

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 Nasdaq. All submissions should refer to file number SR-NASD-2003-88 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47965; File No. SR-NYSE-2003-20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Program To Disengage NYSE Direct+® in Five Actively Traded Stocks

June 2, 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 May 28, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ The NYSE asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

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

The NYSE is proposing to extend its pilot to disengage NYSE Direct+⁶ in five actively-traded stocks to assess the impact of autoquoting⁷ of bids and offers in connection with the Exchange's initiative to disseminate NYSE LiquidityQuote.⁸ NYSE also proposes to amend the language in NYSE Rule 1000, which originally restricted the pilot to a one-week period. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are bracketed.

* * * * *

Rule 1000

Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i)-(vi) No change.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. An auto ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.

⁶ NYSE Rules 1000-1005 provide for the automatic execution of limit orders of 1,099 shares or less against the Exchange's disseminated bid or offer. NYSE Direct+ was originally filed as a one-year pilot. See Securities Exchange Act Release No. 43767 (Dec. 22, 2000), 66 FR 834 (January 4, 2001) (SR-NYSE-00-18). The Direct+ pilot was subsequently extended for an additional year by Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR-NYSE-2001-50), and recently extended for an additional year by Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR-NYSE-2002-47).

⁷ The Exchange will autoquote or automatically update the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer).

⁸ For further details on LiquidityQuote, see Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR-NYSE-2002-55).

During a [one-week] pilot program in 2003, NYSE Direct+ shall not be available in the following five stocks: American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange will announce in advance to its membership the *time* [week] the pilot will run.

* * * * *

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. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

In SR-NYSE-2003-10, the Commission approved the Exchange's proposed rule change to conduct a one-week pilot to disengage NYSE Direct+ in five actively-traded stocks.⁹ The purpose of the pilot was to assess the impact of autoquoting bids and offers in connection with the Exchange's initiative to disseminate NYSE LiquidityQuote.¹⁰ According to the NYSE, the pilot was initially scheduled to run from May 21, 2003 until May 28, 2003, and NYSE LiquidityQuote was initially scheduled to begin on May 21, 2003. However, the Commission issued an order granting an interim stay on the implementation of NYSE LiquidityQuote until June 6, 2003.¹¹

To assess the impact of autoquoting bids and offers in connection with the liquidity quote initiative, the NYSE is proposing to extend the pilot until June 20, 2003. The NYSE believes that continuing the pilot will provide continuity and avoid starting and stopping the disengagement of NYSE Direct+. According to the NYSE, this continuity should aid in the learning process for NYSE Floor personnel.

⁹ See Securities Exchange Act Release No. 47793 (May 2, 2003), 68 FR 25071 (May 9, 2003). The stocks are American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C).

¹⁰ See *supra* note 7.

¹¹ See *In the Matter of the Application of Bloomberg L. P.*, Securities Exchange Act Release No. 47891 (May 20, 2003).

Further, NYSE proposes to amend NYSE Rule 1000 to reflect that the pilot is not limited to a one-week period.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is Section 6(b)(5) of the Act,¹² which requires that an exchange 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.

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

The Exchange believes that the proposed rule change would not 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 regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ 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.

The NYSE has requested a waiver of the five-day written notice and the 30-day operative delay requirements. The Commission believes that waiving the five day pre-filing requirement and the 30-day operative delay will allow the NYSE to continue, without undue

interruption, to assess the impact on the autoquoting of bids and offers in connection with the LiquidityQuote initiative in five actively-traded stocks without the impact of NYSE Direct+.¹⁵

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. 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 in 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to SR-NYSE-2003-20 and should be submitted by July 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47975; File No. SR-Phlx-2003-25]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Buy Orders in Securities Exempt for the Short Sale Rule

June 4, 2003.

I. Introduction

On April 3, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Supplementary Material .07 to Phlx Rule 229 to modify the Exchange's Automatic Price Improvement ("API") program to allow specialists to choose to improve buy orders in securities that are exempted from or otherwise not subject to the "tick" requirements of Rule 10a-1 under the Act³ (the "Short Sale Rule"). The proposed rule change was published for comment in the **Federal Register** on April 28, 2003.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange's API program allows specialists to provide automatic price improvement to automatically executable market and marketable limit orders in New York Stock Exchange, Inc. and American Stock Exchange LLC ("Amex") listed securities received through Phlx's Automated Communication and Execution System ("PACE")⁵ for 599 shares or less of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.10a-1. Paragraph (a) of Rule 10a-1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported pursuant to an "effective transaction reporting plan" ("Reported Securities"). A short sale of a Reported Security listed on a national securities exchange may not be effected at a price either: (1) below the last reported price of a transaction reported in the consolidated transaction reporting system ("minus tick"); or (2) at the last reported price if that price is lower than the last reported different price ("zero-minus tick").

⁴ See Securities Exchange Act Release No. 47714 (April 22, 2003), 68 FR 22447.

⁵ PACE is the Exchange's automated order routing, delivery, execution and reporting system for listed securities. See Phlx Rule 229.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ For 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. 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).