

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](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.<sup>10</sup> 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.<sup>11</sup> The NASD continues to believe that the amended proposal is consistent with this statement.<sup>12</sup>

### 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.<sup>13</sup> The NASD continues to believe that the amended proposal is consistent with this statement.<sup>14</sup>

### 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.<sup>15</sup>

## III. Date of Effectiveness of the Proposed Rule Change and Timing of 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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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

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## 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> See Amendment No. 2 Notice, 65 FR at 76328.

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

<sup>13</sup> See Amendment No. 2 Notice, 65 FR at 76328.

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

<sup>15</sup> *Id.*

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

<sup>17</sup> See *id.*

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

only be entered at intervals of no less than 30 seconds between entry of each such order in a stock[.], *unless the orders are entered by means of separate order entry terminals, and the member or member organization responsible for entry of the orders to the Floor has procedures in place to monitor compliance with the separate terminal requirement.*

\* \* \* \* \*

## 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 and is set forth in Sections A, B, and C below.

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

#### 1. Purpose

The NYSE Direct+ pilot<sup>3</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, 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.

An order placed in NYSE Direct+ is executed when the limit price is equal to or better than the published bid or offer. If an order placed in NYSE Direct+ is not executed, it is placed on the specialist's book for representation in the market at its limit price.

NYSE Rule 1005 provides that an NX order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such order. 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. 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, would 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. The Exchange will include compliance with NYSE Rule 1005 in its examination scope when conducting its periodic examinations of member organizations. This amendment is not inconsistent with the original intent of Rule 1005 to preclude the intentional breaking up of large size orders to circumvent the 1099 NX order size limitation because orders are typically entered by traders who are independent decision makers and who operate from his or her own discrete order entry terminal. Thus, as a practical matter, the Exchange believes that the proposed amendment to NYSE Rule 1005 cannot reasonably be expected to facilitate the ability of any individual trader to break up large orders at less than 30 second intervals to circumvent the 1099 share size limitation for NX orders.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5),<sup>4</sup> which requires an

Exchange to 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 Exchange also believes that the proposed rule change is designed to support the principles of section 11A(a)(1) of the Act<sup>5</sup> 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

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 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

<sup>3</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). In addition, we have recently requested another year extension, beginning December 24, 2002. See Securities Exchange Act Release No. 46906 (November 25, 2002) (SR-NYSE-2002-47). This proposal, if approved, would be part of the pilot and only run while the pilot runs. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Special Counsel, Division of Market Regulation, Commission, December 3, 2002.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78k-1(a)(1).

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 NYSE. All submissions should refer to File No. SR-NYSE-2002-58 and should be submitted by December 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.<sup>6</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-31162 Filed 12-9-02; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

### Modifications to the Disability Determination Procedures; Extension of Testing of Some Disability Redesign Features

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of the extension of tests involving modifications to the disability determination procedures.

**SUMMARY:** We are announcing the extension of tests involving modifications to our disability determination procedures that we are conducting under the authority of current rules codified at 20 CFR 404.906 and 416.1406. These rules provide authority to test several modifications to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and for supplemental security income payments based on disability under title XVI of the Act. We have decided to extend the testing of two redesign features of the disability prototype for 6 months to enable us to address transition issues.

**DATES:** We are extending our selection of cases to be included in these tests from December 30, 2002, until no later than June 30, 2003. If we decide to continue selection of cases for these tests beyond this date, we will publish another notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Phil Landis, Disability Process Redesign Staff, Office of Disability

Determinations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, 410-965-5388.

**SUPPLEMENTARY INFORMATION:** Current regulations at 20 CFR 404.906 and 416.1406 authorize us to test, individually, or in any combination, different modifications to the disability determination procedures. We have conducted several tests under the authority of these rules, including a prototype that incorporates a number of modifications to the disability determination procedures that the State agencies use. The prototype included three redesign features, and we previously extended the tests of two of those features: the use of a single decisionmaker, in which a disability examiner may make the initial disability determination in most cases without requiring the signature of a medical consultant; and elimination of the reconsideration level of review. We are now announcing a further extension of the testing of these two features.

We also have conducted another test involving the use of a single decisionmaker who may make the initial disability determination in most cases without requiring the signature of a medical consultant. We are also extending the period during which we will select cases to be included in this test of the single decisionmaker feature.

### Extension of Testing of Some Disability Redesign Features

On August 30, 1999, we published in the **Federal Register** a notice announcing a prototype that would test a new disability claims process in 10 States, also called the prototype process (64 FR 47218). On December 23, 1999, we published a notice in the **Federal Register** (65 FR 72134) extending the period during which we would select cases to be included in a separate test of the single decisionmaker feature. In these notices, we stated that selection of cases was expected to be concluded on or about December 31, 2001. We also stated that, if we decided to continue the tests beyond that date, we would publish another notice in the **Federal Register**. We subsequently published notices in the **Federal Register** extending selection of cases for these tests. Most recently, on June 24, 2002, we published a notice extending selection of cases for the tests until no later than December 30, 2002 (67 FR 42594). We also stated that, if we decided to continue selection of cases for these tests beyond that date, we would publish another notice in the **Federal Register**. We have decided to

extend selection of cases for two features of the prototype process (single decisionmaker and elimination of the reconsideration step), and the separate test of single decisionmaker beyond December 30, 2002. We expect that our selection of cases for these tests will end on or before June 30, 2003.

This extension also applies to the locations in the State of New York that we added to the prototype test in a notice published in the **Federal Register** on December 26, 2000 (65 FR 81553).

Dated: December 3, 2002.

**Martin H. Gerry,**

*Deputy Commissioner for Disability and Income Security Programs.*

[FR Doc. 02-31074 Filed 12-9-02; 8:45 am]

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## DEPARTMENT OF STATE

[Public Notice 4195]

### Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

Due to scheduling constraints, the Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, December 19, 2002 from 9:45 until 11:45 a.m. and 1 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street, NW. (entrance on 23rd Street), Washington, DC. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Luigina Pinzino at 703/875-7109 before Friday, December 13, 2002, to provide date of birth, Social Security number, and telephone number.

**FOR FURTHER INFORMATION CONTACT:** Luigina Pinzino 703/875-7109.

Dated: November 25, 2002.

**Charles E. Williams,**

*Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.*

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<sup>6</sup> 17 CFR 200.30-3(a)(12).