

### 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 NASD Regulation 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.

NASD Regulation has requested that the Commission provide the public with at least 45 days in which to comment on the proposed rule change.<sup>8</sup> The Commission agrees to allow a 45-day comment period on the proposed rule change.

### 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. Additionally, as previously noted, the Commission's staff disagrees with the NASD's decision to *per se* exclude manager performance information from the rule. Interested persons are specifically invited to comment on this issue.

Persons making written submissions 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 NASD. All submissions should refer to file number

<sup>8</sup> See October 16, 2000 Letter at page 1. NASD Regulation also consents to an extension of the time period for Commission action to 30 days after the expiration of the 45-day comment period. The Commission notes that a further extension of the time period for Commission action may be needed to allow for Commission analysis of comment letters, and to allow NASD Regulation to provide a response to comment letters.

SR-NASD-98-11 and should be submitted by December 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43488; File No. SR-NYSE-00-41]

### Self-Regulatory Organization's; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Approval Procedures for Exchange Employee Securities Accounts

October 27, 2000.

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> notice is hereby given that on October 6, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Rule 407.10 to make the Exchange's Ethics Officer the party to whom employees of the Exchange or any of its affiliates must apply for permission to open a securities or commodities account. The Exchange also proposes to clarify that the Rule's provisions are not applicable to any affiliated company (as that term is defined by the Rule) which administers a corporate employee securities account disclosure program.

The text of the proposed rule change is available at the NYSE and at the Commission.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

### 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

NYSE Rule 407.10 directs Exchange employees, and employees of Exchange affiliates, who wish to open a securities or commodities account to apply to the Secretary of the Exchange for permission. The purpose of the proposed rule change is to require those employees to submit those applications for approval to the Exchange's Ethics Officer rather than the Exchange's Secretary.

The Exchange's ethics functions are performed by the office of the Exchange's senior Human Resources officer, who is also the Exchange's Ethics Officer. The Human Resources Division, as part of its traditional function and as part of its ethics function, maintains a database on Exchange employees. The Exchange Secretary also maintains a database on Exchange employees for the purpose of authorizing securities and commodities accounts.

The Exchange believes that shifting the account-approval function to the Ethics Officer will eliminate duplicative record-keeping and will place the function with the officer most appropriate for making account-approval decisions.

The Exchange also proposes to amend NYSE Rule 407.10 to clarify that the Rule's provisions are not applicable to any affiliated company (as that term is defined by the Rule) which administers a corporate employee securities account disclosure program. This will avoid duplicative approval processes.<sup>3</sup>

<sup>3</sup> Currently, the Securities Industry Automation Corporation ("SIAC") is the only NYSE affiliated company that administers its own corporate employee disclosure program. In this regard, SIAC has a rule similar to NYSE Rule 407.10 requiring SIAC employees to apply to SIAC for permission to open a securities or commodities account. SIAC

## 2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

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

The proposed rule change does 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*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(3) thereunder.<sup>7</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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

employees are not required to also seek permission from the NYSE. Telephone call between Steve Abrams, NYSE, and Jennifer Colihan, Attorney, Division of Market Regulation, Commission, October 25, 2000.

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(3).

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. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-00-41 and should be submitted by November 29, 2000.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43496; File No. SR-NYSE-00-44]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding the Extension of the Pilot Programs for Mediation and Administrative Conferences**

October 31, 2000.

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> notice is hereby given that on October 27, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to extend its pilot programs for mediation and administrative conferences (NYSE Rules 638 and 639) that expire on November 20, 2000. The Exchange has separately requested that the pilot programs, as amended, ("the amended pilots") be extended for two years.<sup>3</sup> An extension of the present pilots is needed pending

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See File No. SR-NYSE-00-39.

the Commission's approval or disapproval of the amended pilots.

#### **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

On November 19, 1998, the Commission approved a two-year pilot program for mediation and administrative conferences in the Exchange's arbitration facility.<sup>4</sup> The pilot mediation program is intended to allow parties to settle cases earlier with lower costs. The administrative conference allows arbitrators to intervene early in the case to set deadlines and resolve preliminary procedural issues. On September 27, 2000, the Exchange requested Commission approval to amend and extend the pilot programs for mediation and administrative conferences.<sup>5</sup> The Exchange is requesting an extension of the present pilot programs pending the Commission's decision to approve or disapprove its request to amend and extend the pilot programs. The Exchange believes that the pilot programs are operating successfully, and on that basis, the Exchange believes that a six-month extension of the pilots is warranted. By this filing, the Exchange is not seeking to modify the present pilot programs.

###### 2. Statutory Basis

The Exchange believes that proposed changes are consistent with Section 6(b)(5) of the Act in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

<sup>4</sup> See Securities Exchange Act Release No. 40695 (November 19, 1998), 63 FR 65834 (November 30, 1998).

<sup>5</sup> See *supra* note 3.