

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 corrects an error in the proposed rule language and in the Rule 19b-4 rule filing to affirm that the reporting requirement level for DIA options will be set at 10,000 contracts. This is the current level under CBOE rules and remains unchanged. The Commission, therefore, believes that there is good cause to grant accelerated approval of Amendment No. 1, consistent with Section 6(b)(5) of the Act<sup>13</sup> and section 19(b)<sup>14</sup> of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-CBOE-2002-26 and should be submitted by March 13, 2003.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>15</sup>, that the proposed rule change (SR-CBOE-2002-26), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4046 Filed 2-19-03; 8:45 am]

**BILLING CODE 8010-01-P**

underlying DIA, should any unanticipated adverse market effects develop due to the increased limits.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b).

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47353; File No. SR-NYSE-2002-58]

### Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change by New York Stock Exchange To Amend the Exchange's Automatic Execution Facility (NYSE Direct+)

February 12, 2003.

On November 1, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Rule 1005 to permit entry of limit orders up to 1,099 shares within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the trading floor ("Floor") has procedures to monitor compliance with the separate terminal requirement. On December 10, 2002, the rule proposal was published for comment in the **Federal Register**.<sup>3</sup> The Commission received 103 comments generally in favor of the proposed rule change. This order approves the proposed rule.

#### I. Description of the Proposed Rule Change

The NYSE Direct+ pilot<sup>4</sup> provides for the automatic execution of limit orders of 1099 shares or less (known as an "NX order" or auto ex order) against trading interest reflected in the Exchange's published quotation. It is not mandatory that all limit orders of 1099 shares be entered as NX orders; rather, the member organization entering the order,

<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. 46943 (December 4, 2002), 67 FR 75893.

<sup>4</sup> See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR-NYSE-2000-18) (approving the NYSE Direct+ pilot). The one-year pilot was subsequently extended for another year in Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR-NYSE-2001-50). The pilot was recently extended through December 23, 2003. See Securities Exchange Act Release No. 46906 (November 25, 2002) 67 FR 72260 (December 4, 2002) (SR-NYSE-2002-47). The proposed rule change, if approved, would be part of the pilot and, thus, would expire on December 23, 2003 unless extended. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Special Counsel, Division of Market Regulation, Commission, December 3, 2002.

or its customer if enabled by the member organization, can choose to enter an NX order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest.

NYSE Rule 1005 currently provides that an NX order for any account in which the same person is directly or indirectly interested may only be entered at 30 second intervals. The restriction against the same customer entering an order within 30 seconds focuses on the identity of the ultimate beneficial owner of an account. Thus, an order cannot be entered for the same beneficial owner within 30 seconds. According to the NYSE, the purpose of this restriction is to limit the ability of a trader to circumvent the restriction on order size by breaking a large order into smaller components and repetitively entering them to exhaust liquidity at the published bid or offer price. The restriction in NYSE Rule 1005 applies across an entire firm, even if separate traders are making independent decisions with respect to an account in which the firm has an interest.

The Exchange is proposing to amend NYSE Rule 1005 to permit entry of NX orders within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the Floor has procedures to monitor compliance with the separate terminal requirement. Such procedures, at a minimum, must require member organization compliance departments to review patterns of order entry from individual terminals on a periodic basis to ensure compliance with the 30 second requirement.

#### I. Summary of Comments

The Commission received 103 comment letters generally supporting the proposed amendment to NYSE Direct+.<sup>5</sup> Many commenters stated that

<sup>5</sup> A number of letters were from registered representatives and registered principals of Heartland Securities. These letters are identified individually. See letters to Jonathan G. Katz, Secretary, Commission, from Christopher Andrews, dated November 19, 2002 ("Andrews Letter"); Christopher Ball, undated ("Ball Letter"); Dror Ben-Aharon, undated ("Ben-Aharon Letter"); Alexander Benetti, dated November 19, 2002 ("Benetti Letter"); Patrick K. Blackburn, Executive Vice President, ABN-AMRO, dated December 23, 2002 ("ABN-AMRO Letter"); Eliav Bock, dated November 19, 2002 ("Bock Letter"); Arthur Brachowski, dated November 20, 2002 ("Brachowski Letter"); Thomas Bradshaw, undated ("Bradshaw Letter"); Blake C. Byczek, dated November 19, 2002 ("Byczek Letter"); Richard Cammarata, undated ("Cammarata Letter"); Coreina

Chan, dated November 19, 2002 ("Chan Letter"); Jireh Chao, Jr., undated ("Chao, Jr. Letter"); Jake Chun, undated ("Chun Letter"); Robert Cope, dated November 19, 2002 ("Cope Letter"); Daniel J. Cosenza, dated November 19, 2002 ("Cosenza Letter"); Dario Cosic, dated November 19, 2002 ("Cosic Letter"); Jay Crosby, undated ("Crosby Letter"); Glen Cutler, undated ("Cutler Letter"); Francis B. DeLuca, undated ("DeLuca Letter"); Brian Dershow, dated November 19, 2002 ("Dershow Letter"); Timothy K. Dolnier, undated ("Dolnier Letter"); David Dondero, undated ("Dondero Letter"); Michael Elmes, undated ("Elmes Letter"); Michael Elzahr, dated November 20, 2002 ("Elzahr Letter"); Tolga Erman, undated ("Erman Letter"); Michael Feeney, undated ("Feeney Letter"); Chris Freddo, undated ("Freddo Letter"); Elizabeth Goldstein, dated November 19, 2002 ("Goldstein Letter"); Jeff Gregario, undated ("Gregario Letter"); Cary S. Grill, dated November 19, 2002 ("Grill Letter"); Brian Gutbrod, undated ("Gutbrod Letter"); Charles William Hansford, dated November 19, 2002 ("Hansford Letter"); Zachary Hepner, November 18, 2002 ("Hepner Letter"); James Hochleutner, undated ("Hochleutner Letter"); Jonathan W. Hodges, dated November 20, 2002 ("Hodges Letter"); Edward E. Hong, undated ("Hong Letter"); Bradford O. Hotchkiss, dated November 18, 2002 ("Hotchkiss Letter"); Brian Ingram, dated November 20, 2002 ("Ingram Letter"); Aaron Israel, undated ("Israel Letter"); Jeremy Ives, dated November 19, 2002 ("Ives Letter"); Kevin Jahng, dated November 19, 2002 ("Jahng Letter"); Joel Jones, undated ("Jones Letter"); Matthew Keegan, dated November 19, 2002 ("Keegan Letter"); John Kernan, undated ("Kernan Letter"); Saeyoon Kim, dated November 19, 2002 ("Kim Letter"); Keith Kirstein, dated November 19, 2002 ("Kirstein Letter"); Gregory Kleiman, undated ("Kleiman Letter"); Eric P. Knight, undated ("Knight Letter"); David Kobin, dated November 18, 2002 ("Kobin Letter"); Aaron Kravitz, dated November 19, 2002 ("Kravitz Letter"); Ira Landsman, dated November 19, 2002 ("Landsman Letter"); Richard Lay, dated November 19, 2002 ("Lay Letter"); Samson Leung, undated ("Leung Letter"); Bronson C. Lingamfelter, undated ("Lingamfelter Letter"); Alex J. Lopez, undated ("Lopez Letter"); Michael Lucarello, undated ("Lucarello Letter"); Eugene Lum, dated November 19, 2002 ("Lum Letter"); Richard Lutz, undated ("Lutz Letter"); Jefferson Magat, dated November 19, 2002 ("Magat Letter"); Dax L. Mathews, dated November 19, 2002 ("Mathews Letter"); Kevin Medvin, ("Medvin Letter"); Robert Merrill, dated November 19, 2002 ("Merrill Letter"); Marc Miller, dated November 18, 2002 ("Miller Letter"); John J. Morgan, dated November 20, 2002 ("Morgan Letter"); Angelo Nicoletta, dated November 19, 2002 ("Nicoletta Letter"); Charles Nierling, dated November 19, 2002 ("Nierling Letter"); Michael O'Malley, dated November 20, 2002 ("O'Malley Letter"); Robert L. Oliver, Jr., November 17, 2002 ("Oliver, Jr. Letter"); Chris M. Paper, undated ("Paper Letter"); Boris Piskun, dated November 19, 2002 ("Piskun Letter"); Tal Plotkin, dated November 20, 2002 ("Plotkin Letter"); Frank Raffaele, dated November 18, 2002 ("F. Raffaele Letter"); John J. Raffaele, dated November 18, 2002 ("J. Raffaele Letter"); Richard Rebatta, dated November 18, 2002 ("Rebatta Letter"); John Schmidt, dated November 18, 2002 ("Schmidt Letter"); Matthew Schroeder, November 19, 2002 ("Schroeder Letter"); Jonathan Schuldenfrei, dated November 20, 2002 ("Schuldenfrei Letter"); David Schwarz, dated November 18, 2002 ("Schwarz Letter"); Drew Aaron Segal, dated November 19, 2002 ("Segal Letter"); Sinan Selcuk, dated November 19, 2002 ("Selcuk Letter"); Tal Sharon, dated November 20, 2002 ("Sharon Letter"); Theodore Siegel, dated November 20, 2002 ("Siegel Letter"); Dan Solomon, dated November 20, 2002 ("Solomon Letter"); Douglas Song, dated November 19, 2002 ("Song Letter"); Doug Squires, dated

proposed rule change would level the playing field between large and small firms<sup>6</sup> and allow greater access to the NYSE floor.<sup>7</sup> Specifically, one commenter noted that "[w]hile larger firms have NYSE floor brokers and hence direct access to the liquidity of the market and exposure to block orders, smaller firms must rely on the DOT system and Direct Plus."<sup>8</sup> Commenters also stated that the proposal would provide greater transparency and liquidity in the market place.<sup>9</sup> Other comments stated that the proposed amendment would increase speed of executions.<sup>10</sup> Finally, many commenters stated that traders at a firm who make independent decisions should not be considered to be "one firm" for purposes of complying with the 30 second restriction in NYSE Rule 1005.<sup>11</sup>

### III. 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.<sup>12</sup> Specifically, the Commission believes the proposed rule change is consistent with section 6(b)(5)

November 19, 2002 ("Squires Letter"); Igor Stancevic, dated November 19, 2002 ("Stancevic Letter"); Joe Tan, dated November 20, 2002 ("Joe Letter"); Howard Teitelman, dated November 19, 2002 ("Teitelman Letter"); Harlan Thompson, undated ("Thomson Letter"); Richard J. Travers III, dated November 19, 2002 ("Travers III Letter"); Michael W. Vaughn, dated November 19, 2002 ("Vaughn Letter"); Isaak Volodarsky, dated November 19, 2002 ("Volodarsky Letter"); Eric Walania, dated November 20, 2002 ("Walania Letter"); Alexander Wang, dated November 20, 2002 ("Wang Letter"); Sean Ward, dated November 19, 2002 ("Ward Letter"); Matthew Weinshall, dated November 20, 2002 ("Weinshall Letter"); Joshua Weitraub, dated November 19, 2002 ("Weitraub Letter"); Scott Westrick, dated November 19, 2002 ("Westrick Letter"); Travis P. Whitten, undated ("Whitten Letter"); Jimmie E. Williams, dated November 19, 2002 ("Williams Letter"); Kevin Yang, dated November 20, 2002 ("Yang Letter"); Paul Yiacas, undated ("Yiacas Letter"); and Daniel You, dated November 19, 2002 ("You Letter").

<sup>6</sup> See e.g., Solomon Letter; Landsman Letter; Sharon Letter; Knight Letter; Jahng Letter; Hochleutner Letter; Chao, Jr. Letter; Dershow Letter; Cammarata Letter; Cosenza Letter; and Weinshall Letter.

<sup>7</sup> See e.g., Chan Letter; J. Raffaele Letter; Volodarsky Letter; Plotkin Letter; Erman Letter; and Tan Letter.

<sup>8</sup> See Weinshall Letter.

<sup>9</sup> See e.g., Feeney Letter; Squires Letter; Stancevic Letter; Miller Letter; Vaughn Letter; Paper Letter; and Whitten Letter.

<sup>10</sup> See e.g., Jones Letter; Piskun Letter; Cosic Letter; Schroeder Letter; Westrick Letter; and Freddo Letter.

<sup>11</sup> See e.g., Selcuk Letter; Kravitz Letter; Lay Letter; Dolnier Letter; and Elzahr Letter.

<sup>12</sup> The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

of the Act,<sup>13</sup> which requires among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest. The Commission believes that the proposed rule change is a reasonable expansion of the Direct + pilot and should allow individual traders greater flexibility and access to the trading interest reflected in the Exchange's published quotation. In addition, the Commission believes that the separate terminal requirement should help to ensure that traders are not circumventing the restriction on order size. The Commission notes that the Exchange has represented that it will surveil for compliance with this requirement when conducting periodic reviews of member organizations.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NYSE-2002-58) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4044 Filed 2-19-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47352; File No. SR-PCX-2003-06]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend the Price Criteria for Securities That Underlie Options Traded on the Exchange

February 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> Id.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).