

Commission, and the filing of required periodic reports. The trustee is responsible for the day-to-day administration of the trust, including keeping the trust's operational records. While the sponsor generally oversees the performance of the trustee and the trust's principal service providers, it does not exercise day-to-day oversight over the trustee or such service providers.

The amended rule will provide that any fee or other compensation paid in connection with the business transaction to a specialist or his member organization or any other member, allied member or approved person in such member organization or officer or employee thereof not have any relationship to the trading price or daily trading volume of the ETF. This will further diminish any potential ability for a specialist or his member organization or any other member, allied member or approved person in such member organization or officer or employee thereof to unduly influence trading for its own benefit, and further diminish any incentive for any such person to compromise its specialist obligations in maintaining fair and orderly markets. It is also designed to prevent the ETF sponsor from unduly influencing its specialist or his member organization or any other member, allied member or approved person in such member organization or officer or employee thereof.

Finally, a specialist or his member organization or any other member, allied member or approved person in such member organization or officer or employee thereof must notify and provide a full description to the Exchange of any business transaction or relationship, except those of a routine and generally available nature as described in NYSE Rule 460.10, it may have with any sponsor of an ETF in which it is registered as a specialist.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and Section 6(b)(5)<sup>6</sup> of the Act, in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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 did not solicit or receive any written comments with respect to 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 self-regulatory organization 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. 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-2005-66 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-NYSE-2005-66. 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-2005-66 and should be submitted on or before November 25, 2005.

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

**Jonathan G. Katz,**  
Secretary.

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BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52696; File No. SR-NYSE-2005-35]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Changes to Listed Company Manual Section 902.00 Regarding Listing Fees

October 28, 2005.

#### I. Introduction

On May 18, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposal to amend the current fee chapter set out in sections 902.01 to 902.04 of the Listed Company Manual ("Manual") and reorganize the relevant sections of the Manual into a format setting out fees by

<sup>7</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>5</sup> 15 U.S.C. 78f(b).

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

type of listed security. The proposed rule change was published for comment in the **Federal Register** on September 23, 2005.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The filing proposes to amend and to reorganize the current listing fees chapter set forth in section 902.00 through section 902.04 of the Manual. Among other things, the Exchange proposes to decrease the current total issuer per annum fee cap by 50% from \$1 million to \$500,000, with certain exceptions. In addition, the Exchange proposes reducing the Listing Fee schedule to three tiers instead of the current four-tier structure. The Exchange also proposes to set forth Listing Fees for all types of securities as per share numbers instead of the current per million share approach and specify the fees applicable to tracking stocks. The Exchange further proposes to decrease the Listing Fee cap for shares issued in conjunction with stock splits by 40% to \$150,000 per stock split and eliminate the three year cap on stock splits as well as apply the \$150,000 fee cap to stock dividends.

The Exchange also proposes increasing the current minimum application fee in certain situations; increasing the current minimum application fee for the authorization of a subsequent application to list additional securities or another class of equity securities, or to make changes (such as a change in the name or par value) applicable to issuers that list equity securities; increasing the special charge that is applied when a company first lists a class of common stock; and eliminating the current application fee applicable to processing minor amendments to previously filed applications. With respect to annual listing fees, the Exchange proposes increasing the current minimum annual fee payable on a common stock or a preferred-only listing from \$35,000 to \$38,000; clarifying that the annual fee for each class of equity security listed is equal to the greater of the minimum fee or the fee calculated on a per share basis of \$0.00093; and clearly setting out the minimum and per share rates applicable to each type of listed security. Finally, the Exchange is proposing to make a number of changes and clarifications to its current billing policies.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 Commission believes that the reorganization of the current fee chapter set out in sections 902.01 to 902.04 of the Listed Company Manual will make those sections clearer, more concise, and easier to use. Guidelines on how fees are calculated as well as numerical examples in each section provide appropriate clarification, where necessary. Further, the Commission believes that the modifications to the Listing Fee schedule simplifies the fee structure for its members. While certain companies may pay higher listing fees than under the current fee schedule, the fee schedule overall is consistent with the Exchange's recent revisions to their fees generally.<sup>6</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSE-2005-35) is approved.

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

**Jonathan G. Katz,**

*Secretary.*

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<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>6</sup> See, e.g. Securities Exchange Act Release No. 49414 (March 12, 2004), 69 FR 13078 (March 19, 2004).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52685; File No. SR-NYSE-2005-17]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend NYSE Rule 472 (“Communications With the Public”)

October 26, 2005.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on February 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 August 12, 2005, the NYSE submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> On October 19, 2005, the NYSE submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is filing with the Commission a proposed amendment to NYSE Rule 472, which will exempt certain communications with the public from the pre-use review and approval requirement. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

#### Rule 472

Communications With the Public  
Approval of Communications and  
Research Reports

(a)(1) *Except for institutional sales material, [E]each advertisement[, ] and market letter, and all sales literature or other similar type of communication which is generally distributed or made available by a member or member organization to customers or the public must be approved in advance by a member, allied member, supervisory*

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Amendment No. 1 clarifies the proposal and includes additional information on the use of the term “Qualified Investor.”

<sup>5</sup> Amendment No. 2 to the proposed rule change makes a technical amendment to the filing.

<sup>3</sup> See Securities Exchange Act Release No. 52463 (September 16, 2005), 70 FR 55933.