positive relationship between increases in spreads and volume attributable to active order-entry firms as it related to total SOES volume per security; and (3) activity by active order-entry firms resulted in higher price volatility and less liquidity—higher price changes are associated with high active trading firm volume, even after controlling for normal price fluctuations.

Therefore, in light of all the above-cited statutory findings made by the SEC when it approved the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature, coupled with the NASD's findings that these rules, as well as the rest of the Interim SOES Rules, have been associated with positive market developments in terms of lower spreads on Nasdaq and less stocks with extreme relative price volatility, the NASD believes it would be consistent with the Act for the Commission to extend the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for a six-month period. In sum, the NASD believes its study and the Furbush Study affirm the validity and correctness of the SEC's prior statutory findings made in connection with the approval of these rules. Moreover, even if the Commission is unwilling to find positive significance in the NASD's statistical analyses, at the very least, these studies indicate that the market has not been harmed by implementation of these rules.

In addition, even if the Commission concludes that the Interim SOES Rules have had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange (''NYSE'') Rule 80A on a permanent basis illustrates that the Commission would still have a sufficient basis to approve an extension on the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for a six month period.[20] When NYSE Rule 80A was proposed, the Commission received considerable adverse comment to the effect that there was no causal relationship between index arbitrage and market volatility and that activation of the rule during turbulent market conditions could have disastrous effects on related options and futures markets and actually exacerbate market volatility. Despite these comments, the commission approved the proposal on a one-year pilot basis noting that ''the NYSE proposal represents a modest step, proposed on a pilot basis, to attempt to address the issue of market volatility.'' [21] After the one year pilot, the NYSE prepared a report that, in the SEC's words, found that the standard measures of NYSE market quality appear largely unaffected by Rule 80A. Specifically, the NYSE Report indicated that: (1) quotes on the NYSE did not widen after the 50 Dow Jones Industrial Average point trigger was reached; and (2) the imposition of Rule 80A did not have any negative effect on price continuity and depth in the market.[22] In addition, in approving Rule 80A on a permanent basis, the SEC noted that the rule ''represents a modest but useful step by the NYSE to attempt to address the issue of market volatility.'' [23] that the rule ''has not been disruptive to the marketplace,'' [24] and that there was a ''lack of evidence of any harmful effects of Rule 80A.'' [25] In sum, the SEC discussion of the statutory basis for approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse impacts on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. Accordingly, the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE to implement rules reasonably designed to enhance the quality of Nasdaq and minimize the effects of potentially disruptive trading practices.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be 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 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. Specifically, the NYSE is proposing to extend the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for six months because of concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transactions prices, wider spreads, and the loss of liquidity for individual and institutional investor orders, all to the detriment of public investors and the public interest. The NYSE believes the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature have operated to rectify this situation while continuing to provide an effective opportunity for the prompt, reliable execution of small orders received from the investing public. Accordingly, in order to protect investors and the public interest, the NASD believes the Interim SOES Rules should be extended through October 2, 1995, so that small investors' orders will continue to receive the fair and efficient executions that SOES was designed to provide.

Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature apply across the board and do not target any particular user or participant, as all dealers may set their exposure limits at two times the tier size and all dealers may elect to utilize the automated quote feature. Accordingly, the NASD believes that these rules changes are not anti-competitive, as they are uniform in application and they seek to preserve the ability of SOES to provide fair and efficient automated executions for small investor orders, while preserving market maker participation in SOES and market liquidity.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. The NASD is seeking to continue the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature so that SOES activity may not result in misleading quotations in the Nasdaq market. Market makers place quotes in the Nasdaq system and these quotes comprise the inside market and define the execution parameters of SOES.

[20] Rule 80A provides that when the Dow Jones Industrial Average declines or advances by 50 points or more, all index arbitrage orders to sell or buy must be executed in a market stabilizing manner.

[21] See Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31468, 31472 (Order approving File Nos. SR–NYSE–90–5 and 90–11).

[22] See Securities Exchange Act Release No. 29854 (Oct. 24, 1991), 56 FR 55963 (Oct. 30, 1991) (order approving file SR–NYSE–91–21) (''Rule 80A Approval Order'').

[23] Id. 56 FR at 55967.

[24] Id.

[25] Id. 56 FR at 55967–68