

Floor Audit Trail") that will be used to enter details related to orders before these orders can be represented on the trading floor. To accomplish this undertaking, the NYSE was ordered to submit a proposed rule change setting forth the complete details and specifications of the Phase I Floor Audit Trail and to implement fully the Phase I Floor Audit Trail nine months after Commission approval of the proposal. The Exchange complied with this aspect of the SEC Order.¹¹

In addition, as part of the SEC Order, the Exchange undertook and was ordered "to design and implement" "an audit trail sufficient to enable the NYSE to reconstruct its market promptly, to effectively surveil the NYSE, and to facilitate the effective enforcement of the federal securities laws and NYSE rules." In connection with this undertaking, at a minimum, the Exchange was required to provide: (a) an accurate, time-sequenced record of orders, quotations and transactions, beginning with the receipt of an order by any NYSE member firm and further documenting the life of the order through the process of execution or cancellation of that order; and (b) for synchronization of clocks used in connection with the audit trail ("Phase II Floor Audit Trail"). This proposed rule change addresses that undertaking.

III. Description of Proposal

The Exchange has proposed the adoption of four new rules which would require members and member organizations (herein referred to collectively as "members") to record and retain order information, to synchronize their time keeping equipment with a time source designated by the Exchange, and to provide the Exchange with information on orders upon request. Specifically, the Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or "FESC")¹² and at the point of receipt (order tracking system, or "OTS"). The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. The proposed rules and amendments are described below.

i. NYSE Rule 123(f)

Proposed NYSE Rule 123(f) requires that order execution reports be entered into FESC and that any member

organization proprietary system used to record the details of an order must also be capable of transmitting a report of the order's execution to FESC. The proposed rule further requires that the details of each execution report required to be recorded must include the following data elements: (1) Order identifier that uniquely identifies the order as required by paragraph 123(e); (2) symbol; (3) number of shares or quantity of security; (4) transaction price; (5) time the trade was executed; (6) executing broker badge number, or alpha symbol as may be used from time to time, in regard to its side of the contract; (7) executing broker badge number, or alpha symbol as may be used from time to time, of the contra side to the contract; (8) clearing firm number, or alpha symbol as may be used from time to time, in regard to its side of the contract; (9) clearing firm number, or alpha symbol as may be used from time to time, in regard to the contra side of the contract; (10) whether the account for which the order was executed was that of a member or member organization or of a non-member or non-member organization; (11) identification of member or member organization which recorded order details as required by paragraph (e); (12) date the order was entered into an Exchange system; (13) indication as to whether this is a modification to a previously submitted report; (14) settlement instructions (e.g., cash, next day, or seller's option); (15) Special Trade Indication, if applicable; (16) Online Comparison System (OCS) Control Number; and (17) such other information as the Exchange may from time to time require.

ii. NYSE Rule 132A

Proposed NYSE Rule 132A requires members to synchronize the business clocks used to record the date and time of any event that the Exchange requires to be recorded. The Exchange will require that the date and time of orders in securities listed on the Exchange be so recorded. The proposed Rule also requires that members maintain the synchronization of this equipment in conformity with procedures prescribed by the Exchange. The Exchange intends to coordinate time synchronization with the National Association of Securities Dealers Inc.'s ("NASD") identical requirements.¹³

iii. NYSE Rule 132B

Proposed NYSE Rule 132B prescribes requirements and procedures with respect to orders in any security listed

on the Exchange received or originated by a member. Paragraph (a) of the proposed rule requires immediate recordation of the data elements described in paragraph (b). If an order is transmitted to another member or is transmitted to another department of the same member, information detailed in paragraph (c) must be recorded. If an order is modified or cancelled, information required by paragraph (d) must be recorded. The various data elements and information required by the proposed rule must be recorded in an electronic format prescribed by the Exchange. Time records must be expressed in hours, minutes and seconds. The Rule makes clear that the records required therein must be preserved pursuant to Rule 17a-4(b) under the Act and that these records may be produced or reproduced on "micrographic media" as contemplated under Rule 17a-4(f) under the Act.

Paragraph (b) of the proposed rule contains the sixteen data elements to be recorded for an order. These include: (1) An order identifier; (2) stock symbol; (3) identification of the member; (4) department identification of the member or terminal identification number for orders received via a SuperDOT terminal; (5) department of the member which originated the order; (6) number of shares; (7) buy or sell order designation; (8) whether the order is a short sale order; (9) whether the order is a market, limit, stop or stop limit order (which terms are defined in Rule 13 of the Exchange); (10) any limit price, stop price or stop limit price prescribed in the order; (11) the date, if any, that an order expires or, if the order is in force for less than a day, the time when it expires; (12) the time limit the order is in force; (13) any request by the customer that the order not be displayed pursuant to Rule 11Ac1-4 under the Act; (14) any special handling requests (such as fill or kill, market-on-close, limit-on-close, not held, etc); (15) date and time of origination or receipt of the order; ¹⁴ and (16) the type of account for which the order is entered. Each of these data elements are commonly understood and used by members.

Paragraph (e) of the proposed rule explains that the order identifier is the order identifier required by NYSE Rule 123(e). This is the identifier assigned to an order in connection with the

¹¹ See Securities Exchange Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) ("Phase I Floor Audit Trail Approval Order").

¹² See *id.*

¹³ See NASD Rule 6953.

¹⁴ For purposes of NYSE Rule 132B(b)(15), for electronic orders, order origination and time of receipt of an order is the time the order is captured by a member organization's electronic order-routing or execution system. For manual orders, order origination and time of receipt of an order is the time the order is first received by the member organization from the customer.