

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50844; File No. SR-NYSE-2004-53)

December 13, 2004

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Relating to a Fee for the NYSE Alerts Datafeed

On September 17, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish a fee of \$500 per month for a customer’s receipt of the NYSE Alerts datafeed. On October 15, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 28, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup>

The proposed rule change, as amended, was published for comment in the Federal Register on November 12, 2004.<sup>5</sup> The Commission received no comments on the amended proposal.

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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated October 14, 2004 (“Amendment No. 1”).

<sup>4</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated October 27, 2004 (“Amendment No. 2”).

<sup>5</sup> See Securities Exchange Act Release No. 50639 (November 5, 2004), 69 FR 65488.

national securities exchange<sup>6</sup> and, in particular, the requirements of Section 6 of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act<sup>8</sup> in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

The Commission notes that the NYSE is amending its fee schedule to incorporate a \$500 fee for its NYSE Alerts datafeed, which will provide real-time information relating to MOC Market Imbalances, Delayed Openings/Trading Halts, ITS Pre-Opening Indications/Trading Range Indications, Trading Collar Messages, and Circuit Breaker Messages. The Commission further notes that the information that would be included in the NYSE Alerts datafeed is currently available and would continue to be available to the public through the Consolidated Tape Association network and through various news services. Vendors and investors who choose to subscribe to NYSE Alerts would be paying for the convenience of having this currently available public information repackaged into a single datafeed. The Commission therefore believes that the proposed fee is reasonable and finds that the proposed rule change, as amended, is consistent with the Act.

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

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>9</sup>, that the proposed rule change (File No. SR-NYSE-2004-53), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).