

automatically executed at \$20.16 since it is more than five cents from the last trade at \$20.10. It would be routed to the specialist as a limit order to buy at \$20.16. The specialist would then bid on behalf of that order at \$20.15 and execute it at \$20.16 against the prevailing offer, or a broker in the crowd could offer to trade with the order at \$20.15, offering price improvement to that order in the auction market.

Under the current provisions of Rule 1000, if the published quotation in a stock is gapped for a brief period of time, usually with one side or both of the quotation being set at 100 shares because of an influx of orders on one side of the market, or if the bid and/or offer size of the prevailing quotation is set at 100 shares, the Direct+ facility is not available. Under very active market conditions, the specialist may quote 100 shares bid or offered in order to allow trades in the auction market to be consummated without the last sale price being changed due to Direct+ executions. This, however, could result in the Exchange's disseminated quotation temporarily not reflecting the actual depth of the market for a stock as reflected by the dynamics of trading interest in the Crowd. If the Direct+ facility is not available in instances where the actual spread in a stock's quotation is greater than five cents, the specialist will be able to show the actual depth in the market. Of course, if the actual spread resulting from bids and offers on the specialist's book, or resulting from trading crowd interest results in a spread of less than five cents from the price of the last trade, the specialist must display these, and Direct+ orders will remain eligible for automatic execution.⁶

NYSE Rule 1000(v)

NYSE Rule 127 establishes procedures for executions outside the NYSE's published bid or offer. It requires a member seeking to cross block orders outside the prevailing quotation to inform the specialist of his or her intention to execute the transaction at a pre-determined, specific price (the "clean-up" price), either a premium or discount from the prevailing bid/offer. In this situation, the executing broker will be bidding and offering on behalf of the cross away from the prevailing quotation, to reflect the discount or premium from the current market.⁷ Currently, Rule 1000(v) provides that auto ex orders will not be executed when an auction market transaction under Exchange Rule 127 is

being completed, and in that instance, the specialist must publish a 100-share bid and/or offer.

The Exchange proposes to amend Rule 1000(v) to provide that the specialist (during the process for completing a Rule 127 transaction) should publish a bid and/or offer that is more than five cents away from the last reported transaction price (instead of a 100-share bid and/or offer) in the subject security on the Exchange. Any limit order that is received as the Rule 127 trade is being effected that would better the market represented by the broker's bid or offer on behalf of the NYSE Rule 127 cross trade would be included in the Rule 127 trade.⁸ For example, assume that the last sale in XYZ is \$10.27, and the current quote is \$10.25 bid for 5000 shares and 5000 shares offered at \$10.35. A proposed block transaction (Rule 127 trade) is about to be effected at the "clean-up" (discount price) of \$10.15 for 50,000 shares. Under amended Rule 1000(v), the specialist would publish a bid that is more than five cents away from the last reported transaction price in order to turn off Direct+. The Rule 127 trade would be completed by the broker bidding \$10.15 on behalf of the cross, and offering at \$10.16. If, prior to the completion of the Rule 127 trade, a limit order to buy 500 shares at \$10.20 was received by the specialist, he or she would represent that order to participate in the Rule 127 cross and receive an improved price. (Under Exchange Rule 79A.15, the requirement to display limit orders received by specialists does not apply to any customer limit order that is executed upon receipt of the order.)⁹

The five cent price parameter will give the specialist additional flexibility in disseminating the actual depth of the NYSE auction market, while still ensuring that Direct+ is available when there is sufficient liquidity at prices closely related to the last sale.¹⁰

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act¹¹ that an Exchange have rules that are 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. The proposed rule change also is designed to

support the principles of Section 11A(a)(1) of the Act¹² in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, 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

⁶ See Amendment No. 1, *supra* note 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ According to the Exchange, a high percentage of executions in Direct+ occur within five cents of the last sale. See Amendment No. 1, *supra* note 3.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78k-1(a)(1).