

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45251; File No. SR-NYSE-2001-49]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 902 To Permit the Submission of Member to Member Coupled Orders in Crossing Session I in Order To Close Out Error Positions

January 8, 2002.

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 December 11, 2001, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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. 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 NYSE proposes to amend NYSE Rule 902, Off-Hours Trading Orders, to permit the submission of member to member coupled orders in Crossing Session I in order to close out error positions. The text of the proposed rule change is below. Proposed new language is in italic.

Rule 902. Off-Hours Trading Orders

(a) Entry of Orders

(i) Closing-Price Orders

Subject to Rule 906 (Impact of Trading Halts on Off-Hours Trading), a member or member organization may enter into the Off-Hours Trading Facility a closing-price order at such times as the Exchange may specify.

(ii) Closing-Price Coupled Orders

(A) Subject to Rule 906, a member or member organization may enter into the Off-Hours Trading Facility a closing-price order to buy coupled with a closing-price order to sell the same quantity of the same security for execution against each other. However, except for those orders defined in paragraphs (ii)(B) and (C) of this rule, a member or member organization may not so enter such coupled orders if both such orders are for an account in which any member or member organization, or any "associated party" (as paragraph (b)(ii) of Rule 800 (Basket Trading:

Applicability and Definitions) defines that term), has a direct or indirect interest.

(B) A member or member organization may enter a closing-price order to buy (sell) a security for the account of the specialist registered in such security coupled with a closing price order to sell (buy) for the account of any member or member organization which has agreed to offset all or part of any market-on-close imbalance that existed in the stock prior to the official closing of the 9:30 a.m. to 4:00 p.m. trading session.

(C) *A member or member organization may enter a closing price order to buy (sell) a security for the account of the specialist registered in such security coupled with a closing price order to sell (buy) for the account of any member or member organization where such member or member organization is acting to offset a transaction made in error. Both parties to the closing price transaction must maintain a specific written record that the purpose of the coupled order was to close out an error.*

(iii) Aggregate-Price Coupled Orders

A member or member organization may only enter into the Off Hours Trading Facility an aggregate-price order to buy (sell) that is coupled with an aggregate-price order to sell (buy) the same quantities of the same securities.

(b)-(g) No change.

#### 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 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-99-25,<sup>3</sup> the Commission approved initiatives to strengthen the regulation of activities of members on the Exchange Floor ("Floor"). The initiatives consisted of amendments to NYSE Rule 134, Differences and

Omissions—Cleared Transactions ("QTs"), and a new rule, NYSE Rule 407A, Disclosure of All Members Accounts. The Exchange is now proposing an amendment to its after-hours crossing session procedures to facilitate the handling of error transactions on the Floor.

In 1991, the Exchange established its "Off-Hours Trading Facility."<sup>4</sup> One of its stated purposes was to recapture order flow in NYSE listed securities that was being executed offshore. The Off-Hours Trading Facility permits members and member organizations to enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4 p.m. trading session. "Crossing Session I" is the session from 4:15 p.m. to 5 p.m. during which orders may be entered for any Exchange listed issue, other than a security that is subject to a trading halt at the close of the regular trading session (including a trading halt under NYSE Rule 80B, Trading Halt Due to Extraordinary Market Volatility) or is halted after 4 p.m.<sup>5</sup> During Crossing Session I, orders may be entered via SuperDOT and may be canceled up to 5 p.m. Eligible orders on the specialist's book will automatically participate in Crossing Session I.

NYSE Rule 902, Off-Hours Trading Orders, currently allows coupled orders to buy and sell the same amount of the same security to be entered into Crossing Session I. Moreover, NYSE Rule 902 provides that coupled orders cannot be entered into Crossing Session I if each side of the coupled order is for the account of a member or member organization. The only exception currently provided for in NYSE Rule 902 is a situation in which a member or member organization and a specialist member organization enter a coupled order in a stock, which has the effect of offsetting all or a part of any market-on-close imbalance that existed in such stock prior to the official closing of the 9:30 a.m. to 4 p.m. trading session.

The Exchange believes it is appropriate to add an additional

<sup>4</sup> See Securities Exchange Act Release No. 33992 (May 2, 1994), 59 FR 23907 (May 9, 1994).

<sup>5</sup> The NYSE confirmed that the new exception to NYSE Rule 902(a)(ii) (embodied in proposed NYSE Rule 902(a)(ii)(C)) is subject to NYSE Rule 906, Impact of Trading Halts on Off-Hours Trading, and, therefore, the proposed exception does not permit trading of a security that is subject to a trading halt under NYSE Rule 906(a) or (b). Telephone discussion between Donald Siemer, Director Rule Development, Market Surveillance Division, NYSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (January 7, 2002).

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

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

<sup>3</sup> See Securities Exchange Act Release Nos. 44769 (September 6, 2001), 66 FR 47710 (September 13, 2001); 44427 (June 14, 2001), 66 FR 33282 (June 21, 2001); and 42381 (February 3, 2000), 65 FR 6673 (February 10, 2000).

exception in NYSE Rule 902 to permit a coupled order to be submitted in Crossing Session I to address situations where a member or member organization wishes to close out an error at the closing price on the Exchange, and the specialist has agreed to take the other side of the trade. Both parties to the coupled order would be required to maintain a specific written record that the purpose of the coupled order was to close out an error.

An error discovered at or around the close can be closed out promptly at the closing price, ensuring that the error is closed out in a timely manner. Such a procedure is also a benefit to members in that it ensures that the member does not have to bear any overnight market risk with respect to the error. Thus, the proposed procedure is timely, efficient, and reduces market risk to members.

This proposed procedure is a limited exception available only to facilitate timely resolution of errors and is not intended for any other purpose. Therefore, it is not a means whereby professional traders in the normal course of trading may step ahead of retail or any other investors.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

### *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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., 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 Exchange. All submissions should refer to File No. SR-NYSE-2001-49 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-884 Filed 1-11-02; 8:45 am]

**BILLING CODE 8010-01-M**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **Proposed Advisory Circular on Internet Communications of Aviation Weather and NOTAMs**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Request for comments on proposed advisory circular.

**SUMMARY:** The Department of Transportation, in accordance with 49 CFR 1.47, delegated responsibility for aviation safety oversight to the Federal Aviation Administration (FAA). The FAA has proposed the development of Advisory Circular (AC) 00-xx, Internet Communications of Aviation Weather and NOTAMs, that describes the process for any person or organization providing access to aviation weather and Notices to Airmen (NOTAMs) via the Public Internet to become and remain a Qualified Internet Communications Provider (QICP).

**DATES:** Comments must be received on or before February 13, 2002.

**ADDRESSES:** Written comments are invited on all aspects of the proposed AC. Commenters must identify draft AC 00-xx, Internet Communications of Aviation Weather and NOTAMs. Send or deliver all comments on the proposed AC to the following location: Federal Aviation Administration, Aerospace Weather Policy Staff, ARS-100, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Albersheim, FAA, Aerospace Weather Policy Staff, ARS-100, 800 Independence Ave., SW., Washington, DC 20591, 202-385-7704, Steven.Albersheim@faa.gov.

**SUPPLEMENTARY INFORMATION:** Aviation weather information is available on the Internet from a variety of government and vendor sources with minimal quality control. Users of the National Airspace System, dispatchers, pilots and air traffic controllers/specialists have expressed interest in the ability to utilize the Internet to retrieve aviation weather text and graphic products for operational decision-making. The FAA proposes to establish the process in an AC for providers who disseminate aviation weather data and NOTAMs via the Internet to become QICPs for the purpose of ensuring the reliability, accessibility and security of the data and encouraging the identification of the approval status of products. The proposed AC will provide information on the QICP process and recommended practices as well as the procedures for a provider to maintain QICP status. The FAA Aerospace Weather Standards Staff (ARS-200) proposes to maintain a current list of all QICPs on a designated Web page accessible by the general public.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).