

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

The Amex has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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. The Amex has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay so that the proposal will be effective on June 5, 2006.

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue without interruption through June 5, 2007.<sup>12</sup> For this reason, the Commission designates that the

proposal become operative on June 5, 2006.<sup>13</sup>

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 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 No. SR-Amex-2006-49 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 20549-1090.

All submissions should refer to File No. SR-Amex-2006-49. 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

<sup>13</sup> As set forth in the Commission's initial approval of the Pilot Program, if the Amex proposes to: (1) Extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The Amex must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the Amex selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Amex's, the Options Price Reporting Authority's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Amex addressed them; (6) any complaints that the Amex received during the operation of the Pilot Program and how the Amex addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. See Pilot Approval Order, *supra* note 5.

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 will also be available for inspection and copying at the principal office of the Amex. 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 No. SR-Amex-2006-49 and should be submitted on or before June 16, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Nancy M. Morris,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53835; File No. SR-NYSE-2006-31]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the NYSE Retail Trading Product and the NYSE Program Trading Product**

May 18, 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 May 8, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange"), 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 NYSE. The Exchange has filed the proposal pursuant to section 19(b)(3)(A) of the

<sup>14</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>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 introduce two new market data products: The NYSE Retail Trading Product and the NYSE Program Trading Product. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the 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. 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

Clause (b)(16) of Exchange Rule 132B ("Order Tracking Requirements") requires members to record the type of account for which each order is submitted. NYSE proposes to make available to vendors and investors the following:

(1) The NYSE Retail Trading Product will consist of (A) a real-time datafeed of certain execution report information that has been recorded as trades for accounts of "individual investors"<sup>5</sup> and (B) an end-of-day summary of the retail trading activity on the Exchange for that day, including total buy-and-sell retail share volume for each stock traded.

(2) The NYSE Program Trading Product will consist of (A) a real-time datafeed of certain execution report information that has been recorded as

program trades<sup>6</sup> and (B) an end-of-day summary of program trading activity on the Exchange for that day, including total index arbitrage (as opposed to non-index arbitrage) program trading volume.

Each published report of a trade execution that is included in the datafeed for either product shall indicate such information as the security's symbol, the size of the trade, the time of the trade's execution and other related information.<sup>7</sup> (More information regarding the NYSE Retail Trading Product and the NYSE Program Trading Product can be found on the NYSE Web site at <http://www.nysedata.com/InfoTools>.)

The Exchange believes the NYSE Retail Trading Product should provide investors with increased information regarding individual investors' trading activity on the Exchange. Similarly, the NYSE Program Trading Product should provide investors with increased information regarding program trading activity.

Pursuant to the proposed rule change, the Exchange proposes to introduce the NYSE Retail Trading Product and the NYSE Program Trading Product without charge as a 60-day pilot program, commencing 30 days from the Exchange's submission of the proposed rule change to the Commission.

In a companion proposed rule change that the Exchange has filed contemporaneously with the proposed rule change (see File No. SR-NYSE-2006-32), the Exchange proposes to establish fees for the NYSE Retail Trading Product and the NYSE Program Trading Product. The Exchange plans to commence to impose those fees upon the later of Commission approval of that filing and the end of the pilot program.

The Exchange is not proposing to impose any attribution requirements on vendors displaying NYSE Trading Information. However, the Exchange believes that it is incumbent on vendors to identify and display information in a manner that avoids investor confusion. This is especially true at a time when markets are offering investors, who have grown accustomed to viewing

<sup>6</sup> For this purpose, "program trading" has the definition that Supplementary Material .40(b) to NYSE Rule 80A ("Index Arbitrage Trading Restrictions") gives to that term.

<sup>7</sup> NYSE will only include in the NYSE Retail Trading Product and the NYSE Program Trading Product information that is attached to execution reports. While the NYSE believes the information contained in the NYSE Retail Trading Product and the NYSE Program Trading Product is accurate, the NYSE does not guarantee the completeness or accuracy of account information submitted by order entry firms on which the InfoTools product is based.

consolidated information over the past three decades, many new exchange-specific information services.

Thus, while the Exchange is not proposing to impose any attribution requirement, it does propose to have vendors provide, by link or otherwise, a description of the NYSE Retail Trading Product and NYSE Program Trading Product in a manner that is reasonably transparent and accessible to subscribers of the two products. The Exchange will require the Exhibit A to each vendor's contract with the Exchange for the receipt and redistribution of the NYSE Retail Trading Product and NYSE Program Trading Product to describe how the vendor will make the description available.

The description should read substantially as follows:

NYSE Rule 132B requires each NYSE member firm to record for each order that it submits to the Exchange such information as whether the firm is placing the order for the account of a retail customer or whether the order results from program trade trading activity. NYSE uses this information to produce the NYSE Retail Trading Product and NYSE Program Trading Product, each of which includes real-time information relating to retail trading and program trading activity, respectively, as well as daily summaries and historical databases of that information.

While the NYSE believes the information contained in the NYSE Retail Trading Product and NYSE Program Trading Product is accurate, Customer understands that its agreement with NYSE provides that NYSE (1) reserves all rights to that information, (2) does not guarantee the completeness or accuracy of account information submitted by order entry firms on which the InfoTools product is based, and (3) shall not be liable for any loss due either to their negligence or to any cause beyond their reasonable control.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,<sup>8</sup> in general, and with section 6(b)(5) of the Act,<sup>9</sup> in particular, in that 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, 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> For this purpose, the "account of an individual investor" means an account covered by section 11(a)(1)(E) of the Act. That section refers to the "account of a natural person, or a trust created by a natural person for himself or another natural person."

*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 regarding the proposed rule change. The Exchange has not received any unsolicited written comments from Exchange participants or other interested parties.

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

The foregoing proposed rule change is subject to section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup> because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission 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. NYSE satisfied the five-day pre-filing requirement.

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.<sup>12</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 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-NYSE-2006-31 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 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-31. 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 the filing also will be available for inspection and copying at the principal office of the NYSE. 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-2006-31 and should be submitted on or before June 16, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Nancy M. Morris,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-53840; File No. SR-NYSE-2005-58]**

**Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Exchange Rule 312(f) Regarding Changes Within Member Organizations**

May 19, 2006.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

"Exchange Act"), and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 15, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 5, 2006, NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 SEC the proposed amendment to Exchange Rule 312(f) to, among other changes, permit the recommendation of purchases and sales of shares of companies controlled and under common control with member organizations (other than MAPs),<sup>4</sup> subject to appropriate customer disclosure of the relationship. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

**Changes Within Member Organizations**

Rule 312(a) to (e) no changes.

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(f)(1) After the completion of a distribution of its *equity or non-investment grade debt securities or those of any organization controlling the member organization or of any Material Associated Person (as used in Rule 17h-1T of the Securities Exchange Act of 1934, as amended) of the member organization*, no member [corporation] *organization* [which has any publicly held security outstanding] shall effect any transaction (except on an

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

<sup>3</sup> Amendment No. 1 replaces the rule text in the original filing in its entirety and proposes to clarify that Rule 312(f) applies only to non-investment grade debt and equity securities. Amendment No. 1 also adds Material Associated Persons ("MAPs"), as that term is used in Rule 17h-1T of the Exchange Act, to the class of persons for whose securities the solicitation of trades is prohibited.

<sup>4</sup> Exchange Act Rule 17h-1T describes certain indicia of MAP status: (i) Legal relationship between the broker or dealer and the associated person; (ii) overall financing requirements of the broker or dealer and the associated person, and the degree, if any, to which the broker or dealer and the associated person are financially dependent on each other; (iii) degree, if any, to which the broker or dealer or its customers rely on the associated person for operational support or services in connection with the broker's or dealer's business; (iv) level of risk present in the activities of the broker's or dealer's associated persons; and (v) extent to which the associated person has the authority or the ability to cause a withdrawal of capital from the broker or dealer.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).