

section 804 of the Listed Company Manual that was inadvertently not added to NYSE Rule 499.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ Specifically, the Commission believes the proposal is consistent with the section 6(b)(5)⁸ requirements that the rules of an exchange be 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 Commission believes that the proposal provides fair procedures for issuers appealing delisting determinations by continuing to ensure that a majority of the members voting on a delisting matter will be public directors and by clarifying that decisions will be based on the record developed by the parties. The Commission also believes that the proposal should add greater transparency to the process since the Chairman of the Committee would be required to disclose to the issuer and the staff at the commencement of each delisting hearing which of the industry directors will be voting on the delisting matter.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2001-27) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47463; File No. SR-NYSE-2002-44]

Self-Regulatory Organizations; Order Approving 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+)

March 7, 2003.

On September 9, 2002, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Direct+ Rule 1000. The Exchange submitted an amendment to the proposed rule change on January 27, 2003.³ On February 5, 2003, the rule proposal was published for comment in the **Federal Register**.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

I. Description of the Proposed Rule Change

The Exchange is proposing to amend its Direct+ pilot by amending NYSE Rule 1000. The NYSE Direct+ pilot expires on December 23, 2003.⁵ This proposal would also expire with the pilot.⁶ The NYSE proposes to amend NYSE Rule 1000(ii) to provide 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.

Under the current provisions of NYSE 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. The Exchange has stated that this 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.

According to the Exchange, 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.

The Exchange also 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.

II. Discussion

After careful review, 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.⁷ Specifically, the Commission believes the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires among other things, that the rules of the Exchange are

⁷ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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").

⁴ See Securities Exchange Act Release No. 47285 (January 29, 2003), 68 FR 5948.

⁵ See Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002).

⁶ Telephone call between Don Siemer, Director, Market Surveillance, NYSE, and Terri Evans, Assistant Director, Division of Market Regulation, Commission (March 5, 2003).

⁷ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).