

Floor Official has approved, as appropriate under prevailing market conditions, the granting of a stop for an order or orders of a larger specified size, or the granting of stops as to a larger specified aggregate number of shares as to which stops may be in effect;

(b) after the granting of the stop the spread between the bid and offer is reduced, in any case where, prior to the granting of the stop, the spread in the quotations was not less than twice the minimum variation of trading in the stock;

(c) the specialist does not reduce the size of the market following the stop; and

(d) on the election of the stop the order or orders on the specialist's book entitled to priority will be executed against the stopped stock.

.40 "Stopping" stock on market-at-the-close orders.—Notwithstanding any provisions of this Rule or of any other Exchange Rule to the contrary, a member shall execute market-at-the-close orders in a stock as provided below, where the member is holding simultaneously both buy and sell market-at-the-close orders.

(A) Where there is an imbalance between the buy and sell market-at-the-close orders, the member shall, at the close of trading on the Exchange in that stock on that day, execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. (An imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid.) The member shall then stop the remaining buy and sell orders against each other and pair them off at the price of the immediately preceding sale described above. The "pair off" transaction shall be reported to the consolidated last sale reporting system as "stopped stock".

(B) Where the aggregate size of the buy market-at-the-close orders equals the aggregate size of the sell market-at-the-close orders, the buy orders and sell orders shall be stopped against each other and paired-off at the price of the last sale of the Exchange just prior to the close of trading in that stock on that day. The transaction shall be reported to the consolidated last sale reporting system as "stopped stock". *See Rule 123C for discussion of procedures applicable to market-at-the-close and limit-at-the close orders.*

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 NYSE included statements concerning

the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to add explanatory or clarifying material to several NYSE rules. The proposed rule change, as amended, does not constitute a substantive change to any NYSE rule or policy, and is responsive to recommendations made by an Independent Consultant retained by the Exchange.⁶

NYSE Rule 72. The Exchange is proposing to add a sentence to NYSE Rule 72(b) making it clear that a broker must "recross" a proposed clean agency cross pursuant to Exchange auction procedures following a transaction which provides price improvement to one side of the cross. The Exchange represents that this is consistent with NYSE auction procedures that require exposure of bids and offers by brokers effecting a cross before a transaction may be completed.

The Exchange is also proposing to specify in the Rule its long standing interpretation of its auction rules that a transaction "clears the Floor," meaning bids and offers not satisfied in the transaction are deemed to be simultaneously re-entered and on parity with each other. This is a fundamental concept that has long been deemed essential to the efficient functioning of the auction market.

NYSE Rule 75. The Exchange is proposing to codify formally in NYSE Rule 75 its long-standing practice that Floor disputes involving \$10,000 or more, or questioned trades, can be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof if the parties to the dispute so agree.⁷ The decision of the

panel is then binding on the parties. This practice, which is essentially a form of expedited arbitration, has proven to be a very efficient means of ensuring timely resolution of Floor disputes.

As an alternative to a panel of three Floor Governors, Executive Floor Officials, and/or Senior Floor Officials (as stated above), members may also proceed to resolve a dispute through long-standing arbitration procedures established under the NYSE's Constitution and Rules.

NYSE Rule 91. The Exchange is proposing to clarify NYSE Rule 91.10 to make clear in the Rule that only a member may confirm a transaction in the situations covered by the Rule. The Exchange is also proposing to add a sentence to the Rule to clarify that transactions which are not confirmed are deemed to have been accepted. The NYSE represents that both of these changes described above reflect consistent Exchange interpretations of NYSE Rule 91.10.

In addition, the Exchange is proposing to replace the term "promptly" with the phrase "as soon as practicable under the prevailing circumstances." Specifically, the Exchange proposes to amend NYSE Rule 91.10 to provide that a member receiving a report of execution of a transaction where another member⁸ acted as principal triggers the member's unconditional right to reject the trade as soon as practicable, given the prevailing circumstances. In addition, the Exchange is amending NYSE Rule 91.10 to clarify that disputes as to whether there was sufficient time to reject the trade would be resolved under NYSE Rule 75, either through a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, or through arbitration procedures established under the Exchange's Constitution and Rules.⁹

The Exchange represents that the proposed changes, deeming transactions

action assigned to or required of a Floor Governor. Floor officials entering their fifth or sixth year of service as a Floor Official are eligible for appointment as Senior Floor Officials. They are also empowered with the authority of a Floor Governor. *See Securities Exchange Act Release No. 44673 (August 9, 2001), 66 FR 43279 (August 17, 2001) (SR-NYSE-2001-16).*

⁸ The Exchange clarified that NYSE Rule 91.10, except the provision dealing with the memorandum record of the specialist, applies to transactions when any member elects to take or supply for his own account the securities named in an order entrusted to him. Telephone conversation between Jeffery Rosenstruck, Senior Special Counsel, Market Surveillance, Rule Development, NYSE, and Tim Fox, Attorney, Division, Commission on May 28, 2003.

⁹ *See Amendment No. 2.*

⁶ *See In the Matter of New York Stock Exchange, Inc.*, 70 S.E.C. Docket 106, Securities Exchange Act Release No. 41574 (June 29, 1999), Administrative Proceeding File No. 3-9925.

⁷ *See Amendment No. 2.* According to the NYSE, Executive Floor Officials and Senior Floor Officials perform many of the same functions performed by Floor Governors. Executive Floor Officials are former Floor Governors and are empowered to perform any duty, make any decision or take any