

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50912; File No. SR-NYSE-2004-61)

December 22, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. to Rescind a Type of Order Known as an Institutional XPress[®] Order Through Amendments to Exchange Rules 13, 60 and 72

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 October 28, 2004, 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. On December 3, 2004, the NYSE filed Amendment No. 1 to the proposed rule change.³ 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 Exchange proposes to rescind a type of order known as an Institutional XPress[®] Order (“XPress Order”) by amending NYSE Rules 13 (Definitions of Orders), 60 (Dissemination of Quotation) and 72 (Priority and Precedence of Bids and Offers).⁴ The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated December 3, 2004 (“Amendment No. 1”). In Amendment No. 1, the NYSE changed the basis under which the proposed rule change was filed from Section 19(b)(3) of the Act to Section 19(b)(2) of the Act.

⁴ See Securities Exchange Act Release Nos. 43763 (December 21, 2000), 65 FR 83120 (December 29, 2000) (SR-NYSE-99-24) and 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR-NYSE-2002-55). See also Information Memo Nos. 01-16 (July 9, 2001) and 03-21 (May 15, 2003).

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. 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

In SR-NYSE-99-24, the Commission approved the Exchange's amendments to NYSE Rules 13 and 72 to create a new type of order, the XPress[®] Order. In light of the Exchange's recent hybrid market filing,⁵ the Exchange now seeks to rescind the XPress Order type, including the amendments made to NYSE Rules 13 and 72 in SR-NYSE-99-24. The Exchange believes that the goal of the XPress Order, clean executions by market participants when entering large-size orders in response to bids and offers which have been displayed for a minimum time period, would be satisfied by the Exchange's hybrid market initiative. In the pending hybrid market filing, the Exchange proposes enhancements to NYSE Direct+[®] that would essentially accomplish the same thing as an XPress Order.⁶

⁵ See Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004) and 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004) (SR-NYSE-2004-05).

⁶ Pursuant to the proposed amendments in the hybrid market filing (see *supra* note 5), auto ex market orders, marketable limit orders and incoming ITS commitments to trade routed to the Display Book, regardless of size, would be eligible for automatic execution against the trading interest reflected in the Exchange's published quotation, with any unfilled

The Exchange also proposes to rescind the amendments made in connection with the execution of XPress Orders in the NYSE LIQUIDITYQUOTE[®] filing.⁷ Specifically, the Exchange proposes to rescind Supplementary Material .40 of NYSE Rule 13, which provides that a liquidity bid or offer, regardless of size, will be XPress eligible if it has been published for at least 15 seconds. In addition, the Exchange proposes to rescind NYSE Rule 60(d)(iii) which discusses the execution of XPress Orders when liquidity bids or offers are disseminated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, because it is 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.

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.

balance “sweeping” the book, broker agency interest file and specialist interest file until executed, its limit price, if any, is reached, or a liquidity replenishment point is reached.

⁷ See Securities Exchange Act Release No. 47614 and Information Memo 03-21, supra note 4.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 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 Exchange consents, the Commission will:

- (A) by order approve the 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. 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-2004-61 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-2004-61. 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 Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the 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-2004-61 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.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).