Nasdaq proposes to eliminate the foreign associate registration category under Nasdaq Rule 1100 and add an exemption to Nasdaq Rule 1060 for persons formerly covered by this registration category. Pursuant to Nasdaq's definition of a foreign associate, these associated persons would not be conducting any securities activities on the Nasdaq market. The Commission notes that NASD Rule 1100 requires foreign associates of NASD members to register with NASD. The Commission believes that, because many Nasdaq members are also members of NASD, requiring Nasdaq members to register its foreign associates with both self-regulatory organizations is duplicative.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASDAQ–2006–016) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–15897 Filed 9–27–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54504; File No. SR–NYSE–2006–76]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating To Exchange Rule 104.10 (''Dealings by Specialists'')

September 26, 2006.

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 September 22, 2006 the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change is an amendment to the specialist stabilization requirements set forth in NYSE Rule 104.10 (''Dealings by Specialists''). The Exchange seeks to implement certain changes as a pilot. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Bids and Offers

Rule 70.

* * * * *

* * * Supplementary Material

* * * * *

.20 (a)(i) With respect to orders he or she is representing on the Floor, a Floor broker may place within the Display Book® system broker agency interest files at multiple price points on both sides of the market at or outside the Exchange best bid and offer with respect to each security trading in the location(s) comprising the Crowd such Floor broker is a part of with respect to orders he or she is representing on the Floor, except that the agency interest files shall not include any customer interest that restricts the specialist's ability to be on parity pursuant to Exchange Rules 104.10[(6)(i)(C)] *(5)(i)(a)(I)(d)* and 108(a).

* * * * *

Dealings by Specialists

Rule 104

* * * * *

Supplementary Material:

Functions of Specialists

.10 Regular specialists.—Any member who expects to act regularly as specialist in any listed stock and to solicit orders therein must be registered as a regular specialist.

* * * * *

(5)(i) Transactions on the Exchange *by a specialist* for [his] *the specialist's* [own] account [of a member acting as specialist] are to be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of the specialist's position to the immediate and reasonably anticipated needs of the round-lot and the odd-lot market.

(a) The following types of transactions [to establish or increase a position are not to be effected except] *are permitted* when they are reasonably necessary to render the specialist's position adequate to such *markets'* needs:

(I) Neutral Transactions

(a) Definition—A neutral transaction is a purchase or sale by which a specialist liquidates or decreases a position.

(b) Neutral Transactions may be made without restriction as to price.

(c) Re-Entry Obligation Following Neutral Transactions—The specialist's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Neutral Transactions. Such re-entry transactions should be in accordance with the immediate and anticipated needs of the market.

(d) Neutral Transactions must yield parity to, and may not claim precedence based on size over, a customer order in the Crowd upon the request of the member representing such order, where such request has been documented as a term of the order, to the extent of the volume of such order that has been included in the quote prior to the transaction.

(e) The requirements contained in (5)(i)(a)(I)(d) above shall not apply to automatic executions involving the specialist dealer account.

(II) Non-Conditional Transactions

(a) Definition—A non-conditional transaction is a specialist's bid or purchase and offer or sale, that establishes or increases a position, other than a transaction that reaches across the market to trade with the Exchange bid or offer.

(b) Non-Conditional Transactions may be made without restriction as to price in order to:

(i) Match another market's better bid or offer price;

(ii) Bring the price of a security into parity with an underlying or related security or asset;

(iii) Add size to an independently established bid or offer on the Exchange;

(iv) Purchase at the published bid price on the Exchange;

(v) Sell at the published offer price on the Exchange;

(vi) Purchase or sell at a price between the Exchange published bid and published offer;

(vii) Purchase below the published bid or sell above the published offer on the Exchange;

(c) Re-entry Obligation Following Non-Conditional Transactions—The specialist's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Non-Conditional Transactions. Such re-entry transactions should be commensurate with the size of the Non-Conditional

[6] The Commission notes that Nasdaq stated in its proposal that it has no reason to expect that the small number of non-NASD members that become Nasdaq members would have associated persons categorized as foreign associates.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

Transactions and the immediate and anticipated needs of the market.

(b)(I) The following types of transactions by a specialist for the specialist's account to establish or increase a position are not to be effected except when, with the approval of a Floor Official, the transactions are reasonably necessary to render the specialist's position adequate to the immediate and reasonably anticipated needs of the round-lot and the odd-lot market and the specialist reoffers or rebids where necessary after effecting such transaction:

[(A)]*(a)* A purchase at a price above the last *trade price on the Exchange* [sale in the same session:];

(b) A sale at a price below the last trade price on the Exchange; [(B)]*(c)* the purchase of more than 50% of the stock offered in the market at a price equal to the last *trade price* [sale] where such *last trade* [transaction] *price* [would be on a ''zero plus tic'' (i.e., the last sale price] was [above the] *higher than the last differently priced* [previous different] regular way sale. [price); and]

[(C) Failing to reoffer or rebid where necessary after effecting transactions described in (A) and (B) above.

Transactions of these types, may, nevertheless, be effected with the approval of a Floor Official or in less active markets where they are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.]

(c) Prohibited Transactions

(I) During the last ten minutes prior to the close of trading, a specialist with a long position in a security is prohibited from making a purchase in such security that results in a new high price on the Exchange for the day at the time of the specialist's transaction, except as provided in subparagraphs (5)(i)(a)(II)(b)(i) through (5)(i)(a)(II)(b)(ii) above.

(II) During the last ten minutes of trading, a specialist with a short position in a security is prohibited from making a sale in such security, including securities subject to the Regulation SHO Pilot (17 CFR 240.202T), that results in a new low price on the Exchange for the day at the time of the specialist's transaction, except as provided in subparagraphs (5)(i)(a)(II)(b)(i) through (5)(i)(a)(II)(b)(ii) above.

(ii) [Notwithstanding the provisions of subparagraphs (5)(i)(A) and (B) above, w]*W*henever a specialist effects a principal purchase of a specialty stock, in another [participating] market center [through ITS,] at or above the price at which [he] *the specialist* holds orders to sell that stock, such orders which remain unexecuted on the Floor must be filled by the specialist buying the stock for [his own] *the specialist's* account[,] at the same price at which [he effected his] *the* principal transaction *was effected*;[through ITS] above unless[,] effecting such a principal transaction on the Floor[,]at that price[,]would [(a)] be inconsistent with the maintenance of fair and orderly markets[; or (b) result in the election of stop orders].

(iii) Whenever a specialist effects a principal sale of a specialty stock[,] in another [participating] market center [through ITS,] at or below the price at which [he] *the specialist* holds orders to buy that stock, such orders which remain unexecuted on the Floor must be filled by the specialist [by] selling the stock for [his own] *the specialist's* account[,] at the same price at which [be effected his] *the* principal transaction *was effected* [through ITS subject to the same conditions as set forth in (ii)(a) and (b) above] *unless effecting such principal transaction on the Floor at that price would be inconsistent with the maintenance of fair and orderly markets* and provided further that effecting such a principal transaction on the Floor, at that price, would not be precluded by the short selling rules, or would not result in a sale to a stabilizing bid.

[(iv) Notwithstanding the provisions of (5)(i)(A) and (B) above, a specialist may effect a principal purchase of a specialty security to establish or increase a position at a price above the last sale in the same session at a price that matches the then current national best bid or, in the case of a sale, that matches the then current national best offer displayed by another market center.]

(6) Specialist Transactions in Active Securities that Establish or Increase the Specialist's Position:

The provisions of this rule are pursuant to a pilot program set to commence following Commission approval and end on June 30, 2007.

(i) Definition—''active'' securities are:

(a) Securities comprising the S&P 500® Stock Index;

(b) Securities trading on the Exchange during the first five trading days following their initial public offering of such securities; and

(c) Securities that have been designated as ''active'' by a Floor Official subject to the following provisions:

(I) A Floor Official may designate a security as ''active'' when such security has exhibited substantially greater than normal trading volume and is, in the Floor Official's judgment likely to continue to sustain such higher volume during the remainder of the current trading session.

(II) A Floor Official's designation of a security as ''active'' shall last only for the trading session on the particular day it is determined. A new designation may be made on subsequent days based on the security's trading characteristics that day.

(III) The Floor Official shall promptly inform the Market Surveillance Division of NYSE Regulation, Inc. (''MKS'') any time she or he designates a security as ''active,'' in the time and manner prescribed by the Exchange.

(IV) The Floor Official designating a security as ''active'' and the specialist for such security shall prepare and maintain such documentation regarding the security as the Exchange shall from time to time require.

(ii) Definition—A ''Conditional Transaction'' is a specialist's transaction in an active security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange published bid or offer (''Hit Bid/Take Offer'').

(iii) The following Conditional Transactions, may be made by a specialist without restriction as to price, provided they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the specialist's transaction. (''Appropriate'' re-entry shall mean re-entry on the opposite side of the market at or before the price participation point or the ''PPP''.):

(a) A specialist's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange and above the last differently-priced published offer on the Exchange; and

(b) A specialist's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange and below the last differently-priced published bid on the Exchange.

(iv) Re-entry Obligations for Conditional Transactions:

(a) ''PPPs''—The Exchange will periodically issue guidelines, called price participation points (''PPP''), that identify the price at or before which a specialist is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a specialist is meeting its obligations.

(b) Notwithstanding that a security may not have reached the PPP, the specialist may be required to re-enter the market immediately after a Conditional Transaction based on the

price and/or volume of the specialist's trading in reference to the market in the security at the time of such trading. In such situations specialists may not rely on the fact that there may have been one or more independent trades following the specialist's trading to justify a failure to re-enter the market.

(c) Immediate re-entry is required after the following Conditional Transactions:

(I) A purchase that (1) reaches across the market to trade with an Exchange published offer that is above the last differently priced trade on the Exchange and above the last differently priced published offer on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published offer size.

(II) A sale that (1) reaches across the market to trade with an Exchange published bid that is below the last differently priced trade on the Exchange and below the last differently priced published bid on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published bid size.

(III) Each trade at a separate price in a Sweep is viewed as a transaction with the published bid or offer for the purpose of subparagraphs (6)(iv)(c)(I) and (6)(iv)(c)(II) above.

(v) The following Conditional Transactions may be made without restriction as to price:

(a) A specialist's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange or above the last differently-priced published offer on the Exchange; and

(b) A specialist's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange.

(c) Re-entry obligations following transactions defined in subparagraphs (6)(v)(a) and (6)(v)(b) above are the same as for Non-Conditional Transactions pursuant to subparagraph (5)(i)(a)(II)(c) above.

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

(A) The specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary in relation to the specialist's overall position in the stocks in which he is registered; and the specialist has obtained the prior approval of a Floor Official;

(B) The specialist may liquidate a position by selling a security on a direct or zero minus tick or by purchasing a security on a direct or zero plus tick without the need to obtain Floor Official approval if such transaction is effected at a price that matches the then current national best bid or offer displayed by another market center;

(C) The specialist should maintain a fair and orderly market during liquidation and, after reliquifying, should re-enter the market to offset imbalances between supply and demand. The selling of stock on a direct minus tick or a zero minus tick, or the purchasing of stock on a direct plus tick or a zero plus tick should be effected in conjunction with the specialist's re-entry in the market on the opposite side of the market from the liquidating transaction where the imbalance of supply and demand indicates that immediately succeeding transactions may result in a lower price (following the specialist's sale of stock on a direct minus tick or a zero minus tick) or a higher price (following the specialist's purchase of stock on a direct plus tick or a zero plus tick). During any period of volatile or unusual market conditions resulting in a significant price movement in the subject security, the specialist's transactions in re-entering the market following a liquidating transaction effected by selling stock on a direct minus tick or zero minus tick, or purchasing stock on a direct plus tick or zero plus tick, should, at a minimum, reflect the specialist's usual level of dealer participation in the subject security. During such periods of unusual price movement in a security, any series of such transactions which may be effected in a brief period of time should be accompanied by the specialist's re-entry in the market and effecting transactions which reflect a significant degree of dealer participation;

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

(ii) Notwithstanding the provisions of subparagraph (6)(i)(A) above, whenever a specialist effects a principal purchase (sale) of a specialty stock, in another participating market center through ITS, at or above (at or below) the price at which he holds orders to sell (buy) that stock, such orders which remain unexecuted on the Floor must be filled by the specialist by buying (selling) the stock for his own account, at the same price at which he effected his principal transaction through ITS subject to the same conditions as set forth in subparagraphs (5)(ii) and (iii) above.

(7) The requirement to obtain Floor Official approval for transactions for a specialist's own account contained in subparagraphs (5)(i)(A), (B) and (6)(i)(A) above shall not apply to transactions effected in an investment company unit (the ''unit''), as that term is defined in Section 703.16 of the Listed Company Manual, or a Trust Issued Receipt (the ''receipt'') as that term is defined in Rule 1200. Nevertheless such transactions must be effected in a manner that is consistent with the maintenance of a fair and orderly market and with the other requirements of this rule and the supplementary material herein.]

(7)[(8)] When inquiry is made of a specialist as to the price at which a block of stock may be sold, the specialist may advise the broker of the ''clean up'' price for the block, *after trading with the published bid (offer).* If, as a result of this inquiry, the block is sold and the specialist participates as a dealer at the ''clean up'' price, he should also execute at the same price the executable buy orders held by him. The same principle applies in the event an inquiry is made with respect to an order to purchase a block of stock.

[(9) If a specialist has limit sell orders on his book at two or more different prices, he should not, as a dealer, purchase all of the stock from the book at the lowest limit price and then immediately purchase stock from the book at a higher limit price. He should in such a situation withdraw the offer and cross the entire amount of stock he is purchasing as a dealer at one price. The same principle applies in the event the specialist sells stock to limit orders on the book at two or more different prices.]

(8)[(10)] A specialist's bid or offer in a specialty stock on the Exchange may not be inferior to the specialist's market maker bid or offer disseminated by an electronic communications network (as that term is defined in Securities and Exchange Commission Rule *600(b)(23)*

of Regulation NMS [11Ac1–1(a)(8))] or any other market center. A specialist may not disseminate a market maker bid or offer on another market center or electronic communications network at a price at which Exchange rules would preclude dissemination of such bid or offer on the Exchange.

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Rule 123. Record of Orders

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(g) Requests To Yield

A request to a specialist to yield to a customer order in accordance with Rule 104.10[(6)(i)(C)] *(5)(i)(a)(I)(d)* is a condition of that order and must be documented in accordance with applicable books and records requirements.

* * * * *

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 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 NYSE 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 NYSE Hybrid Market℠ (''Hybrid Market'') [3] combines the benefits of specialist and Floor Broker expertise with the speed, certainty, and anonymity of electronic executions to create a market center offering maximum choice to customers without eliminating time tested trading processes that have proven immensely successful in providing stable, liquid, and less volatile markets.

Specialists will continue to perform their vital functions in the Hybrid Market'' committing capital and adding liquidity in order to bridge gaps in supply and demand, which keeps the market fair and orderly, reducing volatility and encouraging stable prices.

In order to keep up with the pace of the faster, more electronically-oriented Hybrid Market, specialists will use proprietary systems that employ algorithms (sometimes referred to in shorthand as the ''specialist's API'') to generate quoting and trading messages that will interact with the NYSE Display Book® system. These quoting and trading messages, which must comply with NYSE Rule 104, enable specialists to place proprietary interest at various prices at and outside the Exchange quotation and to interact with Exchange orders.

Given the increase in the amount and speed of market activity which will occur as a result of the Hybrid Market and the Commission's adoption of Regulation NMS [4] (''Reg NMS''), the Exchange believes that the stabilization requirements set forth in NYSE Rules 104.10(5) and (6), governing specialist proprietary trading, are no longer responsive or relevant to the realities of active markets.

Specifically, the institutionalization of the market, increased competition, and increased application of computer and communication technology has significantly diminished the time and place advantages of specialists. As a result, markets have seen increases in the average daily trading volume and the movement off the Floor of the decision making that affects the direction and extent of movements in the specialty stocks. There is a dramatic increase in the transparency of the Display Book® through, among other things, Exchange initiatives like NYSE OPENBOOK™. This increased transparency gives all market participants, both on and off the Floor, a greater ability to see and react to market changes. In addition, prior to the Hybrid Market, all orders were handled by the specialist. The Hybrid Market has reduced the situations in which specialists' have the ability to see and interact with orders. Furthermore, in the Hybrid Market Floor brokers and customers not only have the ability to see limit orders above and below the current market price, but may also interact with those orders directly without the involvement of the specialist. These factors combined significantly reduce the time and place advantage enjoyed by specialists.

Amendments to these rules are required to enable specialists to adapt more quickly and flexibly to changing market conditions in an environment of rapid quote changes and sub-second executions. The amendments also recognize that specialists have fewer opportunities to control the price of or dominate the market in a security, particularly liquid securities or active trading situations. The amendments also reflect the inability to use ''tick'' tests effectively in a fast moving market. Increased transparency, improved technology and better surveillance have lessened the need for a tick test. The Commission has already recognized that '' * * * as trading volume increases, it becomes less likely that a trader would be able to cost-effectively manipulate the price of a security. Further, the high levels of transparency and surveillance for actively-traded securities on exchanges and other regulated markets make it more likely that any manipulation would be detected and pursued.'' [5]

As such, the amendments, discussed below, provide specialists with added flexibility to trade at or between the quote, especially when establishing or increasing a position. With respect to specialist trading with the Exchange quotation (''hitting bids/taking offers''), the proposed amendments reflect the view that more liberal trading ability is appropriate for active stocks, such as those comprising the S&P 500 Index, while for other securities, the existing rules should remain in effect, at least until the Exchange has had an ability to assess these rules in the context of Phase 3 of the Hybrid Market.[6] The Exchange believes that the proposed amendments will give specialists the tools they require in order to meet their affirmative obligation to maintain a fair and orderly market and step in during moments of market volatility in the faster more electronic oriented Hybrid Market. The proposed amendments will benefit the investing public by offering yet another avenue for order execution. Accordingly, the Exchange proposes that the amendments set forth in this filing be approved. The Exchange further proposes that the amendments to NYSE Rule 104.10(6) be approved as a pilot to commence following Commission approval and end on June 30, 2007.

Current Stabilization Rules

NYSE Rule 104.10(5) sets forth the specialist's stabilization obligations with respect to trading as dealer in the stocks in which he or she is registered. The rule requires that the specialist's trading meets the test of reasonable

[3] The Hybrid Market was approved on March 22, 2006. *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05).

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[5] *See* Securities Exchange Act Release No. 48709 (October 28, 2003), 68 FR 62972 (November 6, 2003).

[6] Phase 3, which is scheduled to begin on or about October 6, 2006, will implement most of the provisions approved by the SEC on March 22, 2006, including elimination of restrictions on the availability of automatic executions.

necessity and, unless it is to render the specialist's position in a stock adequate for current or anticipated needs of the market, a specialist should not effect a non-stabilizing transaction (*i.e.*, a transaction with the trend of price movement) for the specialist's account when acquiring or increasing a position. In this regard, the rule restricts specialists from purchasing stock at a price above the last sale (in the same trading session) and purchasing more than 50% of the stock offered on a ''zero plus tick,'' *i.e.* at the same price as the last sale, when such last sale price was higher than the previous, differently priced sale in the stock on the Exchange. Specialists are permitted to effect these types of transactions with Floor Official approval or in less active markets where they are an essential part of a proper course of dealings and where the amount of stock and price change (if any) are normal in relation to the market, provided, they reoffer or rebid as necessary after effecting such trades.

NYSE Rule 104.10(6) sets forth the specialist's stabilization requirements when liquidating or reducing a position. This rule provides that such trades should be effected in a reasonable and orderly manner, in relation to the condition of the general market, the market in the particular security and the adequacy of the specialist's position to meet the immediate and anticipated needs of the market in the security. Specialists are permitted to liquidate or reduce a position by selling stock on a ''direct minus tick,'' *i.e.* selling stock at a price lower than the price of the last sale on the Exchange or by purchasing stock on a ''direct plus tick,'' *i.e.* at a price higher than the price of the last sale on the Exchange, if such transaction is reasonably necessary and the specialist has obtained Floor Official approval; there are no size limitations to such trades. After such transactions (including sales on ''zero minus ticks'' and purchases on ''zero plus ticks''), specialists are required to re-enter the market on the opposite side in an appropriate amount, where the imbalance of supply and demand indicates that immediately succeeding transactions may result in lower (following specialist's sale) or higher (following specialist's purchase) prices.[7]

Amended Stabilization Rules

The proposed changes to the stabilization rules retain the requirement that specialist dealings be reasonably necessary for the maintenance of a fair and orderly market and that transactions with the trend of the market be accompanied by appropriate re-entry on the opposite side. However, these changes move away from defining stabilization in terms of the last sale to focus on market conditions, the type of trade in question and the specialist's existing position.

The proposed rule defines four types of transactions—''Neutral,'' ''Non-Conditional,'' ''Conditional,'' and ''Prohibited.'' Neutral Transactions are discussed in proposed NYSE Rule 104.10(5)(i)(a)(I). The rule defines a Neutral transaction as a purchase or sale by which a specialist liquidates or decreases a position. Neutral Transactions may be made without restriction as to price. This is similar to what the current rule permits today, but eliminates the requirement for Floor Official approval in situations where the transaction is a sale on a direct minus tick or a purchase on a direct plus tick. This recognizes that ticks no longer provide useful benchmarks in a rapidly changing market while retaining the specialists' obligation to make an assessment to ensure the reasonable necessity of such transactions. It further acknowledges that added flexibility is justified when specialists are liquidating or reducing a position because the specialists are adding liquidity to the market.

Re-entry on the opposite side of the market is not required merely as a result of the specialist engaging in one or more Neutral Transactions, but may be necessary in order for the specialist to meet its affirmative obligation to maintain a fair and orderly market.

Proposed NYSE Rule 104.10(5)(i)(a)(II) discusses Non-Conditional Transactions. Non-Conditional Transactions are defined as certain specialist bids or purchases and offers or sales that establish or increase a position. Proposed NYSE Rule 104.10(5)(i)(a)(II)(b) sets forth seven types of Non-Conditional Transactions (items (i) through (vii)). The first two types of Non-Conditional Transactions (items (i) and (ii)) are allowed without restriction under the current rule and have not been changed. Each of these types of transactions may be effected without restriction as to price or the need for Floor Official approval:

(i) Match another market's better bid or offer;

(ii) Bring the price of a security into parity with an underlying or related security or asset;

(iii) Add size to an independently established bid or offer on the Exchange;

(iv) Purchase at the published bid on the Exchange;

(v) Sell at the published offer on the Exchange;

(vi) Purchase or sell at a price between the Exchange published bid and published offer; or

(vii) Purchase below the published bid or sell above the published offer on the Exchange (during a ''sweep'' for example).

As with Neutral Transactions, the amended rule reflects that in circumstances where the specialist is not reaching across the market to trade with the Exchange bid or offer,[8] they should have more flexibility in the types of transactions they can effect, especially as such transactions must be reasonably necessary. Similarly, because in most of the instances, an independent source establishes the price of the allowable transactions, the concerns that a specialist may be ''leading the market'' are diminished. In these instances, specialists are reacting to a price that is established by market forces beyond the specialists' control that is information that is readily available to all market participants. In the other instances, the specialist is buying at the bid price (selling at the offer price) or trading between the quotes that also do not raise significant concerns about price control.

Re-entry on the opposite side of the market is not required as a result of the specialist engaging in one or more Non-Conditional Transactions, but may be required in order for the specialist to meet its affirmative obligation to maintain a fair and orderly market. Where such re-entry is necessary, it should be commensurate with the size of the specialist's transactions and the immediate and anticipated needs of the market.

Whereas the provisions related to Neutral and Non-Conditional Transactions discussed above apply to specialist trading in all NYSE securities, Conditional Transactions relate only to specialist transactions in ''active'' securities.

Proposed NYSE Rule 104.10(6) governs Conditional Transactions. Proposed Rule 104.10(6)(i) defines ''active'' securities as:

(a) Securities comprising the S&P 500® Stock Index;

(b) Securities trading on the Exchange during the first five trading days following their initial public offering; and

[7] The Floor Official approval requirements in NYSE Rules 104.10(5) and (6) do not apply to trading in securities commonly referred to as exchange-traded funds or ETFs. *See* NYSE Rule 104.10(7).

[8] The requirements governing specialist trading that reaches across the market when establishing or increasing a position are discussed below and depend on whether the security in question is ''active.''

(c) Securities that have been designated as ''active'' by a Floor Official.

The proposed rule further describes the process governing Floor Official designation of a security as ''active.'' The process includes, among other things, the Floor Official's determination that the security in question has exhibited substantially greater than normal trading volume and is likely to continue to sustain such higher volume during the remainder of the trading session. The Floor Official's determination that a security should be considered ''active'' lasts only for the trading session on the particular day it is determined. While the security may be designated ''active'' on subsequent days, such determinations must be made based on its trading characteristics that day. The rule also requires the Floor Official to notify the Market Surveillance Division of NYSE Regulation, Inc. whenever he or she designates a security as ''active'' and requires the specialist and Floor Official to create and maintain such documentation regarding the security as the Exchange may require.

Conditional Transactions are defined as specialist trades in ''active'' securities that establish or increase a position by reaching across the market to trade with the Exchange published bid (in the case of a specialist's sale) or offer (in the case of a specialist's purchase) when such bid or offer (as relevant) is priced above the last differently-priced trade and the last differently-priced published bid or offer (as relevant) on the Exchange.

Conditional Transactions may be made without restriction as to price, provided they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the specialist's transaction.

To help specialists to determine appropriate re-entry points after one or more Conditional Transactions, the Exchange will periodically issue guidelines, called ''Price Participation Points'' (''PPPs'') that identify the price at or before which a specialist is expected to re-enter the market after effecting one or more Conditional Transactions. PPPs are minimum guidelines only and compliance with them does not guarantee that a specialist is meeting its obligations.[9]

Certain situations require immediate re-entry after one or more Conditional Transactions, regardless of the PPP; that is, re-entry should occur as the specialist's next available quoting or trading action. For example, immediate re-entry may be required based on the price and/or volume of the specialist's Conditional Transaction(s) in reference to the market in the security at the time of such trading. The fact that there may have been one or more independent trades following the specialist's Conditional Transaction does not, by itself, eliminate the need for immediate re-entry, when otherwise appropriate. In addition, immediate re-entry is required after a Conditional Transaction of: (a) 10,000 shares or more or a quantity of stock with a market value of $200,000 or more; and (b) which exceeds 50% of the published bid or offer size (as relevant).[10]

The Exchange believes that the provisions governing Conditional Transactions appropriately balance the need of specialists to have more flexibility in trading in fast moving markets with the traditional requirements governing their non-stabilizing trading. In addition, these provisions recognize that with respect to securities that are ''active'' as defined in the rule, the specialist has little opportunity to drive price movements in the security.

Specialist transactions in ''inactive'' securities (*i.e.*, securities that are not covered by the definition of ''active'' securities) that reach across the market to trade with the existing bid or offer when the specialist is establishing or increasing a position, continue to be governed by the requirements of current NYSE Rule 104.10(5)(i), and are reflected in the re-numbered NYSE Rule 104.10(5)(i)(b)(I). Proposed NYSE Rule 104.10(5)(i)(b)(I) reflects the current rule text, interpretation and practice on the Floor. While the Exchange believes that the structure of Neutral, Non-Conditional, Prohibited, and Conditional transactions is suitable for all securities with appropriate re-entry requirements, this proposed rule filing does not include that broad an amendment. The Exchange intends to review the trading in the inactive securities once Phase 3 of the Hybrid Market is implemented and will make any necessary filings related to this point after the completion of that review.

Proposed amended NYSE Rule 104.10(5)(i)(b)(I) now covers the circumstances discussed in the current NYSE Rule 104.10(6)(i) which is proposed for deletion. The Exchange is further proposing to delete the following text from NYSE Rule 104.10(5)(i)(C): [11]

(C) failing to reoffer or rebid where necessary after effecting transactions described in (A) and (B) above.

Transactions of these types, may, nevertheless, be effected with the approval of a Floor Official or in less active markets where they are an essential part of a proper course of dealings and where the amount of stock involved and the price change, if any, are normal in relation to the market.

The transactions discussed in NYSE Rule 104.10(5)(i)(C) are by their nature, transactions in less active securities which make the discussion of less active markets redundant.[12] Furthermore, the requirement that the specialist obtain Floor Official approval and reoffer or rebid where necessary are now incorporated in the first subparagraph of NYSE Rule 104.10(5)(i)(b)(I).

In addition, the proposed rule amendments provide that certain transactions are Prohibited: During the last ten minutes of trading, a specialist with a long position in a security is prohibited from making a purchase in such security that results in a new Exchange high for the day at the time of the specialist's transaction, and a specialist with a short position in a security is prohibited from making a sale in such security, including securities subject to the Regulation SHO Pilot (17 CFR 240.202T), that results in a new Exchange low for the day at the time of the specialist's transaction. However, the specialist is permitted to effect such transaction in order to match another market's better bid or offer or to bring the price of the security into parity with an underlying or related security or asset. This reflects the possibility that such trading may unnecessarily influence the price of a security. The exemptions recognize that in those situations, an independent party, not the specialist, has set the price.

Moreover, the Exchange seeks to delete current section (9) of current NYSE Rule 104.10 because it is no longer applicable given the proposed changes to the stabilization rules as described above. Further, the deletion of section (9) is consistent with the proposed re-definition of a Sweep Transaction.[13] The proposed amendments further make clear that each trade at a separate price in a Sweep is viewed as a transaction with the published bid or offer for the purposes of the transactions that require

[9] *See* proposed NYSE Rule 104.10(6)(iv)(a).

[10] *See* proposed NYSE Rule 104.10(6)(iv)(c)(I) and (II).

[11] Telephone conversation between Deanna Logan, Director, NYSE, and Jan Woo, Attorney, Division of Market Regulation, Commission, on September 25, 2006 (clarifying the section of the NYSE Rules that is being deleted).

[12] *Id.*

[13] *See* SR–NYSE–2006–65 (filed on August 23, 2006) including Amendment No. 1 thereto superseding the original filing in its entirety (filed on September 11, 2006).

immediate re-entry pursuant to proposed NYSE Rule 104.10(6)(iv)(c)(III).

Lastly, conforming changes to NYSE Rule 104.10 have been made consistent with the changes noted above, including necessary numbering changes to certain provisions and certain non-substantive language changes. For example, current NYSE Rule 104.10(6)(i)(D) which governs the ability of the Crowd to prevent the specialist, when liquidating or decreasing a position, from trading on parity with the Crowd during a manual transaction has been re-numbered NYSE Rule 104.10(5)(i)(a)(I)(d). NYSE Rules 70 and 123 have been amended to reflect this provision's new rule number.

The proposed amendments are intended to enhance the specialist's ability to effect transactions for its dealer account to provide support to the Hybrid Market. Under the proposed rule change specialists will, to a greater degree, be able to position themselves to provide more liquidity against the market trend and thus moderate volatility. The proposed amendments provide needed flexibility for specialists to better adapt to the new challenges of the Hybrid Market.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [14] that an exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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

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

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

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

[14] 15 U.S.C. 78f(b)(5).

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 NYSE consents, the Commission will:

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

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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–2006–76 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE.

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–2006–76 and should be submitted on or before October 19, 2006.

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

Nancy M. Morris,

Secretary.

[FR Doc. 06–8355 Filed 9–26–06; 10:59 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54485; File No. SR–Phlx–2006–56]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amending the Summary of Index Option and FXI Options Charges and the $60,000 ''Firm Related'' Equity Option and Index Option Cap

September 22, 2006.

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 August 31, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 19, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Phlx has designated this proposal as one changing a fee imposed by the Phlx under section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule

[15] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 (''Amendment No. 1'') removes all references in the proposed rule change that relate to clarifying who may receive payment for order flow funds in connection with the Exchange's payment for order flow program.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).