expectation that all registered advisers, either state or federal, subject to due authorization and regulation, be permitted to receive and vote proxy materials on their behalf. The Commission also believes that this change recognizes, and is consistent with, the regulatory scheme set up for the registration of investment advisors under state and federal law pursuant to Title III of the National Securities Markets Improvement Act of 1996 (the ''Coordination Act'').[9]

The rule will continue to require that a member that receives a written designation from a beneficial owner must ensure that the beneficial owner's designated investment adviser is registered under the Advisers Act or, for state registered investment advisers, is registered as an investment adviser under the laws of the state. Members must also continue to ensure that the designated investment adviser is exercising investment discretion pursuant to an advisory contract for the beneficial owner; and is designated in writing by the beneficial owner to receive and vote proxies for stock that is in the possession of the members. Nasdaq rules would also require members to keep records substantiating this information. These requirements should help to ensure that any state registered adviser is acting on behalf of the beneficial owner.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2002–124), as amended, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[9] *See* NASAA Comment Letter, *supra* note 6. In its comment letter, the NASAA stated that while federal and state-registered advisers are distinguished based on their levels of assets under management, both federal and state-registered advisers generally perform similar functions. According to the NASAA, while not all clients may want their adviser to vote on their behalf, NASAA believes this option should be available to all investors.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47452; File No. SR–NYSE–2001–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change, as Amended by Amendment No. 1 Thereto, by the New York Stock Exchange, Inc. Relating to Amendments to Section 804 of the Listed Company Manual and Rule 499 of the Exchange

March 6, 2003.

I. Introduction

On August 17, 2001, 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 amend Section 804 of the Listed Company Manual to specify that public directors will constitute a majority of the directors of the Committee for Review voting on final delisting determinations; and to codify this change in the parallel Exchange Rule 499, as well as make other minor conforming changes. On January 22, 2003, the NYSE filed Amendment No. 1 to the proposed rule change with the Commission.[3]

The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on February 3, 2003.[4] No comments were received on the proposal. This order approves the amended proposal.

II. Description of the Proposal

Section 804 of the Listed Company Manual describes the procedures to be followed when the Exchange determines that a security should be removed from the list. It provides that the issuer has a right to request a review of the Exchange's determination by a Committee of the Board of Directors of the Exchange, and currently specifies that that committee is to be ''comprised of a majority of public Directors.'' This requirement was added as part of a larger revision of these procedures that became effective in 2000.[5] The Committee for Review is the committee of the Board that reviews both disciplinary and delisting matters and, according to the NYSE, it has often been comprised of equal numbers of public and industry directors. According to the Exchange, in order to reconcile the majority of public Directors requirement with the Committee's traditional composition, and to allow all members of the Committee for Review present at a meeting to participate in discussions, the Committee required that the quorum for delisting matters include two public directors and one industry director. Consequently, a rotation system was established with respect to industry directors voting on delisting matters so that those voting were comprised of a majority of public directors and at least one industry director.[6]

The proposal amends section 804 of the Listed Company Manual to more accurately describe the Exchange's procedures. In addition, pursuant to the proposed rule change, 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. Furthermore, the decision relating to the delisting appeal would be required to identify by name which directors participated only and which directors voted on the matter. The written decision issued by the Committee would also be required to clearly state that, in reaching its decision, the Committee considered only the oral arguments, written briefs and accompanying materials presented by the parties at the time of the hearing. The Exchange also proposes to codify these changes in the parallel Exchange Rule 499. Proposed NYSE Rule 499 also reflects a previous amendment to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 17, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 47253 (January 24, 2003), 68 FR 5322.

[5] *See* Securities Exchange Act Release No. 42863 (May 30, 2000), 65 FR 36488 (June 8, 2000).

[6] Pursuant to the rotation system, the Committee designates prior to each delisting hearing which industry director(s) shall vote. At all hearings, all public directors present shall vote. For example, at a Committee meeting attended by three (3) public directors and three (3) industry directors at which two delisting appeals are considered, all public directors present and industry directors 1 and 2 will vote on the first delisting matter and all public directors present and industry directors 3 and 1 will vote on the second delisting matter. If, on the Committee's next review date, the meeting is attended by two (2) public directors and three (3) industry directors and one delisting appeal is considered, all public directors present and industry director 2 will vote on the matter; industry directors 1 and 3 will not vote. If any of the industry directors designated to vote next is not present at a Committee meeting, the next succeeding industry director(s) will vote. The rotation system is subject to the composition of the Committee, which varies at each meeting as described above, depending upon each director's availability. As is the case with other procedures of the Committee, the rotation system may also be changed from time to time.

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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[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).

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

[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).