

(asked), and a market or marketable limit order to sell 100 contracts is received, a ROT or specialist that executes part of the 100 contract order at the improved price of 6.20 would be granted priority in executing additional contracts in a quantity up to the number of contracts executed at the improved price. Therefore, in this example, because the ROT stepped up to bid 20 contracts at a price of 6.20, he would be granted priority in the execution of up to 20 contracts at 6. In each instance, the specialist or ROT that betters the market would be able to receive a fill at the next lower or inferior price. Moreover, if two (2) or more members were entitled to priority for certain multiple price transactions, such priority would be provided on a pro rata basis to the extent practicable.

The Exchange believes the proposal will provide incentive for both ROTs and specialists to improve upon displayed quotations. As a result, the Exchange believes the proposal will enhance competitive market making on the Exchange and offer additional price improvement for customer orders. The Exchange believes that the proposed rule is similar to rules that are currently in place at other options exchanges.<sup>3</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of section 6(b)(5),<sup>5</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *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*

Amex has neither solicited nor received written comments with respect to the proposed rule change.

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

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from September 6, 2001, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR-Amex-2001-71 and should be submitted by November 16, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44961; File No. SR-NYSE-2001-34]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 103A To Delete an Unused Measure of Specialist Performance**

October 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 29, 2001, 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. 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 NYSE proposes to delete one of the performance measures for specialists under Exchange Rule 103A. The test of the proposal is below. Deletions are in brackets. Specialist Stock Reallocation and Member Education and Performance Rule 103A(a)(1) In order to ensure that a high level of market quality and performance in Exchange listed securities is achieved and maintained, the Market Performance Committee, under the authority granted in its Charter, shall develop and administer systems and procedures, including the determination of specific kinds of data to be reviewed and the establishment of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not all or particular specialist units need to take actions to improve their performance. Based on such determinations, the Market Performance

<sup>3</sup> See CBOE Rule 6.47 and PCX Rule 6.76.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Committee shall take steps as described in this rule, to encourage performance improvement and to improve or sustain market quality in appropriate cases.

\* \* \* \* \*

#### *Supplementary Material*

.10 Performance Improvement Action Criteria.—The Market Performance Committee shall initiate a Performance Improvement Action as described in paragraph (b) above whenever a specialist unit does not meet any standard of acceptable performance as specified below.

(A) No change.

(B) No change.

(C) No change.

(D) Market Share

(i) in any case where the Market Performance Committee finds that a specialist unit's overall percentage of the total share volume as reported on the Consolidated Transaction Reporting System in any of its registered securities has declined significantly within two consecutive quarters and further determines that the reason(s) for the decline can be attributed to factors within the control of the specialist unit.]

\* \* \* \* \*

## **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 Exchange proposes to amend NYSE Rule 103A to delete an unused measure of specialist performance.

Currently, NYSE Rule 103A provides authority for the Market Performance Committee ("MPC") to establish and administer measures of specialist performance, conduct performance improvement actions where a specialist unit does not meet the performance standards in the Rule, and reallocate stocks if a unit does not achieve its specified goals when subject to a performance improvement action. The performance standards in the Rule

include the Specialist Performance Evaluation Questionnaire, timeliness of stock openings, SuperDot order turnaround, administrative message responses and market share. This latter provision refers to a significant decline in market share, as measured by share volume, in two consecutive quarters where the decline is determined to be attributable to factors within the control of the specialist unit.

At the time the Exchange adopted the market share measure, it was intended that the Exchange would develop criteria as to what constitutes a "significant decline" before the market share performance standard could be enforced. However, criteria were never developed, and the MPC has never used the market share standard as a performance measure. The Exchange, therefore, is proposing to eliminate the provision from NYSE Rule 103A.

#### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of section 6(b)(5),<sup>4</sup> in particular, because it should promote just and equitable principles of trade, 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.

## **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:

<sup>3</sup> 15 U.S.C. 78f(b)

<sup>4</sup> 15 U.S.C. 78f(b)(5).

(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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. 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 the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2001-34 and should be submitted by November 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44963; File No. SR-PHLX-2001-84]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Fee for Installing and Maintaining Tethers on the Options Trading Floor**

October 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 31, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

<sup>5</sup> 17 CFR 200.30-2(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.