

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55084; File No. SR-NYSE-2006-90)

January 10, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 13 (Definitions of Orders)

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 27, 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 and II below, which Items have been substantially prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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

NYSE proposes to amend Exchange Rule 13.30 to clarify that Stop Orders in Exchange Traded Funds (as defined below) are elected on quotes and trades.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements

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

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

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

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

may be examined at the places specified in Item IV below. The self-regulatory organization 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

The Exchange is seeking to amend Exchange Rule 13.30 to clarify that Stop Orders (“STP”) in Investment Company Units,<sup>5</sup> Trust Issued Receipts,<sup>6</sup> and securities treated similarly (i.e., streetTRACKS<sup>®</sup> Gold Shares, See Exchange Rule 1300) (collectively Exchange-Traded Funds (“ETFs”)) are elected on both quotes and trades.

Prior to December 1, 2000, STP<sup>7</sup> orders in ETFs were elected only on trades. At that time a STP Order to buy ETFs was elected and became a market order only when a transaction in the security occurred at or above the stop price, after the order was routed to the Display Book<sup>®</sup> or was manually represented by a Floor broker in the Crowd. Similarly, a STP Order to sell ETFs was elected and became a market order only when a transaction in the security occurred at or below the stop price, after the order was routed to the Display Book<sup>®</sup> or was manually represented by a Floor broker in the Crowd.

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<sup>5</sup> Investment Company Units are defined in Rule 703.16 of the NYSE Listed Company Manual.

<sup>6</sup> Trust Issued Receipts are defined in Exchange Rule 1200.

<sup>7</sup> At that time, order types available to customers included both Stop Orders and Stop Limit Orders. Subsequently, on November 27, 2006, the Commission approved the Exchange's proposal to eliminate Stop Limit Orders as an acceptable order type on the Exchange. See Securities Exchange Act Release No. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR-NYSE-2006-65). Stop Limit Orders are therefore not addressed in this filing.

On December 1, 2000, due to the inherent speed of ETF trading and quote changes, the Exchange amended Rule 13.30 to allow STP Orders in ETFs to be elected also on quotations.<sup>8</sup> The purpose of that amendment was to allow STP orders in ETFs to participate more often and minimize STP Orders in ETFs from missing the market. It was not the Exchange's intent to preclude STP Orders in ETFs from being elected on trades and nothing in that filing or the rule amendment excludes STP Orders in ETFs from election on trades. Rather, it added a section to provide that STP Orders in ETFs are elected on quotes, leaving the previous section regarding elections on trades intact. Since the amendment, the Exchange has elected STP Orders in ETFs on quotes and trades. In this filing, the Exchange seeks to amend Rule 13.30 to clarify that STP orders are elected on quotes and trades, in order to eliminate any ambiguity inherent in the current rule's structure.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>9</sup> that an exchange have rules that are 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.

### 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

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<sup>8</sup> See Securities Exchange Act Release No. 43658 (December 1, 2000), 65 FR 77408 (December 11, 2000) (SR-NYSE-2000-53).

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

change.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms, does not 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would clarify that stop orders in ETFs are elected on quotes and trades. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<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

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

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</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).

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 Number SR-NYSE-2006-90 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-2006-90. 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-2006-90 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30–3(a)(12).