Nasdaq intends for this rule change to become operative on January 31, 2006.

At any time within 60 days of the filing of the 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, 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–NASD–2005–150 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–150. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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–NASD–2005–150 and should be submitted on or before January 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

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BILLING CODE 8010–01–P

organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq complied with the five day pre-filing requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53014; File No. SR–NYSE–2005–89]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot for NYSE Direct+® Until December 23, 2006

December 22, 2005.

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 December 13, 2005, 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 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

This proposal is to extend until December 23, 2006, the effectiveness of the pilot (the ''Pilot'') for NYSE Direct+® (''Direct +''). The Pilot was approved initially on a one-year basis and extended for several additional years, and now expires on December 23, 2005.

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 light of the fact that the Commission is still considering the Exchange's filing on proposed enhancements to NYSE Direct+® (the NYSE HYBRID MARKETS℠—''Hybrid Market'') as described in SR–NYSE–2004–05 and subsequent amendments thereto[3], the Exchange hereby is filing to renew its Pilot, as it currently operates, for an additional year.

Background

NYSE Direct+® was originally approved as a one-year pilot in SR–NYSE–2000–18,[4] ending on December 21, 2001. The Exchange then extended the Pilot for an additional one-year, ending December 23, 2002.[5] The Pilot was subsequently extended for an additional one-year, ending December 23, 2003.[6] It was again extended for two additional one-year periods and now expires on December 23, 2005.[7]

The NYSE Direct+® pilot provides for the automatic execution of limit orders of 1,099 shares or less (''auto ex'' orders) against trading interest reflected in the Exchange's published quotation. It is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004) (Amendment No. 1 to SR–NYSE–2004–05); Securities Exchange Act Release No. 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004) (Amendment Nos. 2 and 3 to SR–NYSE–2004–05); (The Exchange withdrew Amendment No. 4 and replaced it with Amendment No. 5); Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR–NYSE–2004–05). *See also* Amendment No. 6 to SR–NYSE–2004–05 (September 16, 2005) and Amendment No. 7 to SR–NYSE–2004–05 (October 11, 2005).

[4] *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–2000–18).

[5] *See* Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50).

[6] *See* Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47).

[7] *See* Securities Exchange Act Release No. 48772 (November 12, 2003), 68 FR 65756 (November 21, 2003) (SR–NYSE–2003–30). *See* Securities Exchange Act Release No. 50828 (December 9, 2004), 69 FR 75579 (December 17, 2004) (SR–NYSE–2004–66).

not mandatory that all limit orders of 1,099 shares be entered as auto ex orders; rather, the member organization entering the order, or its customer if enabled by the member organization, can choose to enter an auto ex order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest.

The Exchange proposes to extend this Pilot for an additional year (from December 24, 2005 until December 23, 2006). Five filings which impact NYSE Direct+® have been filed with or approved by the Commission during the current Pilot are now part of the Pilot.[8] These include:

(a) A filing which amended Rule 1000 to provide that NYSE Direct+® executions will not be available if the resulting trade would be more than five cents away from the last sale.[9] The amendment also provided that during the process for completing Rule 127 transactions, the specialist should publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange.

(b) A filing which amended Exchange Rules 13 and 1005 in order to eliminate size and frequency restrictions for orders entered through NYSE Direct+® (''Direct +'') in Investment Company Units, as defined in paragraph 703.16 of the Listed Company Manual, Trust Issued Receipts (such as HOLDRs), as defined in Rule 1200, and streetTRACKS® Gold Shares, as defined in Rule 1300, (collectively ''ETFs'').[10]

(c) A filing which amended Rule 1002 to include ETFs and HOLDRs and provide that ETFs trade until 4:15 p.m. and amended Rule 1005 to reflect that the rule applies to ETFs and HOLDRs.[11]

(d) A filing which amended Rule 1005 to permit entry of limit orders up to 1,099 shares within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the trading floor (''Floor'') has procedures to monitor compliance with the separate terminal requirement.[12]

(e) A filing which amended Rules 1000 and 1001 in connection with the NYSE LiquidityQuote℠ initiative.[13] In conjunction with autoquoting of bids and offers, Rule 1000 has been amended to provide that a NYSE Direct+® order equal to or greater than the size of the published bid/offer exhausts the entire bid/offer, rather than decreases it to 100 shares.[14] Rule 1001(c) provided that if executions of auto ex orders have traded with all trading interest reflected in the Exchange's published bid or offer, the Exchange will disseminate a bid or offer at that price of 100 shares until the specialist requotes that market. Rule 1001(c) has been deleted.

The above-mentioned filings became part of the NYSE Direct+® rules and were incorporated into the Pilot upon their respective filing or approval by the Commission.[15] Therefore, they are extended as part of the Pilot.

If, however, the Commission approves the Hybrid Market proposal during the extension of the Pilot period (December 24, 2005–December 23, 2006), the Hybrid Market proposal would supersede this filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5) of the Act[17] 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. The Exchange also believes that the proposed rule change is designed to support the principles of Section 11A(a)(1) of the Act[18] in that it seeks to assure economically efficient execution of securities transactions, makes it practicable for brokers to execute investors' orders in the best market and provides an opportunity for investors' orders to be executed without the participation of a dealer.

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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] 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.[21]

The Exchange requests that the Commission waive the five business days pre-filing requirement and the 30-day operative delay under Rule 19b–4(f)(6)(iii).[22] The Exchange believes that the continuation of the Pilot is in the public interest as it will avoid

[8] *See* telephone conversation between Steve L. Kuan, Special Counsel, Division of Market Regulation (''Divison''), Commission, and Jeffrey Rosenstrock, Principal Rule Counsel, NYSE, on December 21, 2005. In addition, SR–NYSE–2003–20 proposed to disengage NYSE Direct+® in five-actively traded stocks. However, this pilot expired on June 20, 2003 and therefore, does not impact the Pilot as proposed to be extended. *See* Securities Exchange Act Release No. 47965 (June 2, 2003), 68 FR 34691 (June 10, 2003) (SR–NYSE–2003–20).

[9] *See* Securities Exchange Act Release No. 47463 (March 7, 2003), 68 FR 12122 (March 13, 2003) (SR–NYSE–2002–44).

[10] *See* Securities Exchange Act Release No. 52160 (July 28, 2005), 70 FR 44963 (August 4, 2005) (SR–NYSE–2005–49).

[11] *See* Securities Exchange Act Release No. 47024 (December 18, 2002), 67 FR 79217 (December 27, 2002) (SR–NYSE–2002–37). The expansion of the Direct+ order size eligibility described in this filing (for up to 10,000 shares) was superseded by SR–NYSE–2005–49.

[12] *See* Securities Exchange Act Release No. 47353 (February 12, 2003), 68 FR 8318 (February 20, 2003) (SR–NYSE–2002–58).

[13] *See* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR–NYSE–2002–55).

[14] *See* telephone conversation between Steve L. Kuan, Special Counsel, Division, Commission, and Jeffrey Rosenstrock, Principal Rule Counsel, NYSE, on December 21, 2005.

[15] *See id.*

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(3)(C).

[22] 17 CFR 240.19b–4(f)(6)(iii).

inconvenience and interruption to the public.

The Commission believes that waiver of the 30 day operative delay is consistent with the protection of investors and the public interest,[23] because it will allow the Exchange to continue, without interruption, the existing operation of the Pilot for an additional year, while the Commission considers the Hybrid Market. Accordingly, the Commission designates that the proposal shall become operative as of the date of this notice.

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–2005–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–89. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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–2005–89 and should be submitted on or before January 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–8066 Filed 12–28–05; 8:45 am]

BILLING CODE 8010–01–P

[23] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53018; File No. SR–NYSE–2005–78]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to New York Stock Exchange Rules 35 (''Floor Employees to be Registered'') and 301 (''Proposed Transfer or Lease of Membership'')

December 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 13, 2005, 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 proposed change consists of amendments to NYSE Rules 35 (''Floor Employees to be Registered'') and 301 (''Proposed Transfer or Lease of Membership'') which would limit access to the Exchange Floor until fingerprint reports have been properly processed and approved and would require an alternative background check for persons whose fingerprints are deemed illegible. The text of the proposed rule change is available on NYSE's Web site (*http://www.nyse.com*), at NYSE's Office of the Secretary, and at the Commission's public reference room.

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

In its filing with the Commission, 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. 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

NYSE Rule 35 governs the issuance of Floor tickets (*e.g.*, Regular Tickets and Special Tickets) to Floor employees, which enables them to enter upon the trading Floor. NYSE Rule 35.70 requires the fingerprinting of prospective employees of members and member organizations. Similarly, NYSE Rule 301.23 requires that prospective members be fingerprinted.

Security concerns have suggested a tightening of these rules in two respects: (1) That access to the Floor be denied for persons fingerprinted for the first time until the fingerprinting results have properly been processed and accepted; and (2) that those persons whose fingerprints cannot be read (*i.e.*, are illegible) be subject to an alternative background check acceptable to the Exchange to cover the same criminal convictions included by fingerprint type. In order for a background check to be acceptable to the Exchange, it would, at a minimum, have to disclose the same arrest records which the fingerprint check would for all fifty states and, where the applicant is foreign, through the records of Interpol. Amendments are also proposed to reflect the fact that the Exchange no longer accepts fingerprint cards, but rather processes them through agents.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Information Memo 04–53, dated October 8, 2004 (announcing that as of October 29, 2004, the Exchange would stop accepting new fingerprints from its members and member organizations and other persons and entities subject to a fingerprinting requirement under Section 17 of the Exchange Act, but noting that certain members unable to submit fingerprints through another SRO