

it determines not to administer PFOF pools.<sup>13</sup>

## 2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>15</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among ISE members and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change, as amended, 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and Rule 19b-4(f)(2)<sup>17</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, as amended, 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

<sup>13</sup> The Exchange states that the proposed rule change would be in effect until June 10, 2006, the date on which the Preferred Orders pilot program expires. See Exchange Act Release No. 52066 (July 20, 2005), 70 FR 43479 (July 27, 2005) (SR-ISE-2005-35). The Exchange notes that allowing a preferred CMM to administer the PFOF fees collected by the Exchange with respect to preferred orders is similar to the Philadelphia Stock Exchange's PFOF program. See Exchange Act Release No. 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR-Phlx-2005-58).

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

investors, or otherwise in furtherance of the purposes of the Act.<sup>18</sup>

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2005-57 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-57. 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, as amended, 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 ISE. 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-ISE-2005-57 and should be

<sup>18</sup> The effective date of the original proposed rule change is December 1, 2005, and the effective date of Amendment No. 1 is December 23, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on December 23, 2005, the date on which the Exchange submitted Amendment No. 1.

submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-666 Filed 1-20-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53132; File No. SR-NASD-2005-144]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Order Entry and Execution Practices

January 17, 2006.

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 8, 2005, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. 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

NASD is proposing to add Rule 3380 to prohibit members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions. The text of the proposed rule change appears below. Additions are in *italics*.

\* \* \* \* \*

#### 3380. Order Entry and Execution Practices

*No member or associated person may engage in conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller*

<sup>19</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.

executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind amount to be received by the member or associated person as a result of the execution of such orders or the transaction reporting of such executions. For purposes of this rule, "monetary or in-kind amount" shall be defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

\* \* \* \* \*

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

In its filing with the Commission, NASD 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. NASD 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

"Trade shredding" is a term used to describe the practice of splitting customer orders for securities into multiple smaller orders (e.g., a 1,000 share order is split into 10 100 share orders) for the primary purpose of maximizing payments or rebates to the member. Among other things, concerns have been raised about market participants increasingly engaging in the practice of trade shredding as a means to increase their share of market data revenues under the joint industry plans ("Plans"),<sup>3</sup> where the Plan participant has adopted a practice of sharing its Plan revenues with market participants who send it orders. Specifically, because the current allocation formulas for distributing Plan income heavily emphasize the number of trades, no matter how small the size of the trade, an incentive can exist for market participants to engage in distortive behavior, such as trade shredding, as a

<sup>3</sup> The three joint-industry plans are (1) the CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for exchange-listed securities, (2) the CQ Plan, which disseminates consolidated quotation information for exchange-listed securities, and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for Nasdaq-listed securities.

means to increase their share of market data revenues.

To address these concerns, among others, the Commission adopted Regulation NMS, which contains amendments to the current Plan formulas used to allocate Plan income.<sup>4</sup> These modifications incorporate a more broad-based measure of a self-regulatory organization's ("SRO") contribution to the consolidated trade stream, including both an SRO's quotes and trades, intended to reduce the incentives for trade shredding.

Although these modifications in Plan formulas should reduce the incentives for trade shredding, the Commission continues to believe that SRO rules prohibiting trade shredding are necessary and appropriate and has requested that all SROs implement rule changes to inhibit the practice of trade shredding. In response to the Commission's request, NASD is proposing to adopt new Rule 3380, which would prohibit such practices. Specifically, new Rule 3380 would prohibit members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions. For purposes of the proposed new rule, "monetary or in-kind amount" shall be defined to include, but not be limited to credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to the member or associated person.

#### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will further the goal of preventing manipulative acts and practices by prohibiting this potentially distortive practice.

<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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

NASD believes that the proposed rule change will impose no 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

NASD has neither solicited nor received comments on this proposal.

## 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 self-regulatory organization 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.

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-144 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-144. 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 offices of 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-2005-144 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-663 Filed 1-20-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53126; File No. SR-NYSE-2005-93]

### Self-Regulatory Organizations; New York Stock Exchange, Inc; Notice of Filing of Proposed Rule Change to Rule 431 ("Margin Requirements") and Rule 726 ("Delivery of Options Disclosure Document and Prospectus") To Expand the Products Eligible for Customer Portfolio Margining and Cross-Margining

January 13, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 29, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "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 is filing with the Commission proposed amendments to NYSE Rule 431 ("Margin Requirements") that would expand the scope of products that are eligible for treatment as part of the Commission's approved Portfolio Margin Pilot Program (the "Pilot").<sup>3</sup> Amendments to Rule 726 ("Options Disclosure Document") also are proposed to include the Commission approved products on the disclosure document required to be furnished to customers pursuant to this rule. The text of the proposed rule change is below. Additions are in italics. Deletions are in brackets.

\* \* \* \* \*

#### Margin Requirements

Rule 431. (a) through (f) unchanged.

#### Portfolio Margin and Cross-Margin [for Index Options]

(g) As an alternative to the ["strategy" based] "strategy-based" margin requirements set forth in sections [paragraphs] (a) through (f) of this Rule, member organizations may elect to apply the portfolio margin requirements set forth in this section (g) to [margin for] (1) listed, broad-based U.S. index options, index warrants and underlying instruments and (2) listed security futures contracts<sup>4</sup> and listed single stock options, (See section (g)(6)(C)(1)). [(as defined below) in accordance with the portfolio margin requirements set forth in this Rule.]

In addition, member organizations, provided they are a Futures Commission Merchant ("FCM") and are either a clearing member of a futures clearing organization or have an affiliate that is a clearing member of a futures clearing organization, are permitted under this

<sup>3</sup> See Securities Exchange Act Release No. 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005), (SR-NYSE-2002-19). On July 14, 2005, the Commission approved on a Pilot Basis expiring July 31, 2007, amendments to Exchange Rule 431 to permit the use of a prescribed risk-based margin requirement ("portfolio margin") for certain specified products as an alternative to the strategy based margin requirements currently required in section (a) through (f) of the Rule. Amendments to Rule 726 were also approved to require disclosure to, and written acknowledgement from, customers in connection with the use of portfolio margin. See NYSE Information Memo 05-56, dated August 18, 2005 for additional information.

<sup>4</sup> For purposes of this section of the Rule, the term "security future" utilizes the definition at section 3(a)(55) of the Exchange Act, excluding narrow-based security indices.

section (g) to combine an eligible participant's [a customer's] related instruments [(] as defined in section (g)(2)(C), [below] and] with listed, broad-based U.S. index options, index warrants and underlying instruments and compute a margin requirement for such combined products [{"cross margin"}] on a portfolio margin basis. [{"cross-margin"}]. Member organizations must confine cross-margin positions to a portfolio margin account dedicated exclusively to cross-margining.

The portfolio margin and cross-margining provisions of this Rule shall not apply to Individual Retirement Accounts ("IRAs").

(1) Member organizations must [will be expected to] monitor the risk of portfolio margin accounts and maintain a written risk analysis methodology for assessing the potential risk to the member organization's capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the person(s) [position(s)] within the organization responsible for the risk function. This risk analysis methodology shall be made available to the Exchange upon request. In performing the risk analysis of portfolio margin accounts required by this Rule, each member organization shall include the following in the written risk analysis methodology:

(A) Procedures and guidelines for the determination, review and approval of credit limits to each eligible participant, [customer,] and across all eligible participants, [customers,] utilizing a portfolio margin account.

(B) Procedures and guidelines for monitoring credit risk exposure to the member organization, including intraday credit risk, related to portfolio margin accounts.

(C) Procedures and guidelines for the use of stress testing of portfolio margin accounts in order to monitor market risk exposure from individual accounts and in the aggregate.

(D) Procedures providing for the regular review and testing of these risk analysis procedures by an independent unit such as internal audit or other comparable group.

(2) Definitions.—For purposes of this section [paragraph] (g), the following terms shall have the meanings specified below:

(A) The term "listed option" [shall] means any option traded on a registered national securities exchange or

<sup>6</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.