

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 corrects an error in the proposed rule language and in the Rule 19b-4 rule filing to affirm that the reporting requirement level for DIA options will be set at 10,000 contracts. This is the current level under CBOE rules and remains unchanged. The Commission, therefore, believes that there is good cause to grant accelerated approval of Amendment No. 1, consistent with Section 6(b)(5) of the Act<sup>13</sup> and section 19(b)<sup>14</sup> of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-CBOE-2002-26 and should be submitted by March 13, 2003.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>15</sup>, that the proposed rule change (SR-CBOE-2002-26), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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underlying DIA, should any unanticipated adverse market effects develop due to the increased limits.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b).

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47353; File No. SR-NYSE-2002-58]

### Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change by New York Stock Exchange To Amend the Exchange's Automatic Execution Facility (NYSE Direct+)

February 12, 2003.

On November 1, 2002, the New York Stock Exchange ("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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend 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 ("Floor") has procedures to monitor compliance with the separate terminal requirement. On December 10, 2002, the rule proposal was published for comment in the **Federal Register**.<sup>3</sup> The Commission received 103 comments generally in favor of the proposed rule change. This order approves the proposed rule.

#### I. Description of the Proposed Rule Change

The NYSE Direct+ pilot<sup>4</sup> provides for the automatic execution of limit orders of 1099 shares or less (known as an "NX order" or auto ex order) against trading interest reflected in the Exchange's published quotation. It is not mandatory that all limit orders of 1099 shares be entered as NX orders; rather, the member organization entering the order,

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 46943 (December 4, 2002), 67 FR 75893.

<sup>4</sup> See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR-NYSE-2000-18) (approving the NYSE Direct+ pilot). The one-year pilot was subsequently extended for another year in Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR-NYSE-2001-50). The pilot was recently extended through December 23, 2003. See Securities Exchange Act Release No. 46906 (November 25, 2002) 67 FR 72260 (December 4, 2002) (SR-NYSE-2002-47). The proposed rule change, if approved, would be part of the pilot and, thus, would expire on December 23, 2003 unless extended. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Special Counsel, Division of Market Regulation, Commission, December 3, 2002.

or its customer if enabled by the member organization, can choose to enter an NX 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.

NYSE Rule 1005 currently provides that an NX order for any account in which the same person is directly or indirectly interested may only be entered at 30 second intervals. The restriction against the same customer entering an order within 30 seconds focuses on the identity of the ultimate beneficial owner of an account. Thus, an order cannot be entered for the same beneficial owner within 30 seconds. According to the NYSE, the purpose of this restriction is to limit the ability of a trader to circumvent the restriction on order size by breaking a large order into smaller components and repetitively entering them to exhaust liquidity at the published bid or offer price. The restriction in NYSE Rule 1005 applies across an entire firm, even if separate traders are making independent decisions with respect to an account in which the firm has an interest.

The Exchange is proposing to amend NYSE Rule 1005 to permit entry of NX orders 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 Floor has procedures to monitor compliance with the separate terminal requirement. Such procedures, at a minimum, must require member organization compliance departments to review patterns of order entry from individual terminals on a periodic basis to ensure compliance with the 30 second requirement.

#### I. Summary of Comments

The Commission received 103 comment letters generally supporting the proposed amendment to NYSE Direct+.<sup>5</sup> Many commenters stated that

<sup>5</sup> A number of letters were from registered representatives and registered principals of Heartland Securities. These letters are identified individually. See letters to Jonathan G. Katz, Secretary, Commission, from Christopher Andrews, dated November 19, 2002 ("Andrews Letter"); Christopher Ball, undated ("Ball Letter"); Dror Ben-Aharon, undated ("Ben-Aharon Letter"); Alexander Benetti, dated November 19, 2002 ("Benetti Letter"); Patrick K. Blackburn, Executive Vice President, ABN-AMRO, dated December 23, 2002 ("ABN-AMRO Letter"); Eliav Bock, dated November 19, 2002 ("Bock Letter"); Arthur Brachowski, dated November 20, 2002 ("Brachowski Letter"); Thomas Bradshaw, undated ("Bradshaw Letter"); Blake C. Byczek, dated November 19, 2002 ("Byczek Letter"); Richard Cammarata, undated ("Cammarata Letter"); Coreina