

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50957; File No. SR-NYSE-2004-72)

January 4, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend the Effective Date of Amendments, Approved Pursuant to File No. SR-NYSE-2002-36, from December 17, 2004 to January 31, 2005 to Conform with the Effective Date of Corresponding Rule Amendments Filed by the National Association of Securities Dealers, Inc. (“NASD”).

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<sup>3</sup> thereunder, notice is hereby given that on December 16, 2004, the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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

The Exchange proposes to extend the effective date of amendments, approved pursuant to File No. SR-NYSE-2002-36, from December 17, 2004 to January 31, 2005 to conform with the effective date of corresponding rule amendments filed by the National Association of Securities Dealers, Inc. (“NASD”). The amendments, collectively known as the “Internal Controls” amendments, consist of changes to Rules 342 (“Offices –

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

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

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

Approval, Supervision and Control”), 401 (“Business Conduct”), 408 (“Discretionary Power in Customers’ Accounts”) and 410 (“Records of Orders”).

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule changes. 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 Changes

1. Purpose

On June 17, 2004, the Commission approved amendments to NYSE rules to strengthen the supervisory procedures and internal controls of members and member organizations.<sup>4</sup> The amendments, collectively known as the “Internal Controls” amendments, consist of changes to Rules 342 (“Offices – Approval, Supervision and Control”), 401 (“Business Conduct”), 408 (“Discretionary Power in Customers’ Accounts”) and 410 (“Records of Orders”).

Amendment No. 2 to the filing, dated April 25, 2003, established an effective date for the amendments of six months from the date of their approval by the Commission. Accordingly, the current effective date is December 17, 2004. This six-month “phase-in” period was intended to allow member organizations sufficient time to develop and

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<sup>4</sup> See Release No. 34-49882 (June 17, 2004); 69 FR 35108 (June 23, 2004) (File No. SR-NYSE-2002-36).

implement the policies and procedures necessary to be in compliance with the proposed amendments.

During the development of the Internal Controls amendments, the NASD was working in conjunction with the Exchange and the Commission to develop substantially similar rule amendments. These amendments were also approved on June 17, 2004.<sup>5</sup> Ultimately, an effective date of January 31, 2005 was established for the NASD amendments.<sup>6</sup> The Exchange requests an extension of its previously approved effective date of December 17, 2004 to January 31, 2005. The Exchange believes that conforming the effective date of its Internal Controls amendments to the NASD's effective date will be beneficial to dual NYSE/NASD member organizations in that it will eliminate any confusion that may otherwise arise in connection with staggered implementation dates. Further, coordinating the effective dates will facilitate the issuance of any joint NYSE/NASD materials to membership to clarify practical aspects of the amendments.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Securities Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5)<sup>7</sup> of the Exchange Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to

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<sup>5</sup> See Release No. 34-49883 (June 17, 2004); 69 FR 35092 (June 23, 2004) (File No. SR-NASD-2002-162).

<sup>6</sup> See NASD Notice to Members 04-71.

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

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 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 believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has been filed pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Exchange Act and paragraph (f)(6) of Rule 19b-4 thereunder, and is therefore immediately effective upon filing with the Commission. The Commission, at any time within 60 days of the filing of a proposed rule change pursuant to Section 19(b)(3)(A) of the Act, may summarily abrogate the proposed 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>9</sup>

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(C).

The Exchange requests that the Commission waive both the five-day notice and 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii).<sup>10</sup> The Exchange has designated the proposed rule change as one that: (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 for 30 days from the date it was filed, or such shorter time as the Commission may designate. The Exchange believes good cause exists to grant such waivers because conforming the effective date of its Internal Controls amendments to the NASD's effective date will be beneficial to dual NYSE/NASD member organizations in that it will eliminate any confusion that may otherwise arise in connection with staggered implementation dates. Further, coordinating the effective dates will facilitate the issuance of any joint NYSE/NASD materials to members to clarify practical aspects of the amendments.

The Commission believes that waiver of the five-day notice and the 30-day pre-operative delay is consistent with the protection of investors and the public interest because it will allow the NYSE to minimize confusion that may otherwise occur due to staggered implementation dates as firms make any required procedural or system changes. Furthermore, this waiver will facilitate the issuance of any joint guidance by the

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<sup>10</sup> See telephone conversation between Stephen Kasprzak, Senior Special Counsel, NYSE and Lourdes Gonzalez, Assistant Chief Counsel, SEC, on January 3, 2005. Under subparagraph (f)(6)(iii) of Rule 19b-4, the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file notice of the proposed rule change at least five business days beforehand. 17 CFR 240.19b-4(f)(6)(iii).

NYSE and NASD. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.<sup>11</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 Exchange 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-72 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-72. 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

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<sup>11</sup> For purposes only of accelerating the effective 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).

<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 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-2004-72 and should be submitted on or before [insert date 21 days from date of publication].

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

Jill M. Peterson  
Assistant Secretary

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