

and did not change the staff original no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: August 20, 2002.

Brief description of amendments: The amendments revised TS Table 3.3.6.1-1, "Primary Containment Isolation Instrumentation," Functional Unit 5.a, Reactor Water Cleanup System Isolation, Main Steam Valve Vault Area Temperature—High, to extend the frequency of the channel calibration surveillance requirement from 122 days to 24 months, and revised applicable Bases.

Date of issuance: November 26, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days from the completion of Browns Ferry Units 2 and 3 refueling outages currently scheduled for early 2003, and the spring of 2004, respectively.

Amendment Nos.: 277 and 236.

Facility Operating License Nos. DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 15, 2002 (67 FR 63698).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50-390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: January 14, 2002.

Brief description of amendment: The amendment reduced the steady-state specific activity of the primary coolant. The amendment also changes the allowable value for the main control room air intake radiation monitor made necessary by reducing the specific activity.

Date of issuance: November 18, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment No.: 41.

Facility Operating License No. NPF-90: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 2, 2002 (67 FR 15629).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 2nd day of December 2002.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02-30921 Filed 12-9-02; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT:

Teresa Floyd, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606-2309.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Kay Coles James,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

Paul T. Conway, Chief of Staff—Chair.

Kathy L. Dillaman, Acting Director,

Investigations Service.

William E. Flynn, Senior Policy Advisor to the Director.

John C. Gartland, Director, Office of Congressional Relations.

Doris L. Hausser, Acting Director,

Workforce Compensation and

Performance Service.

Teresa M. Jenkins, Director, Office of

Workforce Relations.

Gail Lovelace, Chief People Officer,

General Services Administration.

Mark A. Robbins, General Counsel.

[FR Doc. 02-31085 Filed 12-9-02; 8:45 am]

BILLING CODE 6325-45-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46942; File No. SR-NASD-99-60]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 3 and 4 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Restrictions on the Purchase and Sale of Initial Public Offerings of Equity Securities

December 4, 2002.

On October 15, 1999, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change that would govern trading in "hot equity" offerings. The proposed rule, NASD Rule 2790, would revise and replace NASD IM-2110-1, known as the Free-Riding and Withholding Interpretation. On December 21, 1999, the NASD submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on January 18, 2000.⁴ On October 11, 2000, the NASD submitted Amendment No. 2 to the proposal⁵ which, among other things, changed the subject of the proposed rule from "hot issues" to "new issues." Amendment No. 2 was published for comment in the **Federal Register** on December 6, 2000.⁶ The NASD submitted Amendment No. 3 to the proposal on March 20, 2001,⁷ and Amendment No. 4 to the proposal on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Gary L. Goldsholle, NASD, to Katherine A. England, Division of Market Regulation, SEC, dated December 20, 1999 ("Amendment No. 1"). In Amendment No. 1, the NASD made certain technical amendments to the proposed rule change.

⁴ Securities Exchange Act Release No. 42325 (January 10, 2000), 65 FR 2656 ("Original Notice").

⁵ See Letter from Alden S. Adkins, NASD, to Katherine A. England, Division of Market Regulation, SEC, dated October 10, 2000 ("Amendment No. 2").

⁶ Securities Exchange Act Release No. 43627 (November 28, 2000), 65 FR 76316 ("Amendment No. 2 Notice").

⁷ See Letter from Patrice M. Gliniecki, NASD, to Katherine A. England, Division of Market Regulation, SEC, dated March 20, 2001 ("Amendment No. 3").

June 27, 2002.⁸ The Commission is publishing this notice of Amendment Nos. 3 and 4 to solicit comments on 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 NASD has proposed to establish new NASD Rule 2790, Restrictions on the Purchase and Sale of Initial Equity Public Offerings, which would replace NASD IM-2110-1, the Free-Riding and Withholding Interpretation. Consolidated changes made to the proposed rule text as a result of Amendment Nos. 3 and 4 are shown below. The base text is that proposed in Amendment No. 2. Text added by Amendment Nos. 3 and 4 is underlined; deleted text is in brackets.

* * * * *

Rule 2790. Restrictions on the Purchase and Sale of Initial Equity Public Offerings

(a) General Prohibitions

(1) A member or a person associated with a member may not sell, or cause to be sold, a new issue to any account in which a restricted person has a beneficial interest, except as otherwise permitted herein.

(2) A member or a person associated with a member may not purchase a new issue in any account in which such member or person associated with a member has a beneficial interest, except as otherwise permitted herein.

(3) A member may not continue to hold new issues acquired by the member as an underwriter, selling group member, or otherwise, except as otherwise permitted herein.

(4) *Nothing in this paragraph (a) shall prohibit:*

(A) *sales or purchases from one member of the selling group to another member of the selling group that are incidental to the distribution of a new issue to a non-restricted person at the public offering price; or*

(B) *sales or purchases by a broker/dealer of a new issue at the public offering price as part of an accommodation to a non-restricted person customer of the broker/dealer.*

(b) Preconditions for Sale

Before selling a new issue to any account, a member must in good faith have obtained within the twelve months prior to such sale, a representation from:

(1) Beneficial Owners

The account holder(s), or a person authorized to represent the beneficial owners of the account, that the account is eligible to purchase new issues in compliance with this rule; or

(2) Conduits

A bank, foreign bank, broker/dealer, or investment adviser, or other conduit that all purchases of new issues are in compliance with this rule.

A member may not rely upon any representation that it believes, or has reason to believe, is inaccurate. A member shall maintain a copy of all records and information relating to whether an account is eligible to purchase new issues in its files for at least three years following the member's last sale of a new issue to that account.

(c) General Exemptions

The general prohibitions in paragraph (a) of this rule shall not apply to sales to and purchases by *the following accounts or persons, whether directly or through accounts in which such persons have a beneficial interest:*

(1) An investment company registered under the Investment Company Act of 1940;

(2) A common trust fund or similar fund as described in Section 3(a)(12)(A)(iii) of the Act, provided that:

(A) The fund has investments from 1,000 or more [trust] accounts; and

(B) The fund does not limit beneficial interests in the fund principally to trust accounts of restricted persons;

(3) An insurance company general, separate or investment account, provided that:

(A) The account has investments from 1,000 or more policyholders; and

(B) The insurance company does not limit beneficial interests in the account principally to restricted persons;

(4) *An account or joint back office broker/dealer ("JBO") if the beneficial interests of restricted persons do not exceed in the aggregate 10% of such account or JBO [that is beneficially owned in part by restricted persons, provided that such restricted persons in the aggregate own less than 5% of such account, and that:*

(A) *each such restricted person does not manage or otherwise direct investments in the account; and*

(B) *on a pro rata basis, each such restricted person who is a natural person receives less than 100 shares of any new issue];*

(5) A publicly traded entity (other than a broker/dealer []) that *for an affiliate of a broker/dealer where such broker/dealer is authorized to engage in*

the public offering of new issues either as a selling group member or underwriter) that:

(A) Is listed on a national securities exchange; [or]

(B) Is traded on the Nasdaq National Market; or

(C) *Is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange or trading on the Nasdaq National Market; [, provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders;]*

(6) An investment company organized under the laws of a foreign jurisdiction, provided that:

(A) The investment company is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; and

(B) No person owning more than 5% of the shares of the investment company is a restricted person;

(7) An Employee Retirement Income Security Act benefits plan that is qualified under Section 401(a) of the Internal Revenue Code, provided that such plan is not sponsored solely by a broker/dealer;

(8) A state or municipal government benefits plan that is subject to state and/or municipal regulation; [or]

(9) A tax exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code.; or

(10) *A church plan under Section 414(e) of the Internal Revenue Code.*

(d) Issuer-Directed Securities

The prohibitions on the purchase and sale of new issues in this rule shall not apply to securities that:

(1) Are specifically directed by the issuer to *persons that are restricted under the rule*; provided, however, that [this exemption shall not apply to] securities directed by [the issuer to] *an issuer may not be sold to or purchased by an account in which any restricted person specified in subparagraphs [(i)(10)(B) or (i)(10)(C)](i)(11)(B) or (i)(11)(C) of this rule has a beneficial interest, unless such person, or a member of his or her immediate family, is an employee or director of the issuer, the issuer's parent, or a subsidiary of the issuer or the issuer's parent.* Also, for purposes of this [sub]paragraph (d)(1) only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security of the subsidiary, or has the power to sell or direct 50% or more of a class of voting [securities] security of the subsidiary;

⁸ See Letter from Gary L. Goldshalle, NASD, to Katherine A. England, Division of Market Regulation, SEC, dated June 27, 2002 ("Amendment No. 4").

(2) Are part of a program sponsored by the issuer or an affiliate of the issuer that meets the following criteria:

(a) The opportunity to purchase a new issue under the program is offered to at least 10,000 participants;

(b) Every participant is offered an opportunity to purchase an equivalent number of shares, or will receive a specified number of shares under a predetermined formula applied uniformly across all participants;

(c) If not all participants receive shares under the program, the selection of the participants eligible to purchase shares is based upon a random or other non-discretionary allocation method; and

(d) The class of participants does not contain a disproportionate number of restricted persons as compared to the investing public generally; [and

(e) Sales are not made to participants who are managing underwriter(s), the broker/dealer administering the program ("Administering Broker/Dealer"), the officers or directors of the managing underwriter(s) or Administering Broker/Dealer, or any employee of the managing underwriter(s) or Administering Broker/Dealer with access to non-publicly available information about the new issue;] or

(3) Are directed to eligible purchasers who are otherwise restricted under the rule as part of a conversion offering in accordance with the standards of the governmental agency or instrumentality having authority to regulate such conversion offering.

(e) Anti-Dilution Provisions

The prohibitions on the purchase and sale of new issues in this rule shall not apply to an account in which a restricted person has a beneficial interest that meets the following conditions:

(1) The [restricted person] *account* has held an equity ownership interest in the issuer, or a company that has been acquired by the issuer in the past year, for a period of one year prior to the effective date of the offering;

(2) The sale of the new issue to the account shall not increase the [restricted person's] *account's* percentage equity ownership in the issuer above the ownership level as of three months prior to the filing of the registration statement in connection with the offering;

(3) The sale of the new issue to the account shall not include any special terms; and

(4) The new issue purchased pursuant to this [sub]paragraph (e) shall not be sold, transferred, assigned, pledged or hypothecated for a period of three

months following the effective date of the offering.

(f) Stand-by Purchasers

The prohibitions on the purchase and sale of new issues in this rule shall not apply to the purchase and sale of securities pursuant to a stand-by agreement that meets the following conditions:

(1) The stand-by agreement is disclosed in the prospectus;

(2) The stand-by agreement is the subject of a formal written agreement;

(3) The managing underwriter(s) represents in writing that it was unable to find any other purchasers for the securities; and

(4) The securities sold pursuant to the stand-by agreement shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

(g) Under-Subscribed Offerings

Nothing in this rule shall prohibit an underwriter, pursuant to an underwriting agreement, from placing a portion of a public offering in its investment account when it is unable to sell that portion to the public.

(h) Exemptive Relief

Pursuant to the Rule 9600 series, the staff, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from this rule to the extent that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.

(i) Definitions

(1) "Beneficial interest" means any economic interest, such as the right to share in gains or losses. The receipt of a management or performance based fee for operating a collective investment account, or other fees for acting in a *fiduciary capacity*, shall not be considered a beneficial interest in the account.

(2) "Collective investment account" means any hedge fund, investment partnership, investment corporation, or any other collective investment vehicle that is engaged primarily in the purchase and/or sale of securities. A "collective investment account" does not include a "family investment vehicle" or an "investment club." [.]

(3) "Conversion offering" means any offering of securities made as part of a plan by which a savings and loan association, insurance company, or

other organization converts from a mutual to a stock form of ownership.

(4) "Family [partnership]" means a partnership comprised solely of *investment vehicle* means a legal entity that is beneficially owned solely by immediate family members.

(5) "Immediate family member" means a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual to whom the person provides material support.

(6) "Investment club" means a group of friends, neighbors, business associates, or others that pool their money to invest in stock or other securities and are collectively responsible for making investment decisions.

(7) "Joint Back Office Broker/Dealer" means any domestic or foreign private investment fund that has elected to register as a broker/dealer solely to take advantage of the margin treatment afforded under Section 220.7 of Regulation T of the Federal Reserve. The activities of a joint back office broker/dealer must not require that it register as a broker/dealer under Section 15(a) of the Act.

(8) "Limited business broker/dealer" means any broker/dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities and direct participation program securities.

[(8)](9) "Material support" means directly or indirectly providing more than 25% of a person's income in the [current or] prior calendar year. Members of the immediate family living in the same household are deemed to be providing each other with material support.

[(9)](10) "New issue" means any initial public offering of an equity security as defined in Section 3(a)(11) of the Act, made pursuant to a registration statement or offering circular[, or other securities distributions of any kind whatsoever, including securities that are specifically directed by the issuer on a non-underwritten basis]. New issue shall not include:

(A) Offerings made pursuant to an exemption under Section 4(1), 4(2) or 4(6) of the Securities Act of 1933, or SEC Rule 504 if the securities are "restricted securities" under SEC Rule 144(a)(3), or Rule 144A or Rule 505 or Rule 506 adopted thereunder;

(B) Offerings of exempted securities as defined in Section 3(a)(12) of the Act, and rules promulgated thereunder;

(C) Offerings of securities of a commodity pool operated by a commodity pool operator as defined under Section 1a(5) of the Commodity Exchange Act;

(D) Rights offerings, exchange offers, or offerings made pursuant to a merger or acquisition;

[(D)](E) Offerings of investment grade asset-backed securities;

[(E)](F) Offerings of convertible securities;

[(F)](G) Offerings of preferred securities; and

[(G)](H) Offerings of [securities of closed-end companies as defined under Section (5)(a)(2) of] an investment company registered under the Investment Company Act of 1940.

[(10)](11) "Restricted person" means:

(A) Members or other broker/dealers;

(B) Broker/Dealer Personnel:

(i) Any officer, director, general partner, associated person, or employee of a member or any other broker/dealer (other than a limited business broker/dealer); [, or any]

(ii) Any agent of a member or any other broker/dealer (other than a limited business broker/dealer) that is engaged in the investment banking or securities business; or

[(ii)](iii) An immediate family member of a person specified in subparagraph (B)(i) or (ii) if the person specified in subparagraph (B)(i) or (ii):

(a) Materially supports, or receives material support from, the immediate family member;

(b) Is employed by or associated with the member, or an affiliate of the member, selling the new issue to the immediate family member; or

(c) Has an ability to control the allocation of the new issue.

(C) Finders and Fiduciaries:

(i) With respect to the security being offered, a finder or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants and financial consultants; and

(ii) An immediate family member of a person specified in subparagraph (C)(i) if the person specified in subparagraph (C)(i) materially supports, or receives material support from, the immediate family member.

(D) Portfolio Managers:

(i) Any person who has authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account, other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment advisor, or

collective investment account over which such person has investment authority;].

(ii) An immediate family member of a person specified in subparagraph (D)(i) that materially supports, or receives material support from, such person [is materially supported by such person, other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account over which such person has investment authority.

Provided, however, that the term "restricted person" under this subparagraph (D) shall not include a person solely because he or she is a participant in an investment club or a family partnership].

(E) Persons Owning a Broker/Dealer

(i) Any person listed, or required to be listed, in Schedule A of a Form BD (other than with respect to a limited business broker/dealer), except persons [with] identified by an ownership [interests] code of less than 10%;

(ii) [any] Any person listed, or required to be listed, in Schedule B of a Form BD (other than with respect to a limited business broker/dealer), except persons whose listing on Schedule B relates to an ownership interest in a person listed on Schedule A [with] identified by an ownership [interest] code of less than 10%;

(iii) [any] Any person listed, or required to be listed, in Schedule C of a Form BD that meets the criteria of subparagraphs (E)(i) and (E)(ii) above;

(iv) [any] Any person that directly or indirectly owns 10% or more of a public reporting company listed [on], or required to be listed, in Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, [provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders]; or other than with respect to a limited business broker/dealer);

(v) Any person that directly or indirectly owns 25% or more of a public reporting company listed [on], or required to be listed, in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, [provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders]) or other than with respect to a limited business broker/dealer).

(vi) An immediate family member of a person specified in subparagraphs

(E)(i)–(v) unless the person owning the broker/dealer:

(a) Does not materially support, or receive material support from, the immediate family member;

(b) Is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family member; and

(c) Has no ability to control the allocation of the new issue.

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 NASD 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 NASD has 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

Between December 2000 and March 2001, the Commission received 14 comment letters on the proposed rule change.⁹ These comment letters offered a number of suggestions to improve the clarity and consistency of the proposed rule change. Some comment letters also sought additional exemptions that are not in NASD IM–2110–1. The NASD

⁹ See Letter from The Washington Group to Jonathan G. Katz, SEC, dated December 21, 2000; Letter from Fried, Frank, Harris, Shriver & Jacobson to Jonathan G. Katz, SEC, dated December 22, 2000; Letter from Capital International, Inc. to Jonathan G. Katz, SEC, dated December 22, 2000; Letters from Cadwalader, Wickersham & Taft to Jonathan G. Katz, SEC, dated December 22, 2000 and January 4, 2001; Letter from Testa, Hurwitz & Thibault to Jonathan G. Katz, SEC, dated December 26, 2000; Letter from Managed Funds Association to Jonathan G. Katz, SEC, dated December 26, 2000; Letter from Mayor, Day, Caldwell & Keeton, L.L.P. to Jonathan G. Katz, SEC, dated December 26, 2000; Letter from Sullivan & Cromwell to Jonathan G. Katz, SEC, dated December 29, 2000; Letter from Willkie Farr & Gallagher to Jonathan G. Katz, SEC, dated January 8, 2001; Letter from Securities Industry Association to Margaret H. McFarland, SEC, dated January 10, 2001; Letter from Chicago Board Options Exchange to Jonathan G. Katz, SEC, dated January 12, 2001; Letter from Morgan Stanley Dean Witter to Secretary, SEC, dated January 31, 2001; Letter from The Washington Group to Laura S. Unger, Acting Chair, SEC, dated March 27, 2001. Recently, the Commission has received two additional comment letters that, among other things, advocate the publication of Amendment No. 4 in the **Federal Register**. See Letter from Willkie Farr & Gallagher to SEC dated September 24, 2002; Letter from Managed Funds Association to SEC dated October 15, 2002.

reviewed the 14 comment letters and made various revisions to proposed NASD Rule 2790. Interested persons may view Amendment Nos. 3 and 4, which explain these revisions and respond to the comments received, at the following Web site: http://www.nasdr.com/filings/rf99_60.asp. Amendment Nos. 3 and 4 are also available at the principal offices of the NASD and at the Commission's Public Reference Room.

2. Statutory Basis

The NASD previously has stated that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.¹⁰ The NASD believes that the proposal would protect investors and further the public interest by ensuring that NASD members make a *bona fide* public offering of securities at the public offering price; ensuring that members do not withhold securities in a public offering for their own benefit or use such securities to reward certain persons who are in a position to direct future business to the member; and ensuring that industry "insiders," including members and their associated persons, do not take advantage of their "insider" position in the industry to purchase new issues for their own benefit at the expense of public customers.¹¹ The NASD continues to believe that the amended proposal is consistent with this statement.¹²

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

The NASD previously has stated that the proposed rule change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.¹³ The NASD continues to believe that the amended proposal is consistent with this statement.¹⁴

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

Amendment Nos. 3 and 4 reflect changes to the proposal made by the NASD in response to the 14 comments received between December 2000 and March 2001.¹⁵

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 self-regulatory organization consents, the Commission will:

(A) By order approve such 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 proposed rule change, as amended, is consistent with the Act. The Commission notes that the NASD is continuing to consider the need for additional rule changes relating to IPO allocation practices.¹⁶ For example, the NASD has separately sought comment on a practice referred to as "spinning." The NASD has solicited comment on whether it should adopt rule changes prohibiting NASD members from allocating IPO shares to an executive officer or director of a company on the condition that the officer or director send the company's investment banking business to the member, or as consideration for investment banking services previously rendered.¹⁷ Those proposals are not covered by the present rule change proposals and would be addressed in a future filing.

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 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-NASD-99-60 and should be submitted by December 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-31161 Filed 12-9-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46943; File No. SR-NYSE-2002-58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Automatic Execution Facility (NYSE Direct+)

December 4, 2002.

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 November 1, 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 NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change 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 amendments to Exchange Rules governing NYSE Direct+® ("NYSE Direct +"). The rule amendments propose 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. Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].

* * * * *

Rule 1005 An auto ex order for any account in which the same person is directly or indirectly interested may

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ See Amendment No. 2 Notice, 65 FR at 76328.

¹² Telephone conversation between Gary Goldsholle, NASD, and Michael Gaw, Division of Market Regulation, SEC, on November 25, 2002.

¹³ See Amendment No. 2 Notice, 65 FR at 76328.

¹⁴ Telephone conversation between Gary Goldsholle, NASD, and Michael Gaw, Division of Market Regulation, SEC, on November 25, 2002.

¹⁵ *Id.*

¹⁶ See, e.g., NASD Notice to Members 02-55 (August 2002).

¹⁷ See *id.*