

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 ISE. All submissions should refer to the ISE letter of File No. SR-ISE-2002-24 and should be submitted by February 18, 2003.

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<sup>7</sup> and, in particular, the requirements of section 6 of the Act.<sup>8</sup> Specifically, the Commission finds that the proposal to require ISE market makers to be firm for up to their disseminated amount to all orders, other than matching ISE market maker quotations, is consistent with section 6(b)(5) of the Act,<sup>9</sup> in that by ensuring that a larger number of orders may be executed at a better price, the proposed rule change has been designed to remove impediments to and to perfect the mechanism of a free and open market and a national market system, while also protecting investors and the public interest.

The original rule proposal, including the proposal to add ISE rule 805(c), which the ISE subsequently withdrew by letter, was noticed for public comment on November 1, 2002. No comments were received on any aspect of the proposal. Because the ISE letter merely withdraws one provision of the proposal, which was previously published for comment, and because by withdrawing the one provision to add ISE rule 805(c), no other aspect of the proposal is affected, the Commission believes that approving this change to the proposal on an accelerated basis is appropriate. Accordingly, pursuant to section 19(b)(2) of the Act,<sup>10</sup> the

Commission finds good cause to approve the change to the proposal set forth in the ISE Letter prior to the thirtieth day after notice of the ISE letter is published in the **Federal Register**.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-ISE-2002-24) is hereby approved, as amended by the ISE letter, which is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-1882 Filed 1-27-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47221; File No. SR-NYSE-2002-11]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Establish a Six-Month Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Issued Portable Telephone on the Exchange Floor

January 21, 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 February 28, 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 and III below, which items have been prepared by the Exchange. On December 30, 2002, the Exchange filed an amendment 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.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 30, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, clarification and further details on the use of Exchange authorized and issued portable telephones on the Exchange floor.

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

The Exchange proposes to amend NYSE rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange, by deleting the current prohibition against such use. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in brackets.

#### Rule 36 Communications Between Exchange and Members' Offices

No member or member organization shall establish or maintain any telephonic or electronic communication between the Floor and any other location without the approval of the Exchange. The Exchange may to the extent not inconsistent with the Securities Exchange Act of 1934, as amended, deny, limit or revoke such approval whenever it determines, in accordance with the procedures set forth in Rule 475, that such communication is inconsistent with the public interest, the protection of investors or just and equitable principles of trade.

#### Supplementary Material

.10 Installation of telephone lines to Exchange.—The Telephone Company will not recognize any order for the installation or disconnection of a telephone line between the Floor and any other location, except such orders as are issued by the Exchange directly to the Telephone Company.

Requests for telephone lines should be sent to Market Operations Division. Members or member organizations who desire such installations or disconnections should present their requests sufficiently in advance of the desired effective date to avoid any inconvenience resulting from insufficient notice to the Telephone Company.

.20 With the approval of the Exchange, a member or member organization *other than a specialist or specialist member organization* may maintain a telephone line or use an *Exchange authorized and provided portable telephone* which permits a non-member off the Floor to communicate with a member or member organization on the Floor. *However, use of an Exchange authorized and provided portable telephone is not permitted for orders in Investment Company Units (as defined in Section*

<sup>7</sup> The Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).