

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47285; File No. SR-NYSE-2002-44]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Automatic Execution Facility (NYSE Direct+)

January 29, 2003.

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 September 9, 2002 the New York Stock Exchange, Inc. ("NYSE") 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 Exchange submitted an amendment to the proposed rule change on January 27, 2003.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The proposed rule change consists of an amendment to Exchange Rule 1000 governing NYSE Direct+® ("Direct +"). The proposed rule amendment provides that (i) Direct+ executions will not be available if the resulting trade would be more than five cents from the last sale; and (ii) during the process for completing certain NYSE Rule 127<sup>4</sup> transactions, the specialist should publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange. The text of the proposed rule change is set forth below. Additions are in italics; deletion are in brackets.

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

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

<sup>3</sup> See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 23, 2003 ("Amendment No. 1"). Amendment No. 1 clarifies, and provides examples of, how the five cent standard would work; clarifies how limit orders received while a block transaction is pending would be handled; and explains how the Exchange determined that five cents is the appropriate level at which to disengage Direct+.

<sup>4</sup> Exchange Rule 127(b) describes the procedures for a member to follow who has a block of stock which he or she intends to cross at a specific clean-up price outside the current quotation.

#### Rule 1000: Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i) The NYSE's published quotation is in the non-firm quote mode;

(ii) [The NYSE's published quotation has been gapped for a brief period because of an influx of orders on one side of the market, and the NYSE's published quotation size is one hundred shares at the bid and/or offer;] *the execution price would be more than five cents away from the last reported transaction price in the subject security on the Exchange;*

(iii) With respect to a single-sided auto ex order, a better price exists in another ITS participating market center;

(iv) With respect to a single-sided auto ex order, the NYSE's published bid or offer is 100 shares;

(v) A transaction outside the NYSE's published bid or offer pursuant to Rule 127 is in the process of being completed, in which case the specialist should publish a [100-share] bid and/or offer;] *that is more than five cents away from the last reported transaction price in the subject security on the Exchange;*

(vi) Trading in the subject security has been halted.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market.

\* \* \* \* \*

#### 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 and is set forth in Sections A, B, and C below.

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

##### 1. Purpose

NYSE Rules 1000-1005 provide for the automatic execution of limit orders of 1099 shares or less against the Exchange's disseminated bid or offer.<sup>5</sup> These executions of Direct+ orders are not available under unusual market conditions, or in situations when the Exchange's bid or offer is only 100 shares.

Direct+ executions automatically decrease the size of the NYSE bid or offer, which can result in a "default" bid or offer of 100 shares if the Direct+ executions have traded with all trading interest reflected in the Exchange's published bid or offer. This has the effect of rendering the automatic execution feature unavailable until the specialist can requote the market. In other very active trading situations, however, the specialist may quote a 100 share market because of transactions being priced in the auction, which also has the effect of making Direct+ unavailable and results in the Exchange's disseminated quotation not reflecting the actual depth of the NYSE market.

##### NYSE Rule 1000(ii)

The Exchange is proposing to amend Rule 1000(ii) to replace this provision with one that provides that Direct+ executions will not be available if the resulting trade would be more than five cents from the last sale. This would apply to any trade whether an auto-ex trade or a trade in the regular auction market. Any auto-ex order sent that would result in an execution more than five cents away from the last trade would be routed to the specialist as a SuperDOT limit order. The specialist would then represent that order as he or she would represent any other limit order received via the SuperDOT system.

For example, if the last sale in a stock is \$20.10, and the current quote is \$20.09 bid for 300 shares and 900 shares offered at \$20.16, an auto-ex order to buy 500 shares (which would be executed at the offer price) would not be

<sup>5</sup> NYSE Direct+ was originally filed as a one-year pilot in SR-NYSE-2000-18, which was approved on December 22, 2000. See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001). The pilot was subsequently extended by SR-NYSE-2001-50 and SR-NYSE-2002-47. See Securities Exchange Act Release Nos. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002); 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002), respectively. The pilot is currently due to expire on December 24, 2003.

automatically executed at \$20.16 since it is more than five cents from the last trade at \$20.10. It would be routed to the specialist as a limit order to buy at \$20.16. The specialist would then bid on behalf of that order at \$20.15 and execute it at \$20.16 against the prevailing offer, or a broker in the crowd could offer to trade with the order at \$20.15, offering price improvement to that order in the auction market.

Under the current provisions of Rule 1000, if the published quotation in a stock is gapped for a brief period of time, usually with one side or both of the quotation being set at 100 shares because of an influx of orders on one side of the market, or if the bid and/or offer size of the prevailing quotation is set at 100 shares, the Direct+ facility is not available. Under very active market conditions, the specialist may quote 100 shares bid or offered in order to allow trades in the auction market to be consummated without the last sale price being changed due to Direct+ executions. This, however, could result in the Exchange's disseminated quotation temporarily not reflecting the actual depth of the market for a stock as reflected by the dynamics of trading interest in the Crowd. If the Direct+ facility is not available in instances where the actual spread in a stock's quotation is greater than five cents, the specialist will be able to show the actual depth in the market. Of course, if the actual spread resulting from bids and offers on the specialist's book, or resulting from trading crowd interest results in a spread of less than five cents from the price of the last trade, the specialist must display these, and Direct+ orders will remain eligible for automatic execution.<sup>6</sup>

#### *NYSE Rule 1000(v)*

NYSE Rule 127 establishes procedures for executions outside the NYSE's published bid or offer. It requires a member seeking to cross block orders outside the prevailing quotation to inform the specialist of his or her intention to execute the transaction at a pre-determined, specific price (the "clean-up" price), either a premium or discount from the prevailing bid/offer. In this situation, the executing broker will be bidding and offering on behalf of the cross away from the prevailing quotation, to reflect the discount or premium from the current market.<sup>7</sup> Currently, Rule 1000(v) provides that auto ex orders will not be executed when an auction market transaction under Exchange Rule 127 is

being completed, and in that instance, the specialist must publish a 100-share bid and/or offer.

The Exchange proposes to amend Rule 1000(v) to provide that the specialist (during the process for completing a Rule 127 transaction) should publish a bid and/or offer that is more than five cents away from the last reported transaction price (instead of a 100-share bid and/or offer) in the subject security on the Exchange. Any limit order that is received as the Rule 127 trade is being effected that would better the market represented by the broker's bid or offer on behalf of the NYSE Rule 127 cross trade would be included in the Rule 127 trade.<sup>8</sup> For example, assume that the last sale in XYZ is \$10.27, and the current quote is \$10.25 bid for 5000 shares and 5000 shares offered at \$10.35. A proposed block transaction (Rule 127 trade) is about to be effected at the "clean-up" (discount price) of \$10.15 for 50,000 shares. Under amended Rule 1000(v), the specialist would publish a bid that is more than five cents away from the last reported transaction price in order to turn off Direct+. The Rule 127 trade would be completed by the broker bidding \$10.15 on behalf of the cross, and offering at \$10.16. If, prior to the completion of the Rule 127 trade, a limit order to buy 500 shares at \$10.20 was received by the specialist, he or she would represent that order to participate in the Rule 127 cross and receive an improved price. (Under Exchange Rule 79A.15, the requirement to display limit orders received by specialists does not apply to any customer limit order that is executed upon receipt of the order.)<sup>9</sup>

The five cent price parameter will give the specialist additional flexibility in disseminating the actual depth of the NYSE auction market, while still ensuring that Direct+ is available when there is sufficient liquidity at prices closely related to the last sale.<sup>10</sup>

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

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>11</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, 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. The proposed rule change also is designed to

support the principles of Section 11A(a)(1) of the Act<sup>12</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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

The Exchange does not believe that the proposed rule change, as amended, 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:

(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 proposal, as amended, 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 in

<sup>6</sup> See Amendment No. 1, *supra* note 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> According to the Exchange, a high percentage of executions in Direct+ occur within five cents of the last sale. See Amendment No. 1, *supra* note 3.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78k-1(a)(1).

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 organization.

All submissions should refer to File No. NYSE-2002-44 and should be submitted by February 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47275; File No. SR-NYSE-2003-02]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendment to Rule 111

January 29, 2003.

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 January 8, 2003, 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 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 Exchange is proposing to amend rule 111(a) to correct internal rule references. The references to other rules in rule 111 were not updated at the time rule 111 was reorganized.

#### 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 self-regulatory organization 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 recently codified in the NYSE rule book several policies which had been previously filed with, and approved by, the Commission pursuant to rule 19b-4 and reorganized several other rules.<sup>3</sup>

When rule 111 was reorganized, three internal rule references were not updated to refer to the correct corresponding rule. The Exchange proposes to correct these references in rule 111(a) as follows.

- In rule 111(a), the reference that reports must include all transactions executed on orders initiated or originated for such accounts by a member while on the Floor and all transactions which are considered on-Floor trading is found under the provisions of rule 112(c), not 112(b) as stated.

- A competitive trader desiring to exempt neutral transactions for an account in which he or his member organization has an interest from consideration in the computation of his monthly stabilizing percentage is provided for under the provisions of rule 110(g)(2), not 112(d)(2); he must report the trade date, number of shares, and price of stock upon acquisition.

- In addition, rule 110(g)(1), not 112(d)(1), provides that a competitive trader must note with the symbol "NL" that the transaction was effected as part of the initial sale of a newly listed security.

##### 2. Statutory Basis

The Exchange's basis under the Act for this proposed rule change is the requirement under section 6(b)(5) of the Act<sup>4</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms 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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and subparagraph (f)(3) of rule 19b-4 thereunder,<sup>6</sup> because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of the 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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to the File No. SR-NYSE-2003-02 and should be submitted by February 26, 2003.

<sup>13</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.

<sup>3</sup> See Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR-NYSE-2002-31).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(3).

<sup>7</sup> 17 CFR 200.30-(a)(12).