

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51744; File No. SR-NYSE-2005-31)

May 25, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Interpretation of Exchange Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 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 proposed rule change is an Information Memo providing certain interpretations of Exchange rules concerning the application of those rules in connection with the Pilot Program established by the Commission under Rule 202T<sup>3</sup> of Regulation SHO (the “Pilot”).<sup>4</sup> The text of the proposed rule change is available on the Exchange’s Internet Web site ([www.nyse.com](http://www.nyse.com)), at the Exchange’s Office of the Secretary, and at the places specified in Item IV below.

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

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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> 17 CFR 242.202T.

<sup>4</sup> 17 CFR 242.200 through 203.

In its filing with the Commission, the Exchange 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

The Exchange is issuing an Information Memo to provide guidance to its members and member organizations that are engaged in trading on the floor of the Exchange concerning the impact the Pilot will have with respect to certain rules of the Exchange governing such trading. The Information Memo reminds members and member organizations that, even though tick tests will not apply to short sales in Pilot securities, short sales in these securities must still be conducted in a manner consistent with all other applicable Exchange rules and federal securities laws regarding market manipulation, fraud, market maintenance and other violative trading situations. The Information Memo also identifies specific Exchange rules, which have tick-sensitive components, but which are not affected by the suspension of tick tests for short sales outlined in the Pilot. For example, Exchange Rule 80A (Index Arbitrage Trading Restrictions) requires in certain circumstances that index arbitrage orders in certain stocks be entered on the Exchange as “sell plus,” meaning the orders must be executed on a plus or zero-plus tick. This requirement will continue to apply even if the order is a short sale entered in a stock that is part of the Pilot. The Exchange identifies several other tick-sensitive rules that will not be affected by the Pilot.

The Exchange is alerting specialists and other floor members as to the manner in which it is interpreting certain provisions of Exchange Rule 104 (Dealings by Specialists) once the Pilot begins. As the Exchange anticipates that trading in certain stocks may see an increase in speed and volatility, the Exchange is advising specialists that, in such circumstances, Floor Official approval required under the Rule may be sought after a trade has taken place, but, in any case, as soon as possible. The Exchange is advising Floor Officials in these situations to review requests for approval as quickly as possible, and that they should complete their review and make a decision before the close of trading on the same day. The Exchange is also providing guidance to Floor Officials with respect to reviewing approval requests involving specialist short sale proprietary trades against the existing bid in a declining market. Here the Exchange is advising Floor Officials to use the same considerations to reach a decision as to whether to give approval as they would use in evaluating specialist proprietary trades against existing offers in a rising market. Floor Officials must promptly report to the Exchange's On Floor Surveillance Unit instances where they have declined to give approval to a transaction.

The Information Memo also highlights the application of depth guidelines in certain stocks. Depth guidelines specify what are considered general tolerances for price movements per trading sequence of 3,000 shares or less based on a stock's current price range and the prior month's adjusted average daily volume, which excluded trades of 25,000 shares or more. The Exchange reminds Floor Officials that requests to widen or suspend depth guidelines should continue to be evaluated based on what is reasonable given the relevant facts and circumstances in the market at the time of the request.

The Exchange believes that the guidance offered in the Information Memo will help the membership in facing any challenges offered by new market dynamics that could result from trading after the Pilot has begun.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>5</sup> of the Act 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 believes that the proposed change will not 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 comments on the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i)<sup>6</sup> of the Act and subparagraph (f)(1) of Rule 19b-4<sup>7</sup> thereunder. The proposed rule change is a stated policy, practice or interpretation with respect to the meaning,

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

administration or enforcement of existing rules of the Exchange. 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.

#### 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-2005-31 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-2005-31. 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 such 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-2005-31 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 delegated authority.<sup>8</sup>

Margaret H. McFarland  
Deputy Secretary

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