

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50639; File No. SR-NYSE-2004-53)

November 5, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by New York Stock Exchange, Inc. Relating to a Fee for the NYSE Alerts Datafeed

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 September 17, 2004, the New York Stock Exchange (“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. On October 15, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.³ On October 28, 2004, the NYSE filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NYSE proposes to establish a fee of \$500 per month for a customer’s receipt of the NYSE Alerts datafeed.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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”). In Amendment No. 1, the NYSE clarified that the information that would be included in the NYSE Alerts datafeed would continue to be available to the public through the Consolidated Tape Association network and through various news services.

⁴ See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated October 27, 2004 (“Amendment No. 2”). In Amendment No. 2, the NYSE submitted the amended NYSE fee schedule incorporating the proposed \$500 NYSE Alerts datafeed fee.

Below is the text of the proposed rule change, as amended.⁵ Proposed new language is italicized.

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NYSE MARKET INFORMATION PRICE LIST

Market Information

Schedule of Monthly Charges

(Excluding Applicable Taxes)

* * *

Report Service

* * *

NYSE Broker Volume (Annual Charges)

NYSE Broker Volume Database access fee	\$3,000.00
NYSE Broker Volume Device fee – per terminal from NYSE	3,600.00
NYSE Broker Volume Device fee – per terminal from a vendor	1,200.00
(Maximum monthly device fee per subscriber)	2,500.00

NYSE Alerts^{SM***}

<u>Access Fee</u>	<u>\$500.00</u>
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*** No Display fees apply.

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⁵ Upon the Exchange’s request, the Commission made technical corrections to the proposed rule text. Telephone conversation between Ronald Jordan, Vice President, NYSE, and Sapna C. Patel, Special Counsel, Division, Commission, on November 1, 2004.

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 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. 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

The NYSE will make available to vendors and investors its NYSE Alerts datafeed. NYSE Alerts is a real-time datafeed service that NYSE will make available through NYSE's Common Access Point (CAP) network. The NYSE Alerts datafeed will include the following categories of information:

- MOC Market Imbalances. MOC Market Imbalances occur when the number of shares of a stock that market participants offer to buy (sell) at the closing price significantly exceed the number of shares of the stock that other market participants are willing to sell (buy) at the close price. NYSE Rule 123C requires the publication of MOC Market Imbalances at certain times during the trading session. MOC Market Imbalances may also be published -- regardless of the size of the imbalance or the time of publication -- if the imbalance is determined to be significant.
- Delayed Openings/Trading Halts. Delayed openings and trading halts facilitate the maintenance of orderly markets. NYSE Rule 123D requires the dissemination

of information related to delayed openings and trading halts.

- ITS Pre-Opening Indications/Trading Range Indications. Pre-Opening Indications and Trading Range Indications are non-firm quotes that convey approximations of what a stock's opening price or trading range will be after a delayed opening or following a trading halt. Exchange policy requires the dissemination of Pre-Opening Indications prior to the opening of a stock following a trading halt or opening delay or when there is a significant opening price disparity from the prior close.
- Trading Collar Messages. Trading collars are restrictions on index arbitrage trading. Trading collar restrictions are triggered when the Dow Jones Industrial Average advances or declines by a prescribed amount, as determined on a quarter-by-quarter basis. When a change in the Dow Jones Industrial Average triggers a trading collar, the Exchange will disseminate a formatted message indicating which types of Index Arbitrage orders may be entered and which types of Index Arbitrage orders must be cancelled.
- Circuit Breaker Messages. Circuit breakers control extreme market volatility by halting all NYSE trading for a period as determined by the percentage decline of the Dow Jones Industrial Average.

(More information regarding the content contained in the NYSE Alerts datafeed can be found on the NYSE website at www.nysedata.com/alerts.)

Pursuant to this proposed rule change, the NYSE proposes to establish a \$500 per-month fee for receipt of access to NYSE Alerts. The NYSE believes that this access fee would reflect an equitable allocation of its overall costs to users of its facilities. The NYSE believes that the

fee would enable the users of the NYSE Alerts service to make an appropriate contribution to the recovery of the overall costs of the NYSE's operations and is reasonably related to the value that the NYSE Alerts service provides to those who use it. The NYSE plans to impose no fee for the display of NYSE Alerts information.

2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4)⁶ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange believes that the proposed fee change will 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 not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

⁶ 15 U.S.C. 78f(b)(4).

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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2004-53 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-53 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).