

broker in any particular location, it has fallen to the DPM to staff the PAR terminals and to represent the orders routed to the PAR terminal. Generally, the DPM does not charge for this brokerage service and thus, receives no direct benefit from performing this function. The CBOE does not believe it is appropriate or even preferable for the marketplace for the DPM to be denied the opportunity to compete to trade against so many orders merely because it is performing a service that benefits the Exchange generally.

The CBOE believes that without the proposed amendment, it will become increasingly difficult for DPMs to compete against non-DPMs in the trading crowd. As the percentage of orders routed to the PAR terminal grows, the incentives to assume the affirmative obligations and expenses in managing a DPM operation decrease. The Exchange believes that the proposed rule change is justified in light of the particular responsibilities, burdens, and costs borne by DPMs compared to other market participants. DPMs have more market making responsibilities than non-DPMs, higher capital requirements, and other unique costs, including costs associated with staffing the brokerage function, the quote updating functions, and marketing functions.

The Exchange offers the following example to help illustrate the nature of the concern. Assume a particular DPM has an order for a broker-dealer that has been routed to the crowd PAR terminal. The broker-dealer is seeking to buy 30 contracts of XYZ at a limit of \$3 at a time when the market is 3 (bid)—3¼ 4 (offer). Now, assume a broker-dealer walks into the crowd to sell 100 contracts of XYZ at \$3. The DPM may represent the broker-dealer order and compete against other non-DPMs to trade against that 100 contract order. The DPM, however, must accord priority to that broker-dealer order and cannot compete to trade against that order. If the broker-dealer order and the other market-makers determine to trade all of the 100 contracts, the DPM will have no change to participate in the trade. If the DPM did not have to accord priority to the broker-dealer order, the DPM would be able to compete equally with the other market participants and assert its participation right if the trade occurred at the DPM's previously established principal bid or offer.

The Exchange believes that the proposal will require DPMs to accord priority to those orders for public customers that they represent as agent over the DPM's principal transactions. Moreover, in accordance with the

proposed rule change, the CBOE represents that DPMs will have the option to trade other non-public customer orders that they represent ahead of their own interest in a particular trade.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with, and furthers the objectives of, section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>5</sup> in particular, because it is designated to remove impediments to a free and open market and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition 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*

No written comments were solicited or received with respect to 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 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 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. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-00-42 and should be submitted by December 26, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-29931 Filed 12-3-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45097; File No. SR-NYSE-2001-44]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 407 ("Transactions—Employees of Members, Member Organizations and the Exchange")**

November 21, 2001.

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 October 22, 2001, 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 proposes to amend NYSE Rule 407 ("Transactions—Employees of Members, Member Organizations and the Exchange") and incorporate and amend an existing written interpretation into the rule in

<sup>6</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>4</sup> 15 U.S.C. 78f(b).

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

order to require that associated persons obtain their employers' written approval prior to entering into private securities transactions. In addition, the Exchange proposes to define the terms "securities or commodities account," "private securities transactions" and "other financial institutions."

## 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 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

NYSE Rule 407(b) requires that members, allied members and employees to obtain the prior written consent of their employers in order to open and maintain a securities or commodities account at another broker-dealer, investment adviser, bank or other financial institution. Further, employers of such associated persons must receive duplicate confirmations and statements of such accounts. In this regard, the Exchange believes that NYSE Rule 407 helps members and member organizations maintain the integrity of their information barriers and employee trading policies and assists members and member organizations in monitoring employee trading for possible insider trading violations and manipulative and deceptive devices.

An existing interpretation of NYSE Rule 407 in the *NYSE Interpretation Handbook* requires that members, allied members and employees associated with members or member organizations notify their employers of any private securities transactions, where such securities transactions are typically negotiated directly with an issuer and not through an account with a broker-dealer or bank.

The Exchange proposes to amend NYSE Rule 407 and incorporate and amend the interpretation noted above into the rule to require that associated persons of members or member organizations obtain their employers' written approval (rather than notification) prior to entering into private securities transactions. The

Exchange also proposes that associated persons effecting private securities transactions shall arrange for duplicate confirmations and statement (or their equivalents) to be sent to another person designated by their member or member organization under NYSE Rule 342(b)(1) ("Offices—Approval, Supervision and Control") to periodically review such transactions.

In addition, the Exchange proposes to define the terms "securities or commodities account," "private securities transactions" and "other financial institution." The Exchange proposes that the term "securities or commodities account" shall include limited or general partnership interests in investment partnerships.

The Exchange proposes that the term "private securities transactions" shall include all transactions in the securities of issuing entities that are not public, whether or not such transactions are negotiated directly with the issuer. It shall include, but not be limited to, interests in oil and gas ventures, real estate syndications, participations in tax shelters and in other investment vehicles, and shares issued prior to a public distribution by such issuing entities.

The Exchange proposes that the term "other financial institution" shall include, but is not limited to, insurance companies, trust companies, credit unions and investment companies.

In addition, the Exchange proposes to amend NYSE Rule 407 to provide the Exchange with the general authority to waive any of the requirements of the rule upon written request of a member or member organization that has the obligation to approve the account and where good cause is shown. For example, a member or member organization that is required to approve an account of an employee associated with such member or member organization may not wish to receive duplicate confirmations and statements because such employee does not have the direct or indirect power to make any investment decisions at another member or member organizations.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>3</sup> which provides, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade.

<sup>3</sup> 15 U.S.C. 78f(b)(5).

### 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 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 Exchange 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 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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2001-44 and should be submitted by December 26, 2001.

For the Commission, by the Division of Market Regulations, pursuant to the delegated authority.<sup>4</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45112; File No. SR-NYSE-2001-47]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. To Implement Three CRD Processing Fees and a One-Time System Transition Fee in Connection with the Administration of Forms U-4 and U-5

November 28, 2001.

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 6, 2001, 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 implements three Web CRD processing fees and a one-time System Transition Fee charged to NYSE members and member organizations who are not members of the National Association of Securities Dealers, Inc. ("NASD") in connection with the administration and processing of Forms U-4 or U-5 through the Web CRD system.

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

In its filing with the Commission, 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 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

Prior to November 13, 2000, Exchange members and member organizations who were not members of NASD were required to manually file Form U-4<sup>3</sup> and Form U-5<sup>4</sup> with the Exchange's Qualifications and Registrations Department. These members and member organizations primarily conduct business on the Floor of the Exchange and are not required to be registered with NASD.

Effective November 13, 2000, Exchange members and member organizations who are not members of the NASD are required to submit (in connection with NYSE Rules 345.12 and .18) Forms U-4 and U-5 through NASD Regulation, Inc.'s ("NASDR") Web CRD system ("Web CRD"). The filings are processed electronically through the Internet. Specific details regarding the filing procedures associated with this transition were published in NYSE Information Memo Number 00-25<sup>5</sup> dated October 13, 2000. Including associated persons of NYSE-only members and member organizations in Web CRD enables the Exchange to more efficiently perform its regulatory responsibilities for all members and member organizations and ultimately enhances investor protection.

The proposed rule change implements three processing fees and a one-time system transition fee imposed upon NYSE-only members and member organizations resulting from the Exchange's directive that registration filing be submitted to Web CRD. Members and member organizations will be instructed to pay the CRD processing fees directly to NASDR through Web CRD. NASDR will collect the appropriate fees directly to NASDR through Web CRD. NASDR will collect the appropriate processing fees at the time the NYSE member or member

<sup>3</sup> Uniform Application for Securities Industry Registration or Transfer.

<sup>4</sup> Uniform Termination Notice for Securities Industry Registration.

<sup>5</sup> A follow-up Information Memo will be issued to reaffirm the registration filing process for NYSE-only members and member organizations and to update the fee schedule. The NYSE submitted a draft Information Memorandum and Fee Schedule that reflected such registration process and updated fee schedule. E-mail dated November 21, 2001 from Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, to John Riedel, Attorney Adviser, Division of Market Regulation ("Division"), to Commission.

organization effects a registration transaction through Web CRD.

The three processing fees are the same as those charged dual NYSE/NASD registrants, and are as follows:

First, the proposed rule change implements an \$85 CRD Processing Fee charged for all Initial, Transfer, and Re-licensure Form U-4 filings. This fee, combined with current, corresponding NYSE fees, will bring the total amount paid to NASDR for Initial Individual Registration to \$150 (\$65 NYSE Standard Application Fee + \$85 CRD Processing Fee). The total amount paid for Transfer and Re-licensing will amount to \$128 (\$43 NYSE Standard Application Fee + \$85 CRD Processing Fee). The NYSE Application Fees of \$65 (for Initial Individual Registration) and \$43 (for Transfers and for Re-licensing) will be passed on to the NYSE by NASDR.<sup>6</sup> This is the same process and fee structure that already applies to dual NASD/NYSE members and member organizations filing through Web CRD.

Second, the proposed rule change implements a \$95-CRD Disclosure Processing Fee charged in connection with Forms U-4 and U-5 for all filings with new or amended disclosure information. (There is no corresponding NYSE fee.)

Thirdly, the proposed rule change implements an annual \$30 CRD System Processing Fee. Therefore, the total annual processing/maintenance cost per registered person will be \$82, which includes the current \$52 NYSE annual maintenance fee that will be passed on to the NYSE.<sup>7</sup>

In addition to the fees outlined above, sole NYSE members and member organizations will be required to pay a one-time System Transition Fee of \$115 per registered person as of December 31, 2001, payable January, 2002.<sup>8</sup>

##### 2. Statutory Basis

The statutory basis for the proposed rule change in section 6(b)(4) of the Act<sup>9</sup> that permits the rules of an

<sup>6</sup> These fees offset the costs to the NYSE for the review and processing of all applications. Telephone call between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and John Riedel, Attorney Adviser, Division, Commission, dated November 20, 2001.

<sup>7</sup> This is an annual maintenance fee to cover costs associated with the registration program. Telephone call between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, Elizabeth Badaway, Accountant, Division, Commission, and Terri Evans, Assistant Director, Division, Commission, dated November 26, 2001.

<sup>8</sup> This is a fee payable to the NASD to cover special arrangements for NYSE-only members filing through Web CRD. Telephone call between Mary Anne Furlong, Division, Commission, and Terri Evans, Assistant Director, Division, Commission, dated November 26, 2001.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>4</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.