Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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–95–02 and should be submitted by February 28, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 exchange and, in particular, with Section 6(b)(5) [5] and Section 11(b) [6] of the Act. The Commission believes that the amendments to Rule 116.30 should further the objectives of Section 6(b)(5) and Section 11(b) through pilot program procedures designed to allow stops, in minimum variation markets, under limited circumstances that provide the possibility of price improvement to customers whose orders are granted stops.[7]

In its orders approving the pilot procedures,[8] the Commission asked the NYSE to study the effects of stopping stock in a minimum variation market. Specifically, the Commission requested information on (1) the percentage of stopped orders executed at the stop price, versus the percentage of such orders that received a better price; (2) market depth, including a comparison of the size of stopped orders to the size of the opposite side of the quote and to any quote size imbalance, and an analysis of the ratio of the size of the bid to the size of the offer; (3) whether limit orders on the specialist's book were bypassed due to the execution of stopped orders at a better price (and, to this end, the Commission requested that the NYSE conduct a one-day review of all book orders in three of the ten stocks receiving the greatest number of stops); and (4) specialist compliance with the pilot program's procedures.

The Exchange has submitted to the Commission four monitoring reports regarding the amendments to Rule 116.30. The Commission believes that, although these monitoring reports provide certain useful information concerning the operation of the pilot program, the Commission must conduct further analysis of the NYSE data and, in particular, of Rule 116.30's impact on limit orders on the specialist's book before it can consider permanent approval thereof. To allow the Commission fairly and comprehensively to evaluate the NYSE's use of its pilot procedures, without compromising the benefit that investors might receive under Rule 116.30, as amended, the Commission believes that it is reasonable to extend the pilot program until July 21, 1995.

First, the NYSE's latest monitoring report indicates that approximately half of eligible orders (*i.e.*, orders for 200 shares of less) stopped in minimum variation markets received price improvement. The Commission, therefore, believes that the pilot procedures provide a benefit to certain investors by offering the possibility of price improvement to customers whose orders are granted stops in minimum variation markets. According to the NYSE report, moreover, virtually all stopped orders were for 2,000 shares of less. In this respect, the amendments to Rule 116.30 should mainly affect small public customer orders, which the Commission envisioned could most benefit from professional handling by the specialist.

Second, in terms of market depth, the NYSE's monitoring report suggests that stock tends to be stopped in minimum variation markets where there is a significant disparity (in both absolute and relative terms) between the number of shares bid for and the number offered.[9] That report also suggests that, given the depth of the opposite side of the market, orders affected by the Rule 116.30 pilot tend to be relatively small.[10] For a substantial majority of stops granted, the size of the stopped order was less than, or equal to, 25% of the size of the opposite side quote.

In the Commission's opinion, the NYSE data generally supports its conclusion that the imbalances on the opposite side of the market from the stopped orders were of sufficient size to suggest the likelihood of price improvement to customers.[11] The Commission continues to believe that the requirement of a sufficient market imbalance is a critical aspect of the pilot program.[12] When properly applied, such a requirement should help the NYSE ensure that stops are only granted in a minimum variation market when the benefit (*i.e.*, price improvement) to orders being stopped far exceeds the potential for harm to orders on the specialist's book.[13]

Third, the NYSE states that the amendments to Rule 116.30 have relatively little adverse impact on other orders on the specialist's book.[14] This

[5] 15 U.S.C. 78f (1988).

[6] 15 U.S.C. 78k (1988).

[7] For a description of NYSE procedures for stopping stock in minimum variation markets, and of the Commission's rationale for approving those procedures on a pilot basis, *see* 1991 Approval Order, *supra*, note 1. The discussion in the aforementioned order is incorporated by reference into this order.

[8] *See supra*, note 1.

[9] As part of its initial proposed rule change, the NYSE provided the following example illustrating the relationship between quote size imbalance and the likelihood of price improvement: Assume that the market for a given stock is quoted 30 to 30⅛, with 1,000 shares bid for and 20,000 shares offered. The large imbalance on the offer side of the market suggests that subsequent transactions will be on the bid side. Accordingly, the NYSE states that it might be appropriate to stop a market order to buy, since the delay might allow the specialist to execute the buyer's order at a lower price. After granting such a stop, the specialist would be required to increase his quote by the size of the stopped buy order, thereby adding depth to the bid side of the market.

[10] A relatively large order might begin to counteract the pressure the imbalance on the opposite side of the market is putting on the stock's price. Accordingly, it might not be as appropriate to stop such an order.

[11] The NYSE has stated, both to the Commission and to its members, the specialists should only stop stock in a minimum variation market when an imbalance exists on the opposite side of the market and such imbalance is of sufficient size to suggest the likelihood of price improvement. *See, e.g.*, letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary N. Revell, Branch Chief, Division of Market Regulation, SEC, dated December 27, 1990; NYSE information memo #1809, dated September 12, 1991.

[12] For a discussion of the relationship between quote size imbalance and the likelihood of price improvement, *see supra*, note 9.

In extending a comparable pilot program by the American stock Exchange, the Commission placed similar emphasis on the critical nature of the sufficient size standard when stopping stock in minimum variation markets. *See* Securities Exchange Act Release No. 33791 (March 21, 1994), 59 FR 14432 (March 28, 1994) (File No. SR–Amex–93–47).

[13] *See infra*, text accompanying notes 14–15.

[14] When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

As for book orders on the same side of the market as the stopped stock, the Commission believes that Rule 116.30's requirements make it unlikely that these limit orders would not be executed. Under the NYSE pilot program, an order can be stopped only