

arguments concerning the foregoing, including whether the proposed rule change, 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 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-2003-10 and should be submitted by May 30, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

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. In particular, the Commission believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of the 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.¹⁵

The Commission believes that the proposal should help the NYSE to maintain a fair and orderly market by enabling the NYSE to test its autoquoting feature without the interruption of NYSE Direct+, which automatically changes the depth of market, as well as the tick and last reported sale in these stocks. In addition, the Commission notes that NYSE has represented that it will notify members at least one week in advance of the implementation date of the pilot.

The Commission finds good cause for accelerating approval of the proposed

rule change and Amendment No. 1 prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange, without undue delay, to assess the impact of autoquoting on the Exchange's auction market, particularly with regard to liquidity, continuity, spread, depth, number of trades, and other such variables.

Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁶ to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing, on a pilot basis for seven days.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change, as amended, (File No. SR-NYSE-2003-10) be approved as a one week pilot, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47792; File No. SR-NYSE-2002-41]

Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Specialist Combination Review Policy in NYSE Rule 123E

May 2, 2003.

I. Introduction

On August 29, 2002, the New York Stock Exchange, Inc. ("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 its Specialist Combination Review Policy ("Policy"). On January 27, 2003 the NYSE amended the

proposed rule change.³ On March 20, 2003, the rule proposal, as amended, was published for comment in the **Federal Register**.⁴ The Commission received no comments on the proposal. This order approves the amended proposed rule change.

II. Description of the Proposed Rule Change

NYSE Rule 123E sets forth the NYSE's Specialist Combination Review Policy.⁵ Currently, the Policy requires the Quality of Markets Committee ("QOMC") to review proposed specialist unit combinations that exceed five, ten, or fifteen percent tier levels in any one of four concentration measures.⁶

The proposed rule change removes the QMOC review requirement for combinations that result in an increase in any concentration measure of less than two percentage points within a tier level. If, however, the percentage change increase results in the unit moving into a higher tier classification, a review will result. The proposed rule change also eliminates capital position requirements for the various tiers in light of recent amendments of other Exchange requirements to Exchange Rules 104.21 and 104.22.⁷ The proposed rule change also delegates to the Market Performance Committee ("MPC") the responsibility of reviewing and approving, or disapproving in writing, a specialist combination to see what effect it will have on market quality. Furthermore, the proposed rule change amends the Policy to require that proponents of the combined units

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 24, 2003 ("Amendment No. 1"). In Amendment No. 1 the Exchange provided a new Exhibit A that completely replaced and superseded the proposed rule language in the original filing.

⁴ See Securities Exchange Act Release No. 47547 (March 20, 2003), 68 FR 15027 (March 27, 2003).

⁵ See Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR-NYSE-2002-31) (formal codification as Rule 123E); Securities Exchange Act Release No. 34167 (June 6, 1994), 59 FR 30625 (June 14, 1994) (SR-NYSE-93-45) (permanent pilot approval).

⁶ The concentration measures include a specialist unit's share of: (1) Common stocks listed on the Exchange; (2) the 250 most active listed common stocks for the last 12 months; (3) total listed common stock share volume for the last 12 months; and (4) total listed common stock dollar volume for the last 12 months.

⁷ See Securities Exchange Act Release No. 43098 (July 31, 2000), 65 FR 49044 (August 10, 2000) (SR-NYSE-99-46). See also Exchange Rule 104.22 that requires any new specialist entities that result from merger, acquisition, consolidation, or other combination of specialist assets to maintain net liquid assets (NLA) equivalent to the greater of either: (1) The aggregate of the NLA of the specialist entities prior to their combination, or (2) the capital requirement prescribed by Rule 104.

¹⁴ 15 U.S.C. 78f(b)(5).

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

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.