

section 804 of the Listed Company Manual that was inadvertently not added to NYSE Rule 499.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ Specifically, the Commission believes the proposal is consistent with the section 6(b)(5)⁸ requirements that the rules of an exchange be 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 Commission believes that the proposal provides fair procedures for issuers appealing delisting determinations by continuing to ensure that a majority of the members voting on a delisting matter will be public directors and by clarifying that decisions will be based on the record developed by the parties. The Commission also believes that the proposal should add greater transparency to the process since the Chairman of the Committee would be required to disclose to the issuer and the staff at the commencement of each delisting hearing which of the industry directors will be voting on the delisting matter.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2001-27) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47463; File No. SR-NYSE-2002-44]

Self-Regulatory Organizations; Order Approving 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+)

March 7, 2003.

On September 9, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Direct+ Rule 1000. The Exchange submitted an amendment to the proposed rule change on January 27, 2003.³ On February 5, 2003, the rule proposal was published for comment in the **Federal Register**.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

I. Description of the Proposed Rule Change

The Exchange is proposing to amend its Direct+ pilot by amending NYSE Rule 1000. The NYSE Direct+ pilot expires on December 23, 2003.⁵ This proposal would also expire with the pilot.⁶ The NYSE proposes to amend NYSE Rule 1000(ii) to provide 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.

Under the current provisions of NYSE 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. The Exchange has stated that this 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.

According to the Exchange, 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.

The Exchange also 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.

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ Specifically, the Commission believes the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires among other things, that the rules of the Exchange are

⁷ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

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").

⁴ See Securities Exchange Act Release No. 47285 (January 29, 2003), 68 FR 5948.

⁵ See Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002).

⁶ Telephone call between Don Siemer, Director, Market Surveillance, NYSE, and Terri Evans, Assistant Director, Division of Market Regulation, Commission (March 5, 2003).

⁷ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should allow specialists to disseminate 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.⁹ The Commission also believes that the proposed rule change should continue to accommodate the crossing of block transactions outside the prevailing quote, at the same time ensuring that limit orders that are received while the block trade is being effected that improve the market represented by the broker-dealer's bid or offer on behalf of the Rule 127 trade will be executed as part of the block transaction.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSE-2002-44) is approved as part of the NYSE Direct+ pilot that expires on December 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47460; File No. SR-NYSE-2003-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt, on a Permanent Basis, Margin Requirements for Security Futures Contracts

March 6, 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 March 5, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This Exchange proposes to adopt, on a permanent basis, the amendments to NYSE Rule 431 relating to margin requirements for Security Futures Contracts ("SFCs"), which were approved by the SEC on a pilot basis for sixty days (the "Pilot") on November 7, 2002,³ and the Pilot was extended for an additional sixty days, from January 6, 2003 until March 6, 2003.⁴

The Exchange believes that the proposed rule change would make its margin rule consistent with margin rules already adopted by the SEC and the Commodity Futures Trading Commission ("CFTC") and those filed by other self-regulatory organizations ("SROs") regarding security futures.

Specifically, the proposed amendments would: (1) Permit customer margining of SFCs, and establish initial and maintenance margin requirements for SFCs; (2) allow for initial and maintenance margin levels for offsetting positions involving

SFCs and related positions at lower levels than would be required if margined separately; (3) provide for a Market Maker exclusion for proprietary trades of a Security Futures Dealer ("SFD") and allow for "good faith" margin treatment for the accounts of approved options specialists, market makers and other specialists; (4) provide definitions relative to SFCs for application of this rule; (5) provide that SFCs transacted in a futures account shall not be subject to any provisions of Rule 431; (6) provide for money market mutual funds as defined under Rule 2a-7⁵ of the ICA,⁶ to be used to satisfy margin requirements for SFCs provided certain conditions are met; (7) require that SFCs transacted in a securities account be subject to all other provisions of NYSE Rule 431, particularly Rule 431(f)(8)(B) ("Day Trading"); and (8) permit members and member organizations for which the Exchange is the Designated Examining Authority ("DEA") to participate in the trading of SFCs.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets. In addition, the table of offsets is new rule language.

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Rule 431 ("Margin Requirements")

Rule 431. (a) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) The term "current market value" means the total cost or net proceeds of a security on the day it was purchased or sold or at any other time the preceding business day's closing price as shown by any regularly published reporting or quotation service, *except for security futures contracts (see Section (f)(10)(C)(ii))*. If there is no closing price, a member organization may use a reasonable estimate of the market value of the security as of the close of business on the preceding business day.

Rule 431 (a)(2) through (a)(3) unchanged.

(4) The term "equity" means the customer's ownership interest in the account, computed by adding the current market value of all securities "long" and the amount of any credit balance and subtracting the current market value of all securities "short" and the amount of any debit balance. *Any variation settlement received or paid on a security futures contract shall be considered a credit or debit to the account for purposes of equity.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46782 (November 7, 2002), 67 FR 69052 (November 14, 2002) (SR-NYSE-2002-53).

⁴ See Securities Exchange Act Release No. 47129 (January 3, 2003), 68 FR 2094 (January 15, 2003) (SR-NYSE-2003-01).

⁵ 17 CFR 270.2a-7.

⁶ 15 U.S.C. 80a et seq.

⁹ 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.

¹⁰ *Id.*

¹¹ 17 CFR 200.30-3(a)(12).