

information. The six-month pilot should help the Exchange to provide information to the Commission to ensure that these benefits exist, and provide for fair access with adequate monitoring of the orders being taken, and information being provided, over the portable phones.<sup>24</sup>

Finally, the Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.<sup>25</sup> Since the NYSE is also proposing in a separate rule filing to eliminate the exception to NYSE Rule 123(e), which provided that orders in ETFs must be entered into FESC within 90 seconds of execution,<sup>26</sup> the Commission believes that good cause exists to approve the portion of Amendment No. 2 that would allow the use of Exchange-provided and authorized portable phones for orders in ETFs on the Floor. As noted above, the prohibition of using portable phones for ETF orders was based on the 90-second delay for inputting ETF orders in FESC. Because this exception to FESC has been eliminated, the Commission believes that portable phones can be used for ETF orders as with other equity securities.<sup>27</sup> In addition, the Commission believes that it is beneficial to investors and Exchange members that the NYSE specified, in Amendment No. 2, a general time frame of approximately May 1, 2003 to implement the pilot program and of August 1, 2003 to

complete the study of communications on the Exchange Floor. This should help firms and brokers in planning for the upcoming changes. Finally, we believe notice for NYSE members, the Division, and OCIE one week prior to the pilot program's implementation will be beneficial to market participants and the Commission. Based on the above, we believe good cause exists to grant accelerated approval to Amendment No. 2, consistent with sections 19 and 6(b) of the Act.<sup>28</sup>

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 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. 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-2002-11 and should be submitted by May 8, 2003.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change and Amendment No. 1 (SR-NYSE-2002-11) be, and it hereby is, approved, and that Amendment No. 2 be, and it hereby is, approved on an accelerated basis, as a pilot program for six months beginning on or about May 1, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-9472 Filed 4-16-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47672; File No. SR-NYSE-2002-33]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Corporate Governance

April 11, 2003.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 2002, 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, III below, which Items have been prepared by the NYSE. On April 4, 2003, the NYSE submitted Amendment No. 1 to the proposed rule change.<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 NYSE proposes to amend its Listed Company Manual ("Manual") to implement significant changes to its listing standards aimed at helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate governance practices. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in *brackets*.

#### 301.00 Introduction

This section describes the Exchange's policies and requirements with respect to independent [audit committees] *directors*, [ownership interests of corporate directors and officers,] shareholders' voting rights, and other matters affecting [shareholders' ownership interests and the maintenance of fair and orderly markets

<sup>24</sup> In addition, as noted above, the Commission received one comment letter in support of the proposed rule change and Amendment No. 1. This commenter stated that the proposal would improve the overall quality of the flow of information and the efficiency of the communication process between the Exchange Floor and off-Floor participants, including both "direct access" investors and "upstairs" trading desks of NYSE member organizations. Furthermore, the commenter considered the use of portable phones to communicate directly to and from the Floor as enabling vigorous competition, innovative trading services, and faster executions on the Floor. See Morgan Stanley Letter, *supra* note 5. The commenter also suggested that the Exchange should aim to implement the rule change as fully contemplated and not make calls on portable phones linked through the booth, as some market participants might desire. In response, the Exchange stated that they were aware of certain market participants who preferred that phone calls between Floor brokers and off-Floor participants be connected through a Floor booth intermediary, and that, while technologically Floor brokers would have the ability on their portable phones to conference in Floor booth intermediaries on calls, such action is not required by this proposal. Telephone conversation between Jeff Rosenstock, Attorney, NYSE, and Cyndi Rodriguez, Special Counsel, Division, Commission, on April 11, 2003.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> See notes 9 and 10, and accompanying text.

<sup>27</sup> During the pilot, the NYSE should address whether additional surveillance would be needed because of the derivative nature of the ETFs.

<sup>28</sup> 15 U.S.C. 78s and 15 U.S.C. 78f(b).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</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 letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 3, 2003 ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety. Telephone call between Annemarie Tierney, Office of General Counsel, NYSE, and Jennifer Lewis, Attorney, Division, Commission, on April 9, 2003.