

organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

NASD has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day pre-operative period, which would make the proposed rule operative immediately.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and the 30-day pre-operative period in this case. Allowing the rule change to become operative immediately will permit NASD to satisfy its obligation under Section 31 of the Act on a timely basis and will avoid any confusion on the part of NASD members and their customers.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-129 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-129. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2004-129 and should be submitted on or before September 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50277; File No. SR-NYSE-2004-05]

### Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Enhancements to the Exchange's Existing Automatic Execution Facility (NYSE Direct+)

August 26, 2004.

On February 9, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to enhance the Exchange's existing automatic execution facility, NYSE Direct+. On August 2, 2004, the Exchange filed an amendment to the

proposed rule change.<sup>3</sup> A complete description of the proposed rule change, as amended, is in the notice of filing, which was published in the **Federal Register** on August 16, 2004.<sup>4</sup>

To give the public additional time to consider the proposal, the Commission has decided to extend the comment period pursuant to section 19(b)(2) of the Act.<sup>5</sup> Further, the Commission notes that the Exchange has consented to the extension of the comment period.<sup>6</sup> Accordingly, the comment period shall be extended until September 22, 2004.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-05 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number SR-NYSE-2004-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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

<sup>3</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, and accompanying Form 19b-4, which replaced the original filing in its entirety (July 30, 2004) ("Amendment No. 1").

<sup>4</sup> See Exchange Act Release No. 50173 (August 10, 2004), 69 FR 50407.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission (August 25, 2004).

<sup>16</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</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.

the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-05 and should be submitted on or before September 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50275; File No. SR-NYSE-2004-43]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Establishing Fees for Receiving NYSE OpenBook® on a Real-Time Basis

August 26, 2004.

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 August 11, 2004, 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 Exchange. 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 Exchange is proposing to establish fees for providing NYSE OpenBook on a real-time basis.

#### 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 Exchange 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 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

The Exchange believes that NYSE OpenBook responds to the demands of some market participants for depth-of-market data, a demand that has resulted, in part, from decimalization's six-fold increase in the number of price points. The NYSE OpenBook service is a compilation of limit order data that the Exchange provides to market data vendors, broker-dealers, private network providers and other entities through a data feed. The Exchange represents that for every limit price, NYSE OpenBook includes the aggregate order volume.

Currently, the Exchange updates NYSE OpenBook every five seconds. The Exchange proposes to make available a second enhanced NYSE OpenBook service that would update NYSE OpenBook limit order information in real-time. The Exchange believes that the real-time service responds to the desire of some market participants for more frequently updated depth-of-market data. According to the Exchange, the proposed real-time service will allow subscribers to choose to either continue to receive their current NYSE OpenBook service unchanged, or upgrade to the new real-time service.

The fees for the present NYSE OpenBook service are two-fold: (1) \$5,000 per month for the receipt of, and the right to redistribute, the data feed and (2) \$50.00 per month for each terminal through which the end user is able to display the service. The Commission approved the current fees for NYSE OpenBook in December 2001.<sup>3</sup>

The Exchange proposes to establish a fee of \$60.00 per month for each terminal through which the end user is able to display the real-time NYSE OpenBook service. According to the Exchange, the current monthly \$5,000 data feed fee will entitle an entity to receive the five-second NYSE OpenBook data feed, the real-time NYSE OpenBook

data feed, or both. The Exchange states that the current data feed fee will also entitle an entity to receive the NYSE LiquidityQuote R® data feed.

The Exchange believes that the fee for the real-time NYSE OpenBook service reflects an equitable allocation of its overall costs associated with using its facilities. The Exchange states that it reviewed and discussed the fee with the Exchange's Board of Executives ("BoE") at its June 3, 2004 meeting following a presentation by NYSE senior management. (The BoE, which is a constituent panel that advises the Exchange's independent Board of Directors and senior management, is comprised of representatives of individual and institutional investors, listed companies, members and member organizations.) The Exchange also states that all members of the Exchange's Board of Directors attended the BoE meeting, listened to the presentation and discussion, and later that day approved the new service and proposed fee.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

#### 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 not received solicited or unsolicited written comments from members or other interested parties.

#### 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

<sup>7</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.

<sup>3</sup> See Securities Exchange Act Release No. 44962 (December 7, 2001), 66 FR 54562 (December 14, 2001) (SR-NYSE-2001-42).

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

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