to establish certain qualification requirements for supervisors of research analysts pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on June 23, 2004.[3] The Commission received no comments on the proposal.

The proposed rule change amends NASD Rule 1022 to require supervisors of research analysts to pass the regulatory part (Series 87) of the Research Analyst Qualification Examination or the Series 16 Supervisory Analyst Examination administered by the New York Stock Exchange (''NYSE'').

NASD Rule 1050, which became effective on March 30, 2004, requires all persons associated with a member who are to function as research analysts to be registered as such with NASD and pass a qualification examination.[4] Those individuals required to be registered as research analysts must pass the Research Analyst Qualification Examination (Series 86/87) or qualify for an exemption. The Series 86/87 consists of two parts: an analysis part (Series 86) that tests fundamental analysis and valuation of equity securities, and a regulatory part (Series 87) that tests knowledge of applicable rules.

In light of these new research analyst registration requirements and the scope and importance of the comprehensive analyst conflict rules that have been implemented recently, the proposal requires supervisors of research analysts to pass the regulatory part (Series 87) of the Research Analyst Qualification Examination or, for dual NASD–NYSE members, the NYSE Supervisory Analyst Examination (Series 16).

Under the proposed rule change, dual members would be required to have a principal who has passed either the Series 24 and the Series 87 or the Series 16 to supervise the content of research. If the member elects to have a Series 16 be responsible for supervising the content of research, then a Series 24 principal who has also passed either the Series 87 or the Series 16 would be responsible for supervising the conduct of both the Series 16 supervisory analyst and the research analyst.

The Commission believes that the proposed rule change should provide NASD members that are also members of the NYSE some flexibility in their supervisory structure for research analysts by allowing dual members to permit a principal who has passed either the Series 24 and the Series 87 or the Series 16 to supervise the content of research.

The Commission also believes that the proposal should promote investor protection by ensuring that persons responsible for reviewing and approving research reports and for providing general supervision of the conduct of research analysts have demonstrable knowledge of NASD Rule 2711 and other analyst conflict of interest laws, rules, and regulations.

For the above reasons, 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 association [5] and, in particular, the requirements of Section 15A of the Act [6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NASD–2004–078) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18604 Filed 8–13–04; 8:45 am]

BILLING CODE 8010–01–P

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 49857 (June 15, 2004), 69 FR 35106 (June 23, 2004).

⁴ See Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 4575 (August 4, 2003).

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o–3.

⁷ 15 U.S.C. 78o-3(b)(6) and (9).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50173; SR–NYSE–2004–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Enhancements to the Exchange's Existing Automatic Execution Facility (NYSE Direct+)

August 10, 2004.

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 February 9, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On August 2, 2004, the NYSE filed Amendment No. 1 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.

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

The Exchange proposes to create a hybrid market, where investors would be able to choose how their orders are executed. Investors seeking the speed and certainty of an automatic execution, as well as investors who prefer the opportunity for price improvement provided by an auction market, would both be able to obtain executions in accordance with their preferences on the NYSE. This would be accomplished by, among other things, enhancements to the Exchange's existing automatic execution facility, NYSE Direct+® (''Direct+''), making its speed 1 and execution certainty available to a wider variety of orders. The Exchange also proposes to create a new order type—an Auction Limit (''AL'') order—and to modify the way market orders would be handled in the auction market, providing an opportunity for price improvement for those who desire it. The proposed amendments also address ''sweeps,'' ''locked'' and ''crossed'' markets, and ''trade-throughs'' and seek to make Direct+, currently a pilot program, permanent.[4]

Below is the text of the proposed rule change, as amended. Proposed new

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 (''Division''), Commission, dated July 30, 2004, and accompanying Form 19b–4, which replaces the original filing in its entirety (''Amendment No. 1'').

⁴ The Exchange states that the proposed amendments reflect significant changes to the structure of the Exchange's market. As such, there have been numerous valuable discussions between the Exchange with Exchange customers, members, and member organizations concerning the concepts underlying these proposals. As the Exchange continues to evaluate and refine these proposals, the Exchange represents that it will continue to reach out to its constituents for their input and analysis and will make appropriate amendments as necessary.

language is *italicized*; proposed deletions are in brackets.

* * * * *

Definitions of Orders

Rule 13

* * * * *

Auction Limit Order

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

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

An auction limit order shall be quoted and executed in accordance with Exchange Rules 60(h) and 79A.15.

Auto Ex Order

An auto ex order is *an order in a stock, Investment Company Unit (as defined by paragraph 703.16 of the Listed Company Manual), Trust Issued Receipt (as defined in Rule 1200), or a commitment to trade received on the Floor through ITS subject to* [limit order of 1099 shares or less priced at or above the Exchange's published offer (in the case of an order to buy) or at or below the Exchange's published bid (in the case of an order to sell), which a member or member organization has entered for] automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000–100*4*[5].

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

* * * * *

Immediate or Cancel Order

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

A ''commitment to trade'' received on the Floor through ITS *is an auto ex order and* shall be treated in the same manner, and entitled to the same privileges, as [would] an immediate or cancel order that [reaches the Floor] *is routed to the book* at the same time except as otherwise provided in the Plan and except further that such a commitment may not be ''stopped.'' [and the commitment shall remain irrevocable for the time period chosen by the sender of the commitment.] *After trading with the Exchange published bid (offer), the unfilled balance of a commitment to trade shall be automatically cancelled.*

Limit, Limited Order or Limited Price Order

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

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

A marketable limit order routed to the book is an auto ex order subject to automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000–1004.

Market Order

An order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the Trading Crowd *or routed to the book as an auto ex order for execution in accordance with, and to the extent provided by, Exchange Rules 1000–1004.*

A market order not designated auto ex shall be quoted and executed in accordance with Exchange Rules 60(i) and 79A.15.

* * * * *

(Reminder of rule unchanged)

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

Rule 15A

* * * * *

Supplementary Material

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

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

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

.40 For the purposes of this Rule:

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

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

.50 Where the national best bid or offered is published by another market center in which an automated execution is immediately available or such bid or offer is otherwise protected from a trade-through by Securities and Exchange Commission rule or ITS Plan, and the specialist has not systemically matched the price associated with such better bid or offer, the Exchange will automatically rout as a commitment to trade the portion of any market, auto ex market, auction limit or marketable limit order routed to the book that satisfies such better bid or offer, unless the entity entering the order indicated that it was contemporaneously satisfying the better bid or offer.

* * * * *

Dissemination of Quotations

Rule 60

* * * * *

(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.]

Autoquote will not be available when the specialist has gapped the quotation in accordance with Exchange policies and procedures, when a liquidity replenishment point ("LRP") has been reached, or during the time a report of a transaction is being made through the book.

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

Autoquote will resume as soon as possible after a LRP has been reached, but in no more than five seconds where the auto ex order that reached the LRP is executed in full, or any unfilled balance of such order is not capable of trading at a price above (in the case of a buy order) or below (in the case of a sell order) the LRP. Where the unfilled balance can trade at a price above (below) the LRP, but does not create a locked or crossed market, autoquote will resume upon a manual transaction or the publication of a new quote by the specialist, but in any event in no more than 28 seconds. Where the unfilled balance can trade at a price above (below) the LRP and creates a locked or crossed market, autoquote will resume upon a manual transaction or the publication of a new quote by the specialist.

(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.

(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.

(h) Auction Limit Orders

(1) If not executed upon entry, an auction limit order to buy that is marketable when it reaches the book shall be quoted the minimum variation better than the Exchange best bid and an auction limit order to sell that is marketable when it reaches the book shall be quoted the minimum variation better than the Exchange best offer.

(2) Auction limit orders shall be executed pursuant to Exchange auction market procedures, except that a subsequent order on the same side of the market capable of trading at a price better than the auction limit order is bidding (offering) an order on the same side, that exhausts some or all of the contra-side volume available in the Exchange quotation, a change in the price of the contra-side of the quotation that would enable an execution of the auction limit order with price improvement, or a quote at the minimum variation shall cause the auction limit order to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.

(3) An auction limit order that has not been executed within 15 seconds after it reaches the book shall be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.

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

(5) An auction limit order that becomes non-marketable before executed in whole or in part shall be quoted at its limit price.

(i) Market Orders

(1) If not executed upon entry, a market order to buy shall be quoted the minimum variation better than the Exchange best bid and a market order to sell shall be quoted the minimum variation better than the Exchange best offer.

(2) Market orders shall be executed pursuant to Exchange auction market procedures, except that a subsequent order on the same side of the market capable of trading at a better price than the market order is bidding (offering), a change in the price of the contra-side of the quotation that would enable an execution of the market order with price improvement, or a quote at the minimum variation shall cause the market order to be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.

(3) A market order that has not been executed within 15 seconds shall be automatically executed in accordance with, and to the extent provided by, Exchange Rules 1000–1004.

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

* * * * *

[Below Best] Bid*s* **[−]** *and* **[Above Best] Offer***s*

Rule 70

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

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

Supplementary Material

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

.20 (a) A Floor broker may place within the Display Book system a broker agency interest file at varying prices at or outside the Exchange best bid and offer with respect to orders he or she is representing on the Floor, except that the agency interest file shall not include any ''G'' order interest.

(b) A Floor broker's agency interest shall become part of the quotation when it is at the Exchange best bid or offer and shall be executed in accordance with Exchange Rule 72.

(c) A Floor broker's agency interest not at the Exchange best bid or offer shall be on parity with displayed orders if executed as part of a sweep in accordance with, and to the extent provided by, Exchange Rules 1000–1004.

(d) A Floor broker may place agency interest in only one Crowd, as determined by the Exchange, at any given time. If the Floor broker wants to trade on behalf of his or her orders as part of the Crowd at the same price and on the same side of the market as his or her agency interest file, the Floor broker must add to the size of the agency interest file at that price or cancel that portion of the agency interest file before trading verbally in the Crowd.

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

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

* * * * *

Miscellaneous Requirements on Stock and Bond Market Procedures

Rule 79A

Supplementary Material

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

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

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

(ii) the full size of each limit order that

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

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

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

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

Limit orders received by the specialist that improve the Exchange then-current bid or offer or change the size of the Exchange bid or offer, other than de minimis increases or decreases, shall be autoquoted in accordance with Exchange Rule 60(e). Each specialist shall activate the autoquote facility provided by the Exchange in each specialty stock he or she is responsible for by initiating a liquidity quote or by such other means as the Exchange may from time to time disseminate. Each specialist shall keep active at all times the autoquote facility provided by the Exchange, except that a specialist may deactivate the autoquote facility in order to accommodate gap quoting in accordance with the policies and procedures of the Exchange.

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

(1) executed upon receipt of the order;

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

(3) an odd-lot order;

(4) delivered immediately upon receipt to an exchange or association-sponsored system or an electronic communications network that complies with the requirements of Securities and Exchange Commission Rule 11Ac1–1(c)(5)(ii) under the Securities Exchange Act with respect to that order;

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

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

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

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

(9) an auction limit order;

(10) part of a broker agency interest file not at the Exchange best bid or offer; or

(11) the residual of an automatically executed order remaining after a liquidity replenishment point (''LRP'') has been reached, where such order is capable of trading at a price above (in the case of a buy order) or below (in the case of a sell order) the LRP price and such price creates a locked or crossed market on the Exchange.

* * * * *

(Reminder of rule unchanged)

Dealings by Specialists

Rule 104

* * * * *

(c) *Specialists shall have the ability to implement proprietary algorithms that allow them, on behalf of the dealer account, to systematically supplement the Exchange published bid or offer, match bids and offers published by other market centers, and place within the Display Book system a specialist interest file at varying prices outside the published Exchange quotation. The specialist interest file may not participate in a transaction at a price at or between the Exchange published quotation, except that the specialist interest file may provide stock to facilitate a single-price execution at the bid (offer) price, provided that the specialist purchase (sell) all of the remaining volume on the order being facilitated.*

(b) *Nothing in this rule shall be interpreted as modifying or relieving the specialist from his or her obligations and required compliance with all Exchange rules, policies and procedures.*

* * * * *

(Reminder of rule unchanged)

Orders of Members To Be in Writing

Rule 117

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

Supplementary Material

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

* * * * *

(Reminder of rule unchanged)

Record of Orders

Rule 123

* * * * *

(e) System Entry Required

Except as provided in paragraph .21 and .22 below, no Floor member may represent or execute an order on the Floor of the Exchange *or place an interest file within the Display Book system* unless the details of the order have been first recorded in an electronic system on the Floor. Any member organization proprietary system used to record the details of the order must be capable of transmitting these details to a designated Exchange database within such time frame as the Exchange may prescribe. The details of each order required to be recorded shall include the following data elements, any changes in the terms of the order and cancellations, in such form as the Exchange may from time to time prescribe:

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

* * * * *

Miscellaneous Requirements

Rule 123A

* * * * *

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

* * * * *

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

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

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

* * * * *

(Reminder of rule unchanged)

NYSE Direct+®

Rule 1000

(a) [Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid.] An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange['s] published quotation, *orders on the book, Floor broker agency interest file and specialist interest file, in accordance with, and to the extent provided by, Exchange Rules 1000–1004* and shall be immediately reported as [NYSE] *Exchange* transactions, unless:

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

(ii) the execution price would be more than [five cents] a *specified price* away from the last reported transaction price in the subject security on the Exchange; *as the Exchange shall from time to time determine and disseminate.*

(iii) with respect to a single-sided auto ex order, a better price exists in another ITS participating market center *where an automatic execution is immediately available or where such better price is otherwise protected from a trade-through by Securities and Exchange Commission rule or ITS Plan;*

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

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

[(v)] *(v) trading in the subject security has been halted;*

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

(vii) a liquidity replenishment point has been reached. A liquidity replenishment point is reached when:

(A) the execution price of an auto ex order would be above (below) a specified price on the Exchange as the Exchange shall from time to time determine and disseminate, or

(B) a specified price movement on the Exchange has occurred over a specified period of time, as the Exchange shall from time to time determine and disseminate.

(b)(i) Auto ex orders to buy shall trade with the Exchange published best offer. Auto ex orders to sell shall trade with the Exchange published best bid. After trading with the bid (offer), the unfilled balance of any commitment to trade

received on the Floor through ITS shall be automatically cancelled.

(ii) Where the volume associated with the Exchange published best bid (offer) is insufficient to fill an auto ex order in its entirety, other than a commitment to trade received on the Floor through ITS, the unfilled balance of such order (the "residual") shall "sweep" the book—trade with orders on the book and any broker agency interest file and specialist interest file until it is executed in full, its limit price if any is reached, or a liquidity replenishment point is reached, whichever occurs first.

(iii) The residual shall trade with the orders on the book and any broker agency interest file and specialist interest file at a single price, such price being the best price at which such orders and files can trade with the residual to the extent possible, or a liquidity replenishment point, whichever comes first ("clean up price"). All orders on the book and Floor broker agency interest trading with the residual shall be on parity and receive the clean up price. If no orders capable of trading at the clean up price remain on the book, specialist interest may trade on parity with broker agency interest at that price.

(iv) The sweep described in (ii) above is not available during the period a report of a transaction is being made in the book and the volume of the bid (offer) has decremented to 100 shares.

(v) Any residual remaining after the sweep described in (ii) above shall be executed pursuant to Exchange auction market procedures unless the order is designated immediate or cancel, in which case the residual shall be automatically cancelled.

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

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

* * * * *

Rule 1001

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

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

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

(iii) the [specialist shall be responsible for assigning] assignment of the number of shares to each contra side bidder and offeror, as appropriate, in accordance with Exchange Rule 72, with respect to each automatic execution of an auto ex order shall be done systemically;

(iv) the specialist shall be the contra party to any automatic execution of an auto ex order where interest reflected in the Exchange published quotation against which the auto ex order was executed is no longer available;

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

(vi) the unfilled balance, if any, of an auto ex order shall be executed in accordance with, and to the extent provided by Exchange Rule 1000.

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

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

* * * * *

Rule 1002

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

* * * * *

Rule 1003

If a transaction has been agreed upon in the auction market, and an automatic execution involving auto ex orders is reported at a different price before the auction market transaction is reported, any tick test applicable to such auction market transaction shall be based on the last reported trade *on the Exchange* prior to such execution of auto ex orders.

* * * * *

Rule 1004

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

* * * * *

[Rule 1005

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

* * * * *

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

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

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

1. Purpose

The Exchange believes that the proposed amendments to its rules [5] create a hybrid market, where investors would be able to choose the way their orders are executed. According to the Exchange, investors seeking the speed and certainty of an automatic execution at the published bid or offer to the extent of the volume associated with such published bid or offer, with any residual sweeping the book until executed, its limit price, if any, is reached, or a ''liquidity replenishment point'' (''LRP''), as described below, is reached, as well as those who prefer the opportunity for price improvement provided by the auction market, would be able to obtain executions in accordance with their preferences on the NYSE. The Exchange represents that the proposed amendments would be accomplished by, among other things, enhancements to Direct+, making its speed and execution certainty available to a wider variety of orders. In addition, the Exchange proposes to provide for a new order type, an AL order, and to modify the way market orders would be handled in the auction market to provide an opportunity for price improvement for those who desire it. The proposed amendments also address ''sweeps,'' ''locked'' and ''crossed'' markets, and ''trade-throughs'' and seek to make Direct+ permanent. The Exchange represents that the changes described below may be implemented in stages given their significance to the marketplace, programming requirements, and the need for members and order routing vendors to make related changes to their systems.

Approval to Make Direct+ Permanent

Direct+ was originally approved as a one-year pilot program ending on December 21, 2001.[6] The pilot was subsequently extended for three additional one-year periods, and is currently scheduled to end on December 23, 2004.[7] The Exchange represents that the pilot has given the Exchange considerable experience with automated executions, as approximately 8% of the Exchange's adjusted average daily volume [8] is currently executed through Direct+. As a result of this experience and the extensive changes to the Exchange's market envisioned by the proposed amendments discussed below, the Exchange hereby seeks approval to make Direct+ permanent.[9]

Proposed Amendments to Exchange Rules

In order to create the hybrid market, the Exchange proposes the following amendments to its rules:

i. Eliminate order size restrictions for automatically executed (''auto ex'') orders.

ii. Eliminate the 30-second limitation for consecutive auto ex orders for accounts in which the same person is directly or indirectly interested.

iii. Permit immediate or cancel (''IOC'') orders to be automatically executed.

iv. Permit market orders to be automatically executed. Market orders not designated for automatic execution would be executed in the auction market where they would have an opportunity for price improvement. Market orders not immediately executed would be bid (offered) at the minimum variation better than the Exchange's best bid (offer) at the time the order is routed to the Display Book for execution. If the order is not executed in the auction market within 15 seconds, it would be automatically executed. In addition, if an order enters the market on the same side at a better price, the contra-side offer (bid) changes so that an execution would give price improvement to the market order, or there is a quote at the minimum variation, the market order would be automatically executed, even if 15 seconds has not elapsed. For these reasons, a market order could be executed at an inferior price than the prevailing price at the time the order was routed to the Display Book.

v. Limit orders to buy priced at or above the Exchange's published offer and limit orders to sell priced at or below the Exchange's published bid (''marketable limit orders'') [10] would be automatically executed, whether or not such orders are designated for automatic execution. Non-marketable limit orders are routed to the Display Book, even if designated auto ex, and would be represented in the auction market. When such orders become marketable, they would be included in the quote and could participate in automatic executions.

vi. Create a new order type—AL orders. AL orders would provide the opportunity for price improvement inherent in the auction market. AL orders would be required to be designated as such when entered. An AL order to buy should have a limit price at or above the published offer, and an AL order to sell should have a limit price at or below the published bid.[11]

As a marketable limit order, an AL order would be expected to be represented quickly in the auction market for potential price improvement and, if not executed immediately, would be reflected as the NYSE best bid or offer, as follows: an AL order to buy would be quoted the minimum variation better than the Exchange's published best bid, and an AL order to sell would be quoted the minimum variation better than the Exchange's published best offer, regardless of the AL order's limit price. If a subsequent order on the same side as the AL order enters the market at a better price than the AL order is bidding (offering) at the time, takes some or all of the displayed contra-side volume, the contra-side offer (bid) changes so that an execution at that price would give the AL order price improvement, or there is a quote at the minimum variation, the AL order would be automatically executed. In addition, if the AL order has not been executed after 15 seconds, it would be automatically executed.

An AL order could be executed at a price that is inferior to the price that was prevailing at the time the order was

[5] To the extent any inconsistencies exist between this filing and existing Exchange rules, the amendments and concepts proposed herein take precedence and override such rules.

[6] *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–00–18).

[7] *See* Securities Exchange Act Release Nos. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50); 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47); and 48772 (November 12, 2003), 68 FR 65756 (November 21, 2003) (SR–NYSE–2003–30).

[8] Based on data through June 2004.

[9] This would also have the effect of superceding four filings that have been approved by the Commission during the Direct+ pilot, which were made part of the pilot. *See* Securities Exchange Act Release No. 47463 (March 7, 2003), 68 FR 12122 (March 13, 2003) (SR–NYSE–2002–44). However a portion of SR–NYSE–2002–37 that amends NYSE Rule 1002 to provide that Direct+ executions in ETFs are available until 4:14 p.m. would be made permanent by this filing. *See* Securities Exchange Act Release No. 47024 (December 18, 2002), 67 FR 79217 (December 27, 2002) (SR–NYSE–2002–37). *See also* Securities Exchange Act Release Nos. 47353 (February 12, 2003), 68 FR 8318 (February 20, 2003) (SR–NYSE–2002–58) and 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR–NYSE–2002–55).

[10] Orders priced this way ''lock'' or ''cross'' the market. A ''locking'' bid (offer) is one that is the same price as the published offer (bid). For example, where a published offer (bid) is .50, a bid (offer) of .50 would ''lock'' the market, and there would be no spread. A ''crossing'' bid (offer) is one that is higher (lower) than the offer (bid), for example, a bid of .50 when the published offer is .45, or an offer of .45 when the published bid is .50.

[11] An AL order that is not marketable at the time it is routed to the Display Book would be represented in the auction market in the same way as any non-marketable limit order, until it is executed or cancelled.

entered. This could occur due to the cancellation or execution of the displayed contra-side liquidity before the AL order is executed.

vii. Market orders designated for automatic execution (''auto ex market orders'') and marketable limit orders routed to the Display Book would be automatically executed via Direct+ at the price and extent of the Exchange's published bid or offer.[12] Auto ex market and marketable limit orders to buy would be executed at the offer price, to the extent of the volume associated with the published offer. Auto ex market and marketable limit orders to sell would be executed at the bid price, to the extent of the volume associated with the published bid. The unfilled balance of an auto ex market or a marketable limit order would sweep the book until: (1) It is executed; (2) its limit price, if any, is reached; or (3) a LRP is reached. The execution of unfilled balances and LRPs are described in more detail below. The unfilled balance of an auto ex market order or a marketable limit order designated IOC would be automatically cancelled after the sweep.

viii. All quotes would be subject to automatic execution, unless designated otherwise. Non-auto-executable quotes could be generated electronically when LRPs are reached or by the specialist gapping the quote due to an order imbalance.[13] A transaction, update of the quote by the specialist, or a timer-generated quote update, as discussed below, would resume automatic executions and autoquote.

ix. The Exchange believes that LRPs would be volatility moderators and would assist in the maintenance of fair and orderly markets during sweeps. When a LRP is reached, the quotation would not be available for automatic execution and would be designated as such. Autoquote would be suspended, although cancellations of orders would be permitted. When a LRP is reached, the specialist, crowd, and off-floor market participants could enter orders to replenish liquidity on either side of the market.

The Exchange proposes two new LRPs—a price-based LRP and a momentum-based LRP. The price-based LRP would be a minimum of five cents from the Exchange bid or offer, rounded to the next nearest nickel.[14] A specified price movement over a specified period during a trading session would trigger the momentum-based LRP. The Exchange represents that the precise parameters for the momentum-based LRP are currently under review and would be identified at a later time and submitted as an amendment to this filing.[15]

In addition, Exchange rules currently provide that automatic execution is not available if the execution price would be more than five cents away from the last reported transaction price in the relevant security on the Exchange. The Exchange proposes to amend this rule to provide for execution price parameters based on the price of the security, rather than a uniform five-cent standard. Adoption of additional LRPs or changes to a LRP would be made as appropriate. Information about LRPs would be disseminated by the Exchange.

x. The unfilled balance (referred to as the residual) of any auto ex market order or a marketable limit order would ''sweep'' the book, automatically executing until it is filled, its limit price if any is reached, or a LRP is reached.[16] Bids and offers on the Display Book between the displayed bid or offer and the sweep ''clean-up'' price would receive price improvement at the ''clean-up'' price.[17] Any balance remaining after the order reaches its limit price, if any, or a LRP is reached, would remain on the book for handling in the auction market where it would become a bid or offer at its limit price or the LRP price, whichever is reached first. If executed at the price at which it is bidding (offering), the balance would have priority; if executed at a different price—within the parameters of its limit, if any—the balance would trade on parity with the crowd. However, if an auto ex market order or a marketable limit order is marked IOC, any unfilled balance remaining after the sweep or when a LRP is reached would be automatically cancelled.

xi. When a LRP is reached and no residual remains, or a residual remains and it is not capable of trading at a price above (in the case of a buy order) or below (in the case of a sell order) the LRP, autoquote would resume as soon as possible, but in no more than five seconds, unless in that time, orders came in that locked or crossed the market. If a LRP is triggered and a residual capable of trading at a price above or below the LRP remains, but does not lock or cross the market, autoquote would remain disengaged, and automatic executions could not occur until the specialist trades or requotes the market. However, autoquote and auto executions would resume in any event in no later than 28 seconds. Where a residual remains and it is capable of trading above (below) a LRP and it locks or crosses the market, autoquote and auto executions would not be available until a trade occurs or the specialist requotes the market.

xii. Intermarket Trading System (''ITS'') commitments to trade sent to the Exchange from another market center because the Exchange's published bid or offer is the national best bid or offer (''incoming'' ITS commitments) would be automatically executed. These commitments to trade would be executed to the extent of the volume of the Exchange's published bid or offer, and any unfilled balance would be automatically cancelled.

xiii. Where the national best bid or offer is published by another market center in which an automated execution is immediately available, or such bid or offer is otherwise protected from a trade-through and the specialist has not systemically matched the price associated with such bid or offer, the Exchange would automatically route to such market center the portion of a market or marketable limit order that would satisfy the better-priced bid or offer (''outgoing'' ITS commitments), unless the entity entering the order indicated that it was contemporaneously satisfying such better bid or offer. If the routed commitment is not executed or not executed in its entirety, such commitment, or balance thereof, would

[12] Reference to the Exchange's published bid and offer refers to the Exchange's best or inside bid and offer, not a Liquidity Quotesm bid or offer.

[13] Automatic executions also would not be available when the Exchange's published quotation is in non-firm mode or trading in the security has been halted. These are unusual situations and happen infrequently. In addition, during the time that a report of execution is being made through the Display Book, automatic executions would continue until the volume associated with the bid and/or offer decrements to 100 shares and then would be suspended until the market is requoted. Automatic executions would then suspend until the reporting is concluded.

[14] For example, where the quote is .10-.12, sweep transactions could occur at .12, .13, .14, .15, .16, .17, .18, .19, and .20, the LRP, and at .10, .09, .08, .07, .06, and .05, the LRP. Transactions could not occur at .21 or higher and .04 or lower, until the specialist executes a transaction or requotes the market. Similarly, where the quote is .04-.09, LRPs would be .95 and .15. Telephone conversation between Nancy R. Jenkins, Managing Director, NYSE, and Kelly Riley, Assistant Director, Division, Commission, on August 4, 2004.

[15] Telephone conversation between Nancy R. Jenkins, Managing Director, NYSE, and Kelly Riley, Assistant Director, Division, Commission, on August 10, 2004.

[16] If during a sweep, a better priced bid or offer is published by another market in which an automatic execution is immediately available or such bid is otherwise protected from a trade-through (the execution of an order in one market at a price that is inferior to a price for more than one round lot displayed in another market), the portion of the sweeping order that satisfies the better-priced bid or offer would be automatically routed to such market, if not matched by the specialist, as described *infra*. The sweep would continue without that portion of the order.

[17] The sweep price could be improved by the broker agency interest file and specialist interest file, discussed *infra*.

return to the Exchange. Upon its return, the portion that had been sent away would be handled in accordance with its terms, as described herein. The effective time for proper sequencing purposes of the returned portion would be the time it returns to the Exchange.

xiv. A specialist could cause a non-auto-executable quote by gapping the quotation [18] due to an order imbalance in accordance with the policies and procedures of the Exchange. The quote would be designated as non-auto-executable, and autoquote would be suspended, except for cancellations.[19] Once a trade occurs or a non-gapped quote is published, autoquote and automatic execution would resume.

xv. Specialists would have the ability to systemically supplement the quote, determine price points outside the Exchange best bid and offer to which he or she wants to provide liquidity by bidding or offering on behalf of the dealer account, which could serve to improve a sweep price, facilitate a single-price execution at the bid or offer price, and systemically match outgoing ITS commitments. When facilitating a single-price execution, the specialist would be required to buy (sell) all of the volume remaining on the order being facilitated. The specialist interest file would not be disseminated unless at the Exchange best bid or offer price. Specialist interest that establishes the best bid or offer would be entitled to priority with the crowd at that price for one trade, as current Exchange rules permit. Specialist interest at other prices would yield to agency orders and the broker agency interest file, discussed below, except that, once orders on the book are filled, specialists could trade on parity with the crowd, including broker agency interest.[20]

xvi. Brokers would have the ability to place within the Display Book system an agency interest file at varying prices at or outside the quote with respect to orders the broker is representing, except for ''G'' orders.[21] This interest would not be disseminated unless at the Exchange's best bid or offer. The specialist would be able to view only aggregated broker agency interest at each price. Broker agency interest would have priority if it establishes the best bid or offer and would be on parity with other orders at its price, except specialist interest, as described above. The broker's agency interest could serve to improve the price of a sweep order. The broker would be able to place agency interest in only one crowd at any given time, as determined by the Exchange. The broker would be required to cancel his or her agency interest file when leaving the crowd. When the broker wants to trade as part of the crowd on the same side and at the same price as his or her agency interest, the broker would be required to add to the existing agency interest or cancel any agency interest at that price before verbally trading in the crowd. If the broker leaves the crowd without canceling his or her agency interest file and a trade occurs involving such interest, the broker would be held to that trade.

xvii. Eligible tick-restricted orders would be capable of automatic execution when they are marketable. A tick-restricted order not immediately eligible to trade would remain on the book as a tick-restricted order for handling in the auction market.[22]

xviii. The specialist would no longer be responsible for assigning the number of shares to each contra-party with respect to an automatic execution that includes specialist or crowd orders. Instead, such assignment would be done systemically.

xix. Elected and converted portions of CAP–DI orders (convert and parity percentage orders) would be automatically executed and could participate in a sweep.

xx. Elected and converted CAP–DI orders on the same side of the market as an automatically executed order would participate in a transaction at the bid (offer) price if there is volume remaining after the order is filled by such bid (offer). Elected and converted CAP–DI orders on the same side of the market as an automatically executed order that sweeps the book would participate in a transaction at the sweep clean up price if there is volume remaining on the book or from contra-side elected CAP–DI orders at that price.

Elected and converted CAP–DI orders on the contra-side of the market as an automatically executed order would participate in a transaction at the bid (offer) price and the sweep clean up price, if any, providing liquidity to the market.

Operation of Direct+ Under Existing Rules

Direct+ currently provides for the automatic execution of straight limit orders (*i.e.* orders without tick restrictions) of 1,099 shares or less (5,000 shares or less for Investment Company Units, as defined in paragraph 703.16 of the Listed Company Manual, and for Trust Issued Receipts, such as HOLDRs, as defined in NYSE Rule 1200) [23] against trading interest reflected in the Exchange's published quotation. Orders capable of execution via Direct+ are defined in NYSE Rule 13 as ''auto ex'' orders. It is not mandatory that all eligible limit orders be entered as auto ex orders. Rather, the member organization entering the order (or its customer if enabled by the member organization) can choose to enter an auto ex order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in the customer's best interest. Where the customer's interests are best served by being afforded the opportunity for price improvement, the member organization (or customer) may enter a limit or market order by means of the SuperDot® (''DOT'') system for representation in the auction market.

Direct+ orders are entered through DOT with the indicator NX added to identify the order as an auto ex order. In accordance with limit price requirements, the auto ex order is priced at or above the Exchange's published

[18] The purpose of a gapped quote would be to disseminate the existence of an order imbalance and minimize short-term price dislocation associated with such imbalance by allowing appropriate time for the entry of offsetting orders or the cancellation of orders on the side of the imbalance. An imbalance could occur because of a sudden influx of orders on the same side of the market, the entry of one or more large-sized order(s) with little or no offsetting interest, or when a member proposes to effect a one-sided block transaction at a significant premium or discount to the prevailing market. The size of an imbalance suitable for gapped quoting would be at least 10,000 shares or a quantity of stock having a value of $200,000 or more. The specialist would gap the quote by widening the spread, with the imbalance side priced at the last sale and the contra-side priced where the specialist thinks stock could trade if the imbalance continues to exist. The size identified with the gapped quote would be 100 × size or size × 100, the size side being the amount of the imbalance. The specialist would identify a quote as gapped to differentiate from non-gap quote related 100-share bids or offers.

[19] This is different from the Exchange's current gapped quotation procedures, which are described in Information Memo 04–27 (June 9, 2004).

[20] In a filing pending with the Commission, the Exchange has proposed amendments to its rules that permit a customer to preclude the specialist from trading on parity with the customer. *See* Securities Exchange Act Release No. 50090 (July 27, 2004), 69 FR 46197 (August 2, 2004) (SR–NYSE–2004–06). These amendments, if approved, would apply to transactions with the specialist interest file.

[21] ''G'' orders refers to proprietary orders represented pursuant to Section 11(a)(1)(G) of the Act. 15 U.S.C. 78k(a)(1)(G).

[22] Tick-restricted stop orders would not be eligible for automatic execution.

[23] *See* Information Memorandum 03–28 (June 20, 2003) (Amendments to Direct+). The Commission approved a proposal to increase the size of Direct+ orders in Investment Company Units and Trust Issued Receipts to a maximum level of 10,000 shares. *See* Securities Exchange Act Release No. 47024 (December 18, 2002), 67 FR 79217 (December 27, 2002) (SR–NYSE–2002–37).

offer (in the case of an auto ex order to buy), or at or below the Exchange's published bid (in the case of an auto ex order to sell). The auto ex order receives an automatic execution when the limit price is equal to or better than the published bid or offer, without being exposed to the price improvement mechanism of the auction market, provided the bid or offer is still available.[24] The transaction report is returned through DOT to the member organization (or customer) that entered it.

An auto ex order equal to or greater than the size of the Exchange's published bid or offer trades against the entire published bid or offer, and a new bid or offer is published pursuant to NYSE Rule 60(e). Auto ex orders that cannot be immediately executed are displayed as limit orders in the auction market,[25] as is the unfilled balance of any partially executed auto ex order.[26]

Where the best bid or offer is in another market, the auto ex order is delivered to the specialist, who must either match the better price displayed by the other market or send a ''commitment to trade'' to the market displaying the best price via ITS.[27]

In any instance where the automatic execution feature is not available, the auto ex order is entered for execution in the Exchange's auction market. Pursuant to current NYSE Rule 1000, automatic execution is not available when:

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

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

(iii) 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 (on the side such order would be executed against);

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

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

The contra side of an auto ex order execution is the trading interest reflected in the Exchange's published bid or offer. A universal contra is reported as the contra to each auto ex execution, with such contra interest participating in accordance with the Exchange's auction market principles of priority and parity as codified in NYSE Rule 72 (NYSE Rule 1001(a)), except that no published bid or offer is entitled to claim precedence based on size with respect to executions against auto ex orders (NYSE Rule 1001(c)).

The specialist is responsible for assigning the appropriate number of shares to each contra participant after an auto ex order has been executed that includes specialist or crowd orders.[28] If the depth of the published bid or offer is not sufficient to fill an auto ex order in its entirety, the unfilled balance is routed to the floor and displayed in the auction market.[29] Once the order is entered in the auction market, it is treated the same as any other limit order entered into DOT.

The specialist is the contra party to any automatic execution of an auto ex order where interest reflected in the published quotation against which the auto ex order was executed is no longer available.[30] This may occur even though the specialist's interest was not part of such quotation. For example, the published quotation may reflect the interest of a broker in the crowd that was executed in an auction market transaction. If an auto ex order is executed against the published bid or offer before it can be updated, the specialist must take the contra side of the auto ex execution. In other instances, the crowd broker might cancel his or her interest as reflected in the published quotation, but an auto ex order might be executed against such quotation before it can be updated. Again, in such instance, the specialist would be required to take the contra side of the auto ex execution.

The specialist's obligation under NYSE Rule 1001(a)(iv) exists regardless of the tick associated with the automatic execution. However, in the auction market context, NYSE Rule 104, which sets forth the specialist's affirmative and negative obligations, restricts the specialist's ability to purchase stock on direct plus ticks or sell stock on direct minus ticks. Accordingly, the Exchange sought and received Commission approval of an interpretation of NYSE Rule 104 [31] that provides that any instance in which the specialist is effecting such a direct tick transaction only because he or she has been required to assume the contra side of an auto ex execution shall be deemed to be a ''neutral'' transaction for purposes of NYSE Rule 104, and shall not be deemed a violation of the Exchange rule. The Exchange believes that this interpretation is appropriate because the specialist is not setting the price, but is simply being required to trade at a price set by other market participants.[32]

Similarly, the Exchange sought and received Commission approval [33] of its interpretation that NYSE Rule 91 [34] does not apply where the specialist is the contra party to an auto ex execution, as the specialist does not accept an auto ex order for execution or act as agent in the execution of such order.[35]

Similarly, the Exchange received an interpretive position from the Commission [36] that under the short sale rule, Rule 10a–1 of the Act,[37] the specialist is not deemed to be in violation when he or she is required under NYSE Rule 1001(a)(iv) to take the contra side of an auto ex execution on a minus or zero minus tick and has an existing short position or would be creating a short position by virtue of such execution. In such instance, the specialist is not deemed to be engaging in manipulative behavior to influence the price of the subject security because the specialist is simply being required to trade at a price set by other market participants.[38]

Auto ex orders are eligible to receive an automatic execution if entered after the Exchange has disseminated a published bid or offer until 3:59 p.m. for stocks and Trust Issued Receipts, 4:14 p.m. for Investment Company Units, or within one minute of any other closing time of the Exchange's floor market. Orders designated as auto ex that are

[24] *See* NYSE Rule 1000.

[25] *See* NYSE Rule 1000.

[26] *See* NYSE Rule 1001(b).

[27] *See* NYSE Rule 15A.

[28] *See* NYSE Rule 1001(a).

[29] *See* NYSE Rule 1001(b).

[30] *See* NYSE Rule 1001(a)(iv).

[31] *See* note 6, *supra.*

[32] The Exchange continues to believe this interpretation is appropriate and hereby requests that the Commission continue its approval of this interpretation.

[33] *See* note 6, *supra.*

[34] NYSE Rule 91 includes transaction confirmation requirements in instances in which the specialist participates in a transaction as both principal and agent. For recent amendments to this rule, see the filing SR–NYSE–2002–32. *See* Securities Exchange Act Release No. 49183 (February 4, 2004), 69 FR 6354 (February 10, 2004).

[35] The Exchange continues to believe this interpretation is appropriate and hereby requests the Commission continue its approval of this interpretation.

[36] *See* letter from James E. Buck, Secretary and Senior Vice President, Exchange, to Larry E. Bergmann, Senior Associate Director, Division, Commission, dated December 21, 2000 (''Exemption Letter'') and response from Larry E. Bergmann to James E. Buck, dated December 22, 2000.

[37] 17 CFR 240.10a–1.

[38] The Exchange continues to believe this interpretation is appropriate, particularly in light of the recent adoption of Regulation SHO by the Commission. *See* Securities Exchange Act Release No. 50103 (July 28, 2004), and hereby requests its continued approval.

entered prior to the dissemination of a bid or offer or after 3:59 p.m./4:14 p.m. or within one minute of any other closing time, are displayed as limit orders in the auction market.[39]

Automatic executions of Direct+ orders elect stop orders, stop limit orders and percentage orders electable at the price of such executions. Any stop orders so elected are executed pursuant to Exchange auction market procedures and are not guaranteed an execution at the same price as subsequent automatic executions of auto ex orders.[40] The Exchange sought and the Commission approved an interpretation[41] that, for the purposes of NYSE Rule 123A, the specialist is not required to fill any stop orders elected by an auto ex execution at the price of the electing sale in any instance where the specialist was required by NYSE Rule 1001(a)(iv) to take the contra side of an auto ex execution.

If a transaction is being completed in the auction market and an execution involving auto ex orders is reported at a different price before the auction market transaction is reported, any tick test applicable to the auction market transaction is based on the last reported trade prior to the execution of the auto ex order.[42] For example, assume the following: the Exchange's published quotation is 20 bid for 5,000 shares, and 5,000 shares offered at 20.04. The last reported sale was 20.02, which means the published bid is a plus tick. A broker in the crowd bids 20.03 for 5,000 shares, and another broker, representing a short sale order, agrees to trade at the 20.03 bid price. Before the trade at 20.03 is reported, an auto ex order to buy is automatically executed at the 20.04 published offer price, making the trade to be reported at 20.03 a minus tick, which would preclude execution of the order to sell short.

NYSE Rule 1003 provides that in this instance, for the purposes of NYSE Rule 440B and Rule 10a–1 of the Act, the short sale tick test would be based on the sale of 20.03, a plus tick compared with the last reported sale of 20.02 at the time the crowd brokers were completing the trade. The short sale would be reported to the Consolidated Tape as ''sold'' indicating other transactions in the stock have printed on the tape between the time of the sold transaction and its print time. Nevertheless, a floor broker will not be permitted to sell short at a price lower than the best bid displayed in the auction market at the time the transaction is reported.

Finally, current Direct+ rules restrict the frequency and size of auto ex orders. An auto ex order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such order in a stock, Investment Company Unit, or Trust Issued Receipt, unless the orders are entered by means of separate order entry terminals, and the member or member organization responsible for entry of the orders to the floor has procedures in place to monitor compliance with the separate terminal requirement.[43] In addition, the size of auto ex orders in stocks is limited to 1,099 shares. Auto ex orders in investment company units and Trust Issued Receipts are currently limited to 5,000 shares, although the Exchange is authorized to increase the size limit for these orders to 10,000 shares.[44]

Operation of Hybrid Market Under the Proposed Amendments

Pursuant to the proposed amendments, auto ex market orders, marketable limit orders, and incoming ITS commitments to trade routed to the Display Book, regardless of size, would be eligible for automatic execution[45] against the trading interest reflected in the Exchange's published quotation, with any unfilled balance ''sweeping'' the book, broker agency interest file, and specialist interest file until executed, its limit price, if any, is reached, or a LRP is reached. AL orders, market orders, and non-marketable limit orders would remain on the Display Book for handling in the auction market.

Unless the published bid and/or offer has been designated non-auto executable, auto ex market orders, marketable limit orders and incoming ITS commitments to buy would be automatically executed at the offer price to the extent of the volume associated with the published offer. Auto ex market orders, marketable limit orders, and incoming ITS commitments to sell would be executed at the bid price, to the extent of the volume associated with the published bid. The unfilled balance of auto ex market and marketable limit orders would sweep the book, automatically executing until filled; their limit price, if any is reached; or a LRP is reached.

The unfilled balance of any incoming ITS commitment to trade would be cancelled. Furthermore, the unfilled balance of any auto ex market order or marketable limit order designated IOC would be cancelled after the sweep.

Any residual remaining after an auto ex market order or marketable limit order sweeps to its limit price, if any, or reaches a LRP, would remain on the book for handling in the auction market where it would become a bid or offer at its limit price, or the LRP price, whichever is reached first. If the residual executes at the price at which it is bidding (offering), it would have priority. If it executes at a different price—within the parameters of its limit, if any—it would trade on parity.

AL orders and market orders would be executed in the auction market, with an opportunity for price improvement. Both are marketable orders and, if not executed immediately in the auction market, would be reflected as the Exchange's best bid or offer quoted at the minimum variation better than the prevailing bid or offer. If not executed within 15 seconds, AL orders and market orders would be automatically executed. In addition, if a subsequent order enters the market on the same side at a better price, the contra-side offer (bid) changes so that an execution at that price would give the AL order or market order price improvement, or there is a quote at the minimum variation, the market or AL order would automatically trade, even if 15 seconds has not elapsed. AL orders, but not market orders, would also be automatically executed if a subsequent order enters the market on the same side and takes some or all of the displayed contra side liquidity.

Multiple AL orders and market orders on the same side of the market would be aggregated at the best price (consistent with the AL order limits), and executions would occur based on time priority.

AL orders and market orders would be executed at a price at or better than the national best bid or offer published by another market center in which an automated execution is immediately available or such bid or offer is otherwise protected from a trade-through at the time of the order's execution. If that price is not available on the Exchange, the portion of the order that would satisfy such better price would be automatically routed to the relevant market center, unless the entity entering the order indicated it was contemporaneously satisfying the better bid or offer.

[39] *See* NYSE Rule 1002.

[40] *See* NYSE Rule 1004.

[41] *See* note 6, *supra*.

[42] *See* NYSE Rule 1003.

[43] *See* NYSE Rule 1005.

[44] *See* NYSE Rule 13.

[45] A few order types would be ineligible for automatic execution, including, ''all or none'' (AON), CAP, ''opening only'' (OPG), ''fill or kill'' (FOK), ''limit on close'' (LOC), ''market on close'' (MOC), stop, stop limit, and ''basis'' (BAS) orders. Odd lots would also be ineligible for automatic execution via Direct+ at this time.

An AL order or market order could miss the market at the time it was entered, receiving an execution at an inferior price due to the cancellation or execution of the displayed contra-side liquidity before the order is executed.

Non-marketable limit orders would be reflected in the published quotation in accordance with NYSE Rules 60 and 79A.15. Once in the published quotation, such orders could become the contra-side of an automatic execution and participate in a sweep.

In any instance where the quote is non auto-executable, orders would be executed in the Exchange auction market. Autoquote would be suspended except for cancellations when automatic executions are not available.[46]

When a LRP is reached and no residual remains, or a residual remains and it is not capable of trading at a price above (in the case of a buy order) or below (in the case of a sell order) the LRP, autoquote would resume as soon as possible, but in no more than five seconds, unless in that time, orders came in that locked or crossed the market. If a LRP is reached and a residual capable of trading at a price above or below the LRP remains, but does not lock or cross the market, autoquote would remain disengaged, and automatic executions could not occur until the specialist trades or requotes the market.

Autoquote and auto execution, however, would resume in any event in no later than 28 seconds. Where a residual remains capable of trading at a price above (below) a LRP, and it locks or crosses the market, autoquote and auto ex would not be available until a trade occurs or the specialist requotes the market.

A universal contra would continue to be reported as the contra to each auto ex execution, with such contra interest participating in accordance with the Exchange rules of priority and parity as codified in NYSE Rule 72. No published bid or offer would be entitled to claim precedence based on size with respect to executions against auto ex orders. However, the specialist would no longer be responsible for assigning the appropriate number of shares to each contra participant to an automatic execution that includes specialist and/or crowd orders. This would be done systemically.

The specialist would continue to be the contra party to any automatic execution where interest reflected in the published quotation against which the auto ex order was executed is no longer available. Except with respect to transactions occurring with the broker agency interest file, as of today, this could occur even though the specialist's interest was not part of such quotation.[47]

Automatic executions would continue to be available from the time the Exchange disseminates a published bid or offer until 3:59 p.m. for stocks and Trust Issued Receipts, or 4:14 p.m. for Investment Company Units, or within one minute of any other closing time of the Exchange's floor market. Auto ex orders entered prior to the dissemination of a bid or offer or after 3:59 p.m./4:14 p.m. or within one minute of any other closing time, would be handled in the auction market.

The current operation of Direct+ with respect to auction market short sales where an auto ex transaction changes the tick prior to the report of such short sale[48] and the election of stop, stop limit, and percentage orders would remain unchanged.

Specialist Interest File

Specialists would have the ability to systemically supplement the quote, determine price points outside the quote to which he or she wants to provide liquidity by bidding or offering on behalf of its dealer account, which could improve a sweep price, facilitate a single-price execution at the bid or offer price, and systemically match outgoing ITS commitments. When facilitating a single-price execution, the specialist would be required to buy (sell) all of the volume remaining on the order being facilitated. The specialist interest file would not be disseminated unless it is at the Exchange's best bid or offer price. Specialist interest file that establishes the best bid or offer would be entitled to priority with the crowd at that price for one trade, as current Exchange rules permit. Specialist interest file at other prices would yield to agency orders and the broker agency interest file, except that, once orders on the book are filled, specialists could be on parity with the crowd, including broker agency interest file.

Broker Agency Interest File

Brokers would have the ability to place within the Display Book system an agency interest file at varying prices at or outside the quote with respect to orders the broker is representing, except for ''G'' orders. The broker agency interest file would not be disseminated unless it is at the Exchange best bid or offer. The specialist would be able to view only aggregated broker agency interest file at each price. Broker agency interest file would have priority if it establishes the best bid or offer, and would be on parity with other orders at its price, except specialist interest file, as described above. Broker agency interest file could serve to improve the price of a sweep order. The broker would be able to place an agency interest file in only one crowd at any given time, as determined by the Exchange. The broker would be required to cancel his or her agency interest file when leaving the crowd. When the broker wants to trade as part of the crowd at the same price on the same side of the market as his or her agency interest file, he or she would be required to add to his or her existing agency interest file or cancel agency interest file at that price before verbally trading in the crowd. If the broker leaves the crowd without canceling his or her agency interest file, and a trade occurs involving such interest file, the broker would be held to that trade.

''Locked'' and ''Crossed'' Markets

The proposed amendments provide for automatic execution of any order that locks or crosses the Exchange market, unless the quotation is non-auto executable. If an order locking or crossing the market is not automatically executed in its entirety, the remaining portion of such order would sweep the book until executed, reaches its limit price, if any, or reaches a LRP. Once a LRP is reached, any residual that continues to lock or cross the market would be handled in the auction market.

Trade-Throughs

Where the best bid or offer is published by another market center in which an automated execution is immediately available, or such bid or offer is otherwise protected from a trade-through, and the specialist has not systemically matched the price associated with such better bid or offer, the Exchange would automatically route as a commitment to trade the portion of any market order, auto ex market order, AL order, or limit order routed to the Display Book that satisfies such better bid or offer, unless the entity entering the order indicated that it was contemporaneously satisfying the better bid or offer. If such commitment to trade is not filled or not filled in its entirety,

[46] In addition, when a report of a transaction is being made through the Display Book, auto quote would be suspended until the reporting is concluded.

[47] The Exchange has committed to amending NYSE Rule 1001(a)(iv) to reflect this proposed change. Telephone conversation between Nancy R. Jenkins, Managing Director, NYSE, and Kelly Riley, Assistant Director, Division, Commission, on August 10, 2004.

[48] *See* NYSE Rule 1003.

the balance would be returned to the Exchange and handled in the manner described above, consistent with its instructions. The order entry time associated with this returned portion of the order would be the time of its return, not the time the order was first entered with the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[49] in general, and furthers the objectives of Section 6(b)(5),[50] in particular, because it is 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 also believes that the proposed rule change is designed to support the principles of Section 11A(a)(1) of the Act[51] in that it seeks to assure economically efficient execution of securities transactions, makes it practicable for brokers to execute investors' orders in the best market, and provides an opportunity for investors' orders to be executed without the participation of a dealer.

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

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

C. Self-Regulatory Organization's Statement of 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, as amended.

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

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

(A) By order approve 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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–05 and should be submitted on or before September 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[52]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–18638 Filed 8–13–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50170; File No. SR–PCX–2004–56]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Certificate of Incorporation and Bylaws of Archipelago Holdings, Inc.

August 9, 2004.

I. Introduction

On June 28, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Certificate of Incorporation and Bylaws of Archipelago Holdings, Inc. (''New Arca Holdings''). The proposed rule change was published for comment in the **Federal Register** on July 7, 2004.[3] The Commission received no comments on the proposal. On August 3, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, grants accelerated approval to Amendment No. 1 to the proposed rule change, and solicits comments from interested persons on Amendment No. 1.

---

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(5).

[51] 15 U.S.C. 78k–1(a)(1).

[52] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49946 (June 30, 2004), 69 FR 41009 (''Notice'').

[4] *See* letter from Mai S. Shiver, Director/Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 2, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified the intent of the drafters regarding the interpretation of ''beneficial ownership'' and any variation thereof, made other technical corrections to the text of the proposed rule change, and requested accelerated approval of Amendment No. 1.