

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47285; File No. SR-NYSE-2002-44]

Self-Regulatory Organizations; Notice of Filing of 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+)

January 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 9, 2002 the New York Stock Exchange, Inc. ("NYSE") 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 NYSE. The Exchange submitted an amendment to the proposed rule change on January 27, 2003.³ 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 proposed rule change consists of an amendment to Exchange Rule 1000 governing NYSE Direct+® ("Direct +"). The proposed rule amendment provides that (i) Direct+ executions will not be available if the resulting trade would be more than five cents from the last sale; and (ii) during the process for completing certain NYSE Rule 127⁴ transactions, the specialist should publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange. The text of the proposed rule change is set forth below. Additions are in italics; deletion are in brackets.

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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"). Amendment No. 1 clarifies, and provides examples of, how the five cent standard would work; clarifies how limit orders received while a block transaction is pending would be handled; and explains how the Exchange determined that five cents is the appropriate level at which to disengage Direct+.

⁴ Exchange Rule 127(b) describes the procedures for a member to follow who has a block of stock which he or she intends to cross at a specific clean-up price outside the current quotation.

Rule 1000: Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i) The NYSE's published quotation is in the non-firm quote mode;

(ii) [The NYSE's published quotation has been gapped for a brief period because of an influx of orders on one side of the market, and the NYSE's published quotation size is one hundred shares at the bid and/or offer;] *the execution price would be more than five cents away from the last reported transaction price in the subject security on the Exchange;*

(iii) With respect to a single-sided auto ex order, a better price exists in another ITS participating market center;

(iv) With respect to a single-sided auto ex order, the NYSE's published bid or offer is 100 shares;

(v) A transaction outside the NYSE's published bid or offer pursuant to Rule 127 is in the process of being completed, in which case the specialist should publish a [100-share] bid and/or offer;] *that is more than five cents away from the last reported transaction price in the subject security on the Exchange;*

(vi) Trading in the subject security has been halted.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rules 1000-1005 provide for the automatic execution of limit orders of 1099 shares or less against the Exchange's disseminated bid or offer.⁵ These executions of Direct+ orders are not available under unusual market conditions, or in situations when the Exchange's bid or offer is only 100 shares.

Direct+ executions automatically decrease the size of the NYSE bid or offer, which can result in a "default" bid or offer of 100 shares if the Direct+ executions have traded with all trading interest reflected in the Exchange's published bid or offer. This has the effect of rendering the automatic execution feature unavailable until the specialist can requote the market. In other very active trading situations, however, the specialist may quote a 100 share market because of transactions being priced in the auction, which also has the effect of making Direct+ unavailable and results in the Exchange's disseminated quotation not reflecting the actual depth of the NYSE market.

NYSE Rule 1000(ii)

The Exchange is proposing to amend Rule 1000(ii) to replace this provision with one that provides 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.

For example, if the last sale in a stock is \$20.10, and the current quote is \$20.09 bid for 300 shares and 900 shares offered at \$20.16, an auto-ex order to buy 500 shares (which would be executed at the offer price) would not be

⁵ NYSE Direct+ was originally filed as a one-year pilot in SR-NYSE-2000-18, which was approved on December 22, 2000. See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001). The pilot was subsequently extended by SR-NYSE-2001-50 and SR-NYSE-2002-47. See Securities Exchange Act Release Nos. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002); 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002), respectively. The pilot is currently due to expire on December 24, 2003.