

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41386; File No. SR-NYSE-99-09]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 79A.15

May 10, 1999.

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 March 10, 1999, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

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

The proposed rule change consists of amendments to Exchange Rule 79A.15, to provide that deactivation of Quote Assist will require that the specialist review that decision with a Floor Official as soon as practicable, and no later than three minutes from the time of deactivation. The text of the proposed rule change is available at the Exchange and at the Commission.

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 III 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

In January 1997, Commission Rule 11Ac1-4 under the Act ("Display Rule")³ became effective. The Display Rule requires specialists to display immediately, *i.e.*, as soon as practicable, which under normal market conditions means no later than 30 seconds from the time of receipt, the price and full size of customer limit orders that would improve the bid or offer in a security. On January 7, 1997, the Exchange implemented a Display Book⁴ enhancement known as "Quote Assist" to compute and disseminate a quote within the 30-second timeframe. Quote Assist is designed to help specialists comply with the Display Rule.

Quote Assist monitors the limit order book for new orders and compares those orders with the published quotation. When a new order would improve the quote or increase the size at a quoted price, Quote Assist publishes a new quote at the improved price or increased size 30 seconds after the order arrives if the specialist has not already done so. Quote Assist is always active at the beginning of the trading day. A specialist has the ability to deactivate Quote Assist as to a particular stock or stocks.

The Exchange proposes to amend Exchange Rule 79A.15 to provide that deactivation of Quote Assist will require that the specialist obtain approval of that decision from a Floor Official. Floor Official approval would only be granted in instances when there is an influx of orders resulting in gap pricing, an ITS outgoing commitment, or other unusual circumstances. Approval of a Floor Official to deactivate Quote Assist should be obtained as soon as practicable, and must be obtained no later than three minutes from the time of deactivation. If approval is not obtained within three minutes from the time of deactivation, the matter will be reviewed as a market surveillance issue by the Exchange.

³ 17 CFR 240.11Ac1-4.

⁴ The specialist's Display Book is an electronic workstation at the trading post that keeps track of limit orders and incoming market orders. Various window-like screen applications allow the specialist to view one or more issues at a time at various levels of detail. Incoming SuperDOT limit orders automatically enter the Display Book. When a floor broker gives the specialist a limit order, the specialist's clerk can enter the order into the Display Book using the keyboard. The Display Book sorts the limit orders and displays them in price/priority.

As an interim measure, Floor Official approvals will be documented on the Exchange's electronic Floor Official approval forms. After mid-year, the Exchange expects to modify the Display Book so that Floor Official approval will be documented within that system.

The requirement to keep Quote Assist active is not meant to serve as a substitute for the actual posting of quotes by specialists. Specialists will be reminded that they are not to rely solely on Quote Assist to generate quotes, because this would not comply with the Commission's requirements for limit order display. Rather, specialists should always attempt to reflect a limit order by manually quoting the stock as soon as practicable, even though the Quote Assist feature is active.

The Exchange believes that Quote Assist provides valuable help to enable specialists to comply with their responsibilities under the Commission's Display rule. The requirement that Quote Assist generally remain active throughout the day will ensure that specialists avail themselves of the tools provided for managing order flow and updating quotes.

2. Statutory Basis

Section 6(b)(5) of the Act⁵ requires an Exchange to have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change will help perfect the mechanism of a free and open market by facilitating compliance with the Commission's Display Rule.

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. 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

⁵ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 NYSE. All submissions should refer to file No. SR-NYSE-99-09 and should be submitted by June 7, 1999.

IV. Commissions Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Exchange's proposed rule change⁶ and believes, for the reasons set forth below, the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Sections 6(b)(5) and 11A(a)(1)(C)(iii) and (iv) of the Act.⁷ Section 6(b)(5) requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to remove impediments to and perfect the mechanism of a free and open market and a national market system. With respect to Section 11A, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market. The proposed rule change will help to ensure the availability of information with respect to quotations by assisting specialists in providing information regarding orders to the market.⁸

⁶ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5), 78k-1(a)(1)(C)(iii) and (iv).

⁸ The Commission, in approving the proposed rule change, notes that the requirement to keep Quote Assist active does not relieve specialists of their responsibility to reflect limit orders by manually quoting the stock as soon as practicable.

In addition, the Commission believes the proposal is consistent with Section 6(b)(5) of the act because it requires specialists to obtain approval of a decision to deactivate Quote Assist from a Floor Official as soon as practicable, and no later than three minutes from the time of deactivation. This requirement should improve member handling of customer limit orders.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**, because the proposal facilitates compliance with the Display Rule. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSE-99-09) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41375; File No. SR-NYSE-99-15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listed Company Fees

May 6, 1999.

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 April 13, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual ("Manual"). Paragraph 902.02 contains the schedule of current listing fees for companies listing securities on the Exchange.

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 III below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The proposed rule change amends the NYSE's listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to certain business transactions. First, the Exchange seeks to adopt a \$500,000 fee cap for companies that split the stock more than once over a rolling three calendar year period. Currently, additional securities issued in conjunction with a split are billed initial listing fees and capped at \$250,000 per split. The new cap is intended to provide pricing consideration for companies that frequently split their securities.

Second, the Exchange seeks to adopt a \$500,000 initial fee cap for shares issued in conjunction with a merger or acquisition. Currently, shares issued in conjunction with a merger or acquisition are billed initial listing fees. This fee cap is intended to provide pricing consideration for listed companies involved in mergers and acquisitions.

2. Statutory Basis

The NYSE represents that the proposed rule change is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(4)⁴ in particular, which requires an

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).