a price and size above the lowest offer). The liquidity bid and liquidity offer shall reflect all trading interest represented in the highest bid and lowest offer, as well as trading interest (represented by orders on the specialist's book, members in the Crowd, and the specialist as dealer) executable at prices down to (in the case of a liquidity bid) the liquidity bid price, or up to (in the case of a liquidity offer) the liquidity offer price. Depending on market conditions in any particular security, the highest bid or offer and the liquidity bid or offer may be the same. The liquidity bid and offer shall be ''firm quotations'' available for orders to trade with. The specialist shall be the ''responsible broker-dealer,'' for all liquidity bids and offers. The Exchange shall not disseminate a liquidity bid or offer during any period when trading in the subject security has been suspended or halted, or prior to the commencement of trading in such security on any trading day. The provisions of Rule 60(c)(1) and (2) shall be applicable to liquidity bids and liquidity offers.*

(i) *Execution of Market Orders When Liquidity Bid or Offer Is Disseminated*

In the case of a market order to sell of a size greater than the highest bid size, the order shall be executed against such highest bid (or crossed by the specialist if agent for the order) with the balance of the order being executed (to the extent possible based on the size of the liquidity bid) at the higher of the liquidity bid price or the price at which orders on the book would not be traded-through. Auction market crossing procedures should be followed, as appropriate, to ensure proper execution of orders. The same principles apply in the case of a market order to buy.

(ii) *Execution of Limit Orders When Liquidity Bid or Offer Is Disseminated*

In the case of a limit order to sell whose size is greater than the highest bid size, but which is limited to a price executable at or above the liquidity bid price, the order shall be executed first against the highest bid price (or crossed by the specialist if agent for the order), with the balance of the order being executed (to the extent possible based on the size of the liquidity bid) within its limit price at a price at which orders on the book would not be traded-through. Auction market crossing procedures should be followed, as appropriate, to ensure proper execution of orders. The same principles apply in the case of a limit order to buy.

(iii) *Execution of XPress Orders When Liquidity Bid or Offer Is Disseminated*

An XPress order may be priced at either the highest bid or offer price if XPress eligible) or the liquidity bid or offer price (if XPress eligible). An XPress order priced at the highest bid or offer price shall be executed in accordance with the Exchange's XPress order execution procedures. An XPress order to buy priced at the liquidity offer price shall be executed at the lower of the liquidity offer price or the price at which the XPress order can be filled without trading through orders on the book, unless price improvement can be offered to the XPress order in accordance with the Exchange's XPress order execution procedures. The same principles shall apply in the case of an XPress order to sell priced at the liquidity bid price.

If the specialist receives two XPress orders within a nearly simultaneous time frame, one priced at the best bid (offer), and the other priced at the liquidity bid (offer), both orders shall be executed in accordance with the Exchange's procedures for the execution of XPress orders. Both orders shall be exposed to the Crowd for price improvement. Those portions of the orders that do not receive price improvement shall be executed against the XPress bids (offers), which may not then be traded against by other members pursuant to the Exchange's procedures for the execution of XPress orders.

(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 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 with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the specialist's 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 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 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, 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.*

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.

[(d)] *(f)* In addition to meeting its obligations as set forth in paragraph (b) of SEC Rule 11Ac1–1 as applicable to the Exchange under this Rule 60, the Exchange shall make available to quotation vendors and shall communicate to other specified persons the appropriate mode identifier in effect as to each reported security which shall, in the case of the initiation and termination of non-firm modes, effect the requisite notification and re-notification of specified persons under subparagraph (b)(3) of SEC Rule 11Ac1–1.

[(e)] *(g)* (1) Each specialist shall promptly report in each reported security in which he is registered the highest bid and lowest offer made in the trading crowd in such security and the associated quotation size that he wishes to make available to quotation vendors.

(2) Each specialist who is a responsible broker or dealer on the Floor shall:

(i) Promptly report as to the reported security whenever a bid, offer or quotation size he previously reported is to be revised; and

(ii) Promptly report as to the reported security whenever a bid and/or offer he previously reported is to be cancelled or withdrawn.

Supplementary Material

.10 No specialist shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist who is responsible for the published bid or published offer shall be obligated to the extent set forth in paragraph (c) of Rule 11Ac1–1 but only to the extent of one unit of trading in the reported security in question.

.20 While the market for a reported security is in a ''normal mode'', the specialist shall honor any bid or offer then being displayed by quotation vendors which is erroneous, up to the quotation size then being so displayed, which has been displayed for six minutes or more on the Price Display Unit at the post. Provided, however, that the specialist shall not be required to honor such a bid or offer which is erroneous as to either price or size or both if:

(i) As a matter or record, an execution, cancellation or update of such bid or offer was in effect or in process;

(ii) In honoring such a bid or offer, the resulting transaction would violate applicable Exchange rules or federal regulations;

(iii) Equipment failure prevents the specialist from monitoring such bid or offer; or

(iv) The price sought upon such quotation is above the current bid or below the current offer, on the Floor, by (a) one-half point or more in the case of a reported security trading at $50 or less or (b) one point or more in the case of a reported security trading at more than $50.

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Definitions of Orders

Rule 13

.40 The minimum number of shares for an XPress order is [15,000 shares] *(i) 15,000 shares for an XPress order seeking to trade with the best bid or offer, and (ii) the size of the liquidity bid or offer for an XPress order seeking to trade with such liquidity bid or offer. With respect to the best bid or offer, the* [The] published bid or offer must be at the same price for no less than 15,000 shares for at least 15 seconds in order to be indicated as an XPress Quote. *With respect to the liquidity bid or offer, the published bid or offer must be the same price for at least 15 seconds in order to be indicated as an XPress Quote.*

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Miscellaneous Requirements

Rule 123A

Supplementary Material

.10 through .25—No Change.

.30 A specialist may accept one or more percentage orders.—When accepting more than one order, the specialist must make every effort to inform the entering brokers that they will be participating with another order or orders. Information of this type would alert brokers to the fact that each order will do less than 50% of the volume. When the specialist is handling more than one percentage order, each such order will be on parity with the other. When an odd amount of shares is involved, for example, 300 shares, and a specialist holds two percentage orders, he must give the extra 100 shares to the broker having priority on a time basis. Therefore, all percentage orders given to a specialist must be time-stamped by the specialist at his Post location.

If a specialist feels he cannot properly handle a number of percentage orders at one time, he should call in a Floor Official to discuss the situation.

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.

Special Conversion Instructions. In addition to the conversion instructions discussed immediately above, the entering broker(s) may further instruct the specialist that he may, but shall not be required to, convert a percentage order to buy into a regular limit order for transactions effected on ''zero plus'' and ''plus'' ticks. Conversely, the entering broker(s) may further instruct the specialist that he may, but shall not be required to, convert a percentage order to sell into a regular limit order for transactions effected on ''zero minus'' or ''minus'' ticks. (These ticks are hereinafter collectively referred to as ''destabilizing ticks''.) Pursuant to these special conversion instructions, the specialist may convert a percentage order on a destabilizing tick only where *(i) the transaction for which the order is being converted is for less than 10,000 shares or a quantity of stock having a market value of less than $500,000 and the price at which the converted percentage order is to be executed is no more than 0.10 away from the last sale price; or (ii) the transaction for which the order is being converted is for 10,000 shares or more or a quantity of stock having a market value of $500,000 or more and the price at which the converted percentage order is to be executed is no more than 0.25 away from the last sale price.* [(i) the transaction for which the order is being converted is for 10,000 shares or more or a quantity of stock having a market value of $500,000 or more (whichever is less); and (ii) the price at which the converted percentage order is to be executed is no more than 0.25 point away from the last sale price; provided, however, that this price parameter may be modified, in appropriate cases, with the prior approval of a Floor Official and the written consent of the broker who entered the order.]

The specialist shall not execute a converted percentage order pursuant to the preceding paragraph at consecutively higher or lower prices such that consecutive up or down ticks (as the case may be), follow one another in rapid succession, unless he obtains the prior approval of a Floor Governor, Senior Floor Official, or Executive Floor Official. In determining whether to grant such prior approval, the Floor Governor, Senior Floor Official, or Executive Floor Official shall consider any changes in overall market conditions, and any changes in buying or selling interest in the stock in question. Where a specialist reasonably believes, based on prevailing market conditions (for example, a brief period of time where there is an influx of buying/selling interest and a ''fast market'' condition) that it may be appropriate and necessary for him to convert percentage orders, on destabilizing ticks, in a series of trades which, while not consecutive, may be effected within a short period of time, the specialist shall first seek the approval of a Floor Governor, Senior Floor Official, or Executive Floor Official. In granting such approval, the Floor Governor, Senior Floor Official, or Executive Floor Official should, based on his evaluation of the buying/selling and contra-side interest in the market, determine a price a reasonable amount away from the market, to which price the specialist may convert percentage orders in a series of non-consecutive trades. As this price is approached, the specialist shall again consult with a Floor Governor, Senior Floor Official, or Executive Floor Official, who will re-evaluate the situation at that time. Any subsequent approvals by the Floor Governor, Senior Floor Official, or Executive Floor Official shall follow the principles discussed immediately above.

The specialist may convert a percentage order on a stabilizing tick to make a bid or offer in such size as he deems appropriate. The specialist may convert a percentage order on a destabilizing tick to make a bid or offer in such size as he deems appropriate to add size to prevailing bid or offer.

In addition, the specialist may, except as provided below, convert a percentage order on a destabilizing tick to establish a new bid in such size as he deems appropriate, (i) immediately following a transaction where such transaction has cleared the Floor of bids and offers, or (ii) to narrow the quotation spread, provided that no such bid may be more than 0.10 of a point higher than the last sale. The specialist's conversion of a percentage order to establish a new bid pursuant to (i) and (ii) above shall be further subject to the following conditions:

(1) Where the specialist has converted a percentage order to buy on a destabilizing tick [to participate in a transaction of at least 10,000 shares or in a transaction with a quantity of stock having a market value of $500,000 or more (whichever is less)] as otherwise permitted by this rule, he may not convert a percentage order to buy to establish a new bid at a price which is higher than the price of the transaction, unless there is an intervening transaction at a price that is independent of the price established by the specialist through the conversion of a percentage order.

(2) Where the specialist has converted a percentage order to buy to establish a new bid that is higher than the last sale price, with the result that a transaction is effected at the bid price, he may not convert a percentage order to buy to participate in a trade [of at least 10,000 shares or a quantity of stock having a market value of $500,000 or more (whichever is less)] as otherwise permitted by this rule, unless there is an intervening transaction at a price that is independent of the price established by the specialist through the conversion of a percentage order.

(3) Where the specialist has converted a percentage order to buy to establish a new bid that is higher than the last sale, he may not convert a percentage order to subsequently establish a higher bid, unless there is an intervening transaction at a price independent of the price established by the specialist through the conversion of a percentage order.

The same principles shall apply in the case of a specialist's conversion of percentage orders to sell. With the prior approval of a Floor Governor, Senior Floor Official, or Executive Floor Official, the specialist may convert a percentage order to make a destabilizing bid or offer at a price which would otherwise be prohibited under the limitations and conditions stated above.

Any percentage order or portion thereof converted to make a bid or offer shall be considered as a limit order on the book and will be ahead of other limit orders subsequently received by the specialist at that price, and any such bid or offer made pursuant to such order shall have the same standing in the market as would be provided any other bid or offer under the Exchange's auction market rules and procedures dealing with priority, parity, and precedence. Where the specialist has converted a percentage order to make or add to a bid (offer) as permitted by this rule, and subsequently additional buying or selling interest enters the market and establishes a different higher bid (lower offer), the original converted order or portion thereof shall retain its status on the book as a limit order at the price at which it was converted. However, unless the order has been converted at its maximum limit price, if a transaction is effected upon such higher bid (lower offer), and another bid (offer) is made at a price higher (lower) than such transaction, the original converted order or portion thereof shall be treated as a cancelled order on the book and revert to its original status as a percentage order subject to subsequent election or further conversion as permitted by this rule. Where the specialist has converted a percentage order to make or add to a bid or offer as permitted by this rule, and subsequently additional size is added to a prevailing bid or offer on the opposite side of the market from the converted percentage order, or a different bid or offer is established on the opposite side of the market from the converted percentage order, the specialist may cancel the converted order or portion thereof if he intends to reconvert the order to trade with the interest on the opposite side of the market, and such trade is otherwise permitted by this rule. The specialist must document the status of a converted percentage order on the book as a limit order at the price it was converted.

Notwithstanding the provisions of this Rule permitting percentage orders to be converted on destabilizing ticks, where a member holds orders of 10,000 shares or more or a quantity of stock having a market value of $500,000 or more (whichever is less) to buy or sell a particular stock which he proposes to cross at or within the prevailing market, the specialist may not, unless asked to do so by the member with the cross (assuming the cross is at or within the 0.25 point price parameter of this Rule), convert any percentage order on a destabilizing tick for execution in such proposed cross transaction unless the specialist can (at or within the 0.25 of a point price parameter specified in this Rule, and within the limit price of the order) provide a better price to one side or the other of the proposed cross.

When the specialist is holding one or more percentage orders with special instructions permitting conversions on destabilizing ticks as provided in this Rule, and a member who holds orders to buy and sell 10,000 shares or more or a quantity of stock having a market value of $500,000 or more (whichever is less) proposes to cross such orders at or within the prevailing market, the specialist shall not, unless asked to do so by the member with the cross, trade for his own account with either the bid or the offer side of such cross (as the case may be), where the effect of such proprietary trade would be to establish a new last sale price, and thereby extend the 0.25 point price parameter specified in this Rule.

In any situation where the specialist is taking or supplying for his own account the security named in a percentage order entrusted to him, the specialist and the entering broker shall comply with the procedures for confirmation of transactions specified in Exchange Rule 91.10.

When converting a percentage order into a limit order, the specialist shall give priority to conventional limit orders on his book at that price on the same side of the market, which orders were entered before the conversion. This means that the converted percentage order may receive an execution at any particular price only after all such conventional limit orders on the book at that price are satisfied.

The entering broker may permit the specialist to be on parity with his order. However, when the specialist is handling more than one percentage order, he may not be on parity with any such order unless permission has been obtained from all brokers for whom he is holding percentage orders in the particular stock. If a specialist is on parity with one or more percentage orders, at no time may the specialist participate for his own account in an amount in excess of what each percentage order would receive, except that the specialist may participate for his own account to an extent greater than any particular percentage order where the size specified on such order has been satisfied. A specialist on parity with a percentage order remains subject to the limitations in Exchange Rule 104.10 as to transactions for his own account effected on destabilizing ticks. A specialist on parity with a percentage order shall inform the entering broker at the time the order is entered, whether or not he intends to buy or sell, as the case may be, along with the order. Specialists must make every effort to execute percentage orders in amounts which correspond as nearly as possible to the percentage specified therein.

The elected portion of a percentage order shall be handled as a new limited price order and shall take its place on the specialist's book as though it were a new order received at the time of the electing transaction. When a specialist holds more than one percentage order each individual order shall be elected to the extent of the full amount of the electing transaction; except that percentage orders held by a specialist shall not be elected by any portion of volume which results from the execution of a previously elected or converted portion of a percentage order that is on the same side of the market.

All percentage orders and special instructions related thereto, and any modifications or cancellations thereof shall be in writing. (See also Rule 13 and ''Records of Specialists'' at Rule 121.)

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Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Rule 1000 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 and shall be immediately reported as NYSE transactions, unless:

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

(ii) The NYSE's published quotation has been gapped for a brief period because of an influx of orders on one side of the market, and the NYSE's published quotation size is one hundred shares at the bid and/or offer;

(iii) With respect to a single-sided auto ex order, a better price exists in another ITS participating market center;

(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 100-share bid and/or offer;

(vi) Trading in the subject security has been halted.

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.*

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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

The Exchange is required by SEC Rule 11Ac1–1 under the Act [5] to disseminate the highest bid and lowest offer in its market (*i.e.*, the ''best quote'' available for dissemination). The Exchange believes that the advent of decimal trading has resulted in many more price intervals which can be the best quote, with the result that the highest bid and lowest offer may not reflect the true depth of the market at prices reasonably related to the last sale.

The Exchange is proposing to address this issue by providing for the dissemination, in selected securities as appropriate, of a ''liquidity bid'' and a ''liquidity offer,'' which would reflect aggregated trading interest at a specific price interval below the best bid (in the case of a liquidity bid) or at a specific price interval above the best offer (in the case of a liquidity offer). The specific price interval above or below the best bid and offer, as well as the minimum size of the liquidity bid or offer, would be established by the specialist in the subject security. Liquidity bids and offers would include orders on the specialist's book, trading interest of brokers in the trading crowd, and the specialist's dealer interest, at prices ranging from the best bid (offer) down to the liquidity bid (up to the liquidity offer).

According to the Exchange, it would not be mandatory to disseminate a separate liquidity bid and/or offer. In certain instances, depending on the depth of the market, the Exchange represents that the best bid (offer) and the liquidity bid (offer) may converge. In such case, the Exchange would make available the same price and size both as the best (bid) offer over the Consolidated Quotation System (''CQS'') and as the liquidity bid (offer) via the Exchange's Common Access Point (''CAP''). In any event, all disseminated bids and offers (best and liquidity) would be deemed to be ''firm quotations'' that are available for interaction with trading interest. Orders seeking to trade against the best and liquidity bids/offers would be executed in accordance with NYSE auction procedures and NYSE procedures governing the execution of XPress orders.

The NYSE proposes to amend NYSE Rule 60 (''Dissemination of Quotations'') to provide for the dissemination of

[5] 17 CFR 240.11Ac1–1.

liquidity bids and offers. The proposed amended rule contains a discussion of how market and limit orders, as well as XPress orders, would be executed against best and liquidity bids and offers.

Market Orders

When a liquidity bid is published in addition to a best bid, a market order to sell of a size greater than the size of the best bid will be executed to the extent possible against the best bid (or the order will be crossed by the specialist when he or she is acting as agent for the order using the auction market procedures in NYSE Rule 76, which calls for the member to publicly bid and offer on behalf of the orders before making a transaction with him—or herself) with the balance of the sell order being executed at the higher price of the liquidity bid or at the price of other orders on the book below the best bid, but above the liquidity bid. For example, assume the best bid is $20.10 for 200 shares, while the liquidity bid is $20.05 for 10,000 shares, with no other bids in between the best and liquidity bids. If a market order to sell 1,000 shares is received by the specialist, 200 shares would trade at the best bid price of $20.10, and 800 shares would trade at $20.05, the liquidity bid price, unless the specialist in crossing the order obtains price improvement for it. If there were other bids on the book between the best and liquidity bids, the sell market order could receive executions at those prices. For example, if, in addition to the best and liquidity bids of $20.10 and $20.05 in the previous example, there were also a bid of $20.07 for 300 shares, the market order to sell would be executed as follows—200 shares at the best bid of $20.10, 300 shares at $20.07 and 500 shares at the liquidity bid of $20.05, unless the specialist in crossing the order obtains price improvement for it. Market orders to buy would follow the same principles using the best and liquidity offers.

Limit Orders

NYSE is proposing that similar procedures would be used for the execution of limit orders when there are liquidity bids and offers as well as best bids and offers. In that regard, when a liquidity bid is published in addition to a best bid, a limit order to sell of a size greater than the size of the best bid, but which is limited to a price executable at or above the liquidity bid price, would be executed first against the best bid (or crossed as explained above), with the balance of the order being executed within its limit price at a price at which orders on the book will not be traded through. For example, assume there is a best bid for 200 shares of $20.10 and a liquidity bid of $20.05 for 10,000 shares. In addition, there is a bid for 500 shares at $20.07. If a limit order to sell 1,000 shares at $20.05 is received by the specialist, it would be executed as follows—200 shares at $20.10, 500 shares at $20.07 and 300 shares at the liquidity bid of $20.05. In all these examples, however, as with market orders, the specialist would follow NYSE auction market crossing procedures in an effort to obtain price improvement for the order. Limit orders to buy would follow the same principles.

Execution of XPress Orders

An XPress order is an order of a specified minimum size that is to be executed against a displayed XPress quote, or at an improved price, if obtainable. In order to be indicated as an XPress quote, a published bid or offer must be for no less than the minimum share size, currently 15,000 shares, at the same price for no less than 15 seconds.

With respect to liquidity quotes, the Exchange proposes to amend Supplementary Material .40 of NYSE Rule 13 (''Definitions of Orders'') to provide that a liquidity bid or offer, regardless of size, will be XPress eligible if it has been published for at least 15 seconds. The Exchange expects that the size of liquidity bids and offers will be of a size that represents significant interest for a stock and will, in many stocks, be greater than 15,000 shares. However, where the share size of the liquidity bid or offer does not equal 15,000 shares, the Exchange believes that institutional interest in trading at the liquidity price may still be present, and that utilizing the XPress trading protocol will be an appropriate way for this interest to access such displayed greater liquidity. A liquidity quote will still be required to be at the same liquidity price for at least 15 seconds to be eligible as a quotation against which an XPress order may be executed.

Further, the Exchange proposes to amend NYSE Rule 60 to provide that an XPress order may be priced at either the best bid or offer price if XPress eligible (*i.e.*, for at least 15,000 shares for at least 15 seconds), or priced at the liquidity bid or offer price, if, again, XPress eligible. An XPress order to buy priced at the liquidity offer price will be either executed at that price, or a price that will allow an XPress order to be filled without trading through orders on the book. The Exchange represents that specialists will seek price improvement for XPress orders in accordance with the Exchange's procedures for the execution of XPress orders.

The Exchange proposes that if a specialist receives two XPress orders within a nearly simultaneous time frame, one priced at the best bid (offer), and the other priced at the liquidity bid (offer), both orders will be executed in accordance with the Exchange's procedures for the execution of XPress orders.[6] Both orders will also be exposed to the trading crowd for price improvement. Those portions of the orders that do not receive price improvement will be executed against the XPress bids (offers), which may not then be traded against by other members pursuant to the Exchange's procedures for the execution of XPress orders.

Automated Dissemination of Quotations

In conjunction with the dissemination of dual quotations, the Exchange proposes to provide for the automated dissemination of the best bid and offer as SuperDOT limit orders are received systemically. The Exchange notes that this is a change to the current practice whereby specialists are responsible for disseminating bids and offers. NYSE Rule 60 would be amended to provide that the Exchange will autoquote the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's 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 with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price. NYSE Rule 60 would also be amended to provide that autoquoting will include: (i) Adding size to the best and liquidity bids/offers as additional limit orders are received; and (ii) reducing the size of the best and liquidity bids/offers as limit orders on the book are executed or cancelled. However, the Exchange notes that *de minimis* increases or decreases in the size of limit orders on the 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.

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

[6] *See* Amendment No. 1, *supra* note 3.

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.

In conjunction with autoquoting of bids and offers, NYSE Rule 1000 (''Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation'') would be amended to provide that a NYSE Direct+® (''NYSE Direct+'') order equal to or greater than the size of the published bid/offer will exhaust the entire bid/offer, rather than decrease it to 100 shares as is the case today.[7] The purpose of this change is to facilitate the autoquoting of the next highest bid/lowest offer. The unfilled balance of the NYSE Direct+ order would be displayed in the auction market as a SuperDOT limit order.

The Exchange believes that the proposed automated dissemination of the best bid and offer suggests a need to amend Supplementary Material .30 to NYSE Rule 123A (''Miscellaneous Requirements'') to enable specialists to trade percentage orders against incoming SuperDOT orders. Currently, specialists may bid or offer (within $0.10 of the last sale) on behalf of a percentage order, and an incoming SuperDOT order may then trade against such bid or offer. The specialist may not ''reach across the market'' to trade a percentage order against a bid or offer in a ''destabilizing'' transaction (bid above the last sale or sell below the last sale) unless the trade is for at least 10,000 shares or a quantity of stock with a market value of at least $500,000. With the automating of SuperDOT bids and offers, specialists would not be permitted to interact with such orders on behalf of percentage orders as they do today because they cannot ''reach across the market'' to effect smaller size trades. Thus, the Exchange is proposing to amend NYSE Rule 123A.30 to permit specialists to ''reach across the market'' with percentage orders to effect trades of less than 10,000 shares or a quantity of stock having a market value of less than $500,000. Specialists could not ''reach across the market'' more than $0.10 from the last sale to effect these smaller size trades if the trade would be destabilizing. This $0.10 limitation is the same as the current limitation on making destabilizing bids or offers against which incoming orders may trade.

2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is in Section 6(b)(5) of the Act,[8] which requires 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 Exchange believes that the proposed rule change also supports the principles of Section 11A(a)(1) of the Act,[9] in that it seeks to assure the availability to market participants of information with respect to market interest in securities traded on the Exchange, and thereby promote economically efficient execution of securities transactions.

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

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

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

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

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number in the caption above and should be submitted by January 23, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33118 Filed 12–31–02; 8:45 am]

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[7] NYSE Rule 1001(c) currently provides that if executions of auto ex orders have traded with all trading interest reflected in the Exchange's published bid or offer, the Exchange will disseminate a bid or offer at that price of 100 shares until the specialist requotes that market. *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–2000–18). The NYSE Direct+ pilot was subsequently extended for an additional year, *see* Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50); and, recently extended until December 23, 2003, *see* Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47). The Exchange recognizes that the proposed language in NYSE Rule 1000 will have the effect of superseding the provisions of NYSE Rule 1001(c). The Exchange represents that it will submit an amendment to delete Rule 1001(c) before approval of the proposed rule change. The Exchange also represents that, if approved, amended NYSE Rule 1000 will be part of the pilot program for NYSE Direct+ rules.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47089; File No. SR–NYSE–2002–43]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration

December 23, 2002.

On September 4, 2002, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4

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