

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51319; File No. SR-NYSE-2004-61)

March 4, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Rescind a Type of Order Known as an Institutional XPress[®] Order Through Amendments to Exchange Rules 13, 60 and 72

On October 28, 2004, the New York Stock Exchange, Inc. (“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 rescind a type of order known as an Institutional XPress[®] Order (“XPress Order”) by amending NYSE Rules 13 (Definitions of Orders), 60 (Dissemination of Quotation) and 72 (Priority and Precedence of Bids and Offers). On December 3, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended by Amendment No. 1, was published for notice and comment in the Federal Register on December 29, 2004.⁴ The Commission received no comment letters on the proposal, as amended. On January 25, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Partial Amendment dated December 3, 2004 (“Amendment No. 1”). In Amendment No. 1, the Exchange changed the basis under which the proposed rule change was filed from Section 19(b)(3)(A) of the Act to Section 19(b)(2) of the Act.

⁴ See Securities Exchange Act Release No. 50912 (December 22, 2004), 69 FR 78084.

⁵ See Partial Amendment dated January 25, 2005 (“Amendment No. 2”). In Amendment No. 2, the Exchange made minor, technical corrections to the proposed rule text. Accordingly, this Amendment is not subject to notice and comment.

requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁶ and, in particular, the requirements of Section 6 of the Act⁷ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act⁸ in that it is 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.

According to the Exchange, the XPress Order has not been widely used⁹ and if the Hybrid Market initiative¹⁰ is approved and implemented, the need for XPress Orders will be further diminished. Therefore, the Commission believes that it is consistent with the Act to eliminate this type of order.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ Telephone conversation between Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, and Jeffrey S. Rosenstock, Special Counsel, Market Surveillance, NYSE, on March 1, 2005. The NYSE also represented that the proposed rule change would be implemented on or about April 1, 2005. *Id.*

¹⁰ See Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004) and 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004) (SR-NYSE-2004-05).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NYSE-2004-61), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).