

“Pilot”).³ The Pilot was initially approved on a one-year basis and was twice extended for additional one-year periods, for a total of two years ending December 23, 2003.

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. The Exchange prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

NYSE Direct+ was originally approved as a one-year pilot ending on December 21, 2001.⁴ The Exchange then extended the Pilot for an additional one-year period, ending December 23, 2002.⁵ The Pilot was subsequently extended for an additional one-year period, ending December 23, 2003.⁶

The NYSE Direct+ pilot provides for the automatic execution of limit orders of 1099 shares or less (“auto ex” orders) against trading interest reflected in the Exchange’s published quotation. It is not mandatory that all limit orders of 1099 shares be entered as auto ex orders; rather, the member organization entering the order, or its customer if enabled by the member organization, can choose to enter an auto ex order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange’s published bid or offer price is in its customer’s best interest.

The Exchange proposes to extend the Pilot for an additional year until December 23, 2004. Four filings that impact NYSE Direct+ have been approved by the Commission during the

current Pilot and are now part of the Pilot.⁷ These include:

(a) A filing that (i) amended NYSE Rule 1000 to provide that NYSE Direct+ executions will not be available if the resulting trade would be more than five cents away from the last sale; and (ii) provided that during the process for completing NYSE Rule 127 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;⁸

(b) A filing that (i) amended NYSE Rule 13 to provide for a one-year pilot program (also expiring on December 23, 2003) to expand Direct+ order size eligibility (for up to 5,000 shares) for Exchange-Traded Funds (“ETFs”) and Holding Company Depositary Receipts (“HOLDRs”); (ii) amended NYSE Rule 1002 to include ETFs and HOLDRs and provide that ETFs trade until 4:15 p.m.; and (iii) amended NYSE Rule 1005 to reflect that the rule applies to ETFs and HOLDRs;⁹

(c) A filing that amended NYSE Rule 1005 to permit entry of limit orders up to 1,099 shares within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the trading floor has procedures to monitor compliance with the separate terminal requirement;¹⁰ and

(d) A filing that amended NYSE Rules 1000 and 1001 in connection with the NYSE LiquidityQuote initiative.¹¹ In conjunction with autoquoting of bids and offers, NYSE Rule 1000 has been amended to provide that an NYSE Direct+ order equal to or greater than the size of the published bid/offer exhausts the entire bid/offer, rather than decreasing it to 100 shares as was the case initially under the pilot. NYSE Rule 1001(c) provided that if executions of auto ex orders have traded with all

trading interest reflected in the Exchange’s published bid or offer, the Exchange will disseminate a bid or offer at that price of 100 shares until the specialist requotes that market. NYSE Rule 1001(c) has been deleted.

The above-mentioned filings became part of the NYSE Direct+ rules and were incorporated into the Pilot upon their respective approvals by the Commission. Therefore, if the Commission approves the extension of the Pilot for an additional year, they are extended as part of the Pilot.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under section 6(b)(5)¹² 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)¹³ 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 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five

⁷ In addition, SR-NYSE-2003-20 proposed to disengage NYSE Direct+ in five-actively traded stocks. However, this pilot expired on June 20, 2003 and therefore, does not impact the Pilot as proposed to be extended. See Securities Exchange Act Release No. 47965 (June 2, 2003), 68 FR 34691 (June 10, 2003) (SR-NYSE-2003-20).

⁸ See Securities Exchange Act Release No. 47463 (March 7, 2003), 68 FR 12122 (March 13, 2003) (SR-NYSE-2002-44).

⁹ See Securities Exchange Act Release No. 47024 (December 18, 2002), 67 FR 79217 (December 27, 2002) (SR-NYSE-2002-37).

¹⁰ See Securities Exchange Act Release No. 47353 (February 12, 2003), 68 FR 8318 (February 20, 2003) (SR-NYSE-2002-58).

¹¹ See Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR-NYSE-2002-55).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1).

³ See NYSE Rules 1000-1005, 13, and 476A.

⁴ See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR-NYSE-2000-18).

⁵ See Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR-NYSE-2001-50).

⁶ See Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR-NYSE-2002-47).