

Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on JLO, SIN, RND, IXZ, IXX, and IXK.<sup>10</sup> The amount of the execution fee and comparison fee for products covered by this filing shall be the same for all order types on the Exchange—that is, orders for Public Customers, Market Makers, and Firm Proprietary—and shall be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker and Firm Proprietary transactions in equity options.<sup>11</sup> Further, since options on JLO, SIN, RND, IXZ, IXX, and IXK are not multiply-listed, the Payment for Order Flow fee shall not apply. The Exchange believes that the proposed rule change, as amended, will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act,<sup>12</sup> which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3) of the Act<sup>13</sup>

<sup>10</sup> The Exchange represents that these fees will be charged only to Exchange members.

<sup>11</sup> The execution fee is currently between \$.21 and \$.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$.03 per contract per side.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

and Rule 19b-4(f)(2)<sup>14</sup> thereunder. At any time within 60 days of the filing of such amended 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>15</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 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-ISE-2005-34 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-ISE-2005-34. 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

<sup>14</sup> 17 CFR 19b-4(f)(2).

<sup>15</sup> The effective date of the original proposed rule is July 12, 2005. The effective date of Amendment No. 1 is July 29, 2005. The effective date of Amendment No. 2 is August 10, 2005. The effective date of Amendment No. 3 is August 11, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 11, 2005, the date on which the ISE submitted Amendment No. 3. See 15 U.S.C. 78s(b)(3)(C).

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2005-34 and should be submitted on or before September 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Jonathan G. Katz,  
Secretary.

[FR Doc. E5-4536 Filed 8-18-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52251; File No. SR-NYSE-2005-47]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to NYSE Rule 103.12 Requiring Specialists and Clerks To Record Their Time on the Trading Floor of the Exchange

August 12, 2005.

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 July 11, 2005, the New York Stock Exchange, Inc. ("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 prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and paragraph (f)(6) of Rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission.<sup>5</sup> On August 10, 2005, NYSE filed Amendment No. 1 to the

<sup>16</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>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>5</sup> NYSE has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

proposed rule change.<sup>6</sup> On August 12, 2005, NYSE filed Amendment No. 2 to the proposed rule change.<sup>7</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 proposed rule change seeks to amend NYSE rules to include NYSE Rule 103.12 to require specialists and their clerks to record the time they spend on the trading floor of the Exchange ("Floor") working in those capacities. The text of the proposed rule change is available on the NYSE'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, the Exchange included statements concerning the purpose of, and basis for, 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**

As part of a recent settlement with the Commission,<sup>8</sup> the Exchange agreed to undertake certain initiatives concerning the oversight of the Floor. In one of these undertakings, the Exchange is required to develop systems to track the identity of specialists and their clerks and the times when each specialist and clerk act as such while on the Floor.

The Exchange believes that proposed NYSE Rule 103.12 will enable it to more

accurately track the identity of specialists and their clerks and the times when each specialist and clerk act as such while on the Floor. The proposed rule would require that specialist member organizations make and keep, in the regular course of business, records of the times that each of the member organization's specialists and clerks work in these capacities on the Floor. The records created and maintained by the specialist member organizations must be able to be provided to the Exchange within the time frame and in a format determined by the Exchange.

In addition, while the Exchange can utilize the identification badges issued to members and member organization employees, such as clerks, working on the Floor to record the time when they enter the trading Floor, the undertaking requires more detail as to the times when specialists and clerks act as such. To facilitate the Exchange's ability to monitor specialist and clerk activity, the Exchange will install a system to capture this information electronically. This system, to be known as IDTrack, will require specialists and clerks to log in to the IDTrack system and register their presence with respect to specialty stocks in which they are working. IDTrack will provide reports and information to the Exchange's Division of Market Surveillance and to specialist firms. Accordingly, under the proposed rule the Exchange will have an independent record of the times that specialists and their clerks spend on the Floor of the Exchange working in those capacities.

##### **2. Statutory Basis**

The Exchange believes that 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 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.

#### *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 change.

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

Because the proposed rule change: (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 (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change 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> 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>

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 Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay to allow NYSE to implement the undertaking in the Administrative Proceeding with respect to the recording of time specialists and clerks spend on the Floor acting in those capacities. The Commission has decided, consistent with the protection

<sup>6</sup> NYSE withdrew Amendment No. 1 on August 11, 2005.

<sup>7</sup> In Amendment No. 2, NYSE clarified that the specialist organization as well as individual specialists and Floor clerks must comply with separate obligations under the proposed rule. NYSE also withdrew the proposed addition of NYSE Rule 103.12 to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A," which the Exchange represents it will file separately at a later date.

<sup>8</sup> See Securities Exchange Act Release No. 51524 (April 12, 2005) announcing Administrative Proceeding File No. 3-11892 (the "Administrative Proceeding").

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

<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 of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on August 12, 2005, the date the NYSE filed Amendment No. 2.

of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative date so that the NYSE may meet the requirement in the Administrative Proceeding that the tracking of the time specialists and clerks spend on the Floor begin on or before October 1, 2005.<sup>13</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 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-2005-47 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File No. SR-NYSE-2005-47. 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 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 No. SR-NYSE-2005-47 and should be submitted on or before September 9, 2005.

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

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52255; File No. SR-NYSE-2005-54]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) To Eliminate the Requirement To Publish Pre-Opening Market Order Imbalances on Expiration Fridays

August 15, 2005.

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 July 26, 2005, the New York Stock Exchange, Inc. ("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 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 seeks to amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) to eliminate the requirement to publish pre-opening market order imbalances on expiration Fridays.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

#### Market on the Close Policy and Expiration Procedures

##### Rule 123C

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>27</sup> 17 CFR 240.19b-4.

#### (6) Expiration Friday Auxiliary Procedures for the Opening

The Exchange adopted monthly auxiliary procedures for expiration days in order to integrate stock orders relating to expiring index contracts into the NYSE's opening procedures in a manner that will assure an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation). The twelve expiration days are "expiration Fridays" which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month.

#### Order Entry

Stock orders relating to index contracts whose settlement pricing is based upon the "Expiration Friday's" opening prices must be received by SuperDOT or by the specialist by 9 a.m.

- These orders may be cancelled or reduced in size. Firms cancelling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Rule 410 provides.

- Stock orders relating to index contracts whose settlement pricing is not based upon the "Expiration Friday's" opening prices may be entered before or after 9 a.m.

To facilitate early order entry, SuperDOT (a) will begin accepting orders at 7:30 a.m. and (b) will accept orders of 500,000 shares or less.

"Limit at the opening" ("limit OPG") orders are permitted, including delivery through Exchange systems.

- Ordinary limit orders may also be entered.

#### Order Identification

Stock orders relating to opening-price settling contracts must be identified "OPG".

- Firms entering these orders through SuperDOT, but unable to identify orders as "OPG," may use a unique branch code or firm identifier (mnemonic) to identify these orders.

- Firms unable to identify these orders in either way, and firms not using SuperDOT, must submit a list of all these orders and related details to the NYSE Market Surveillance Division.

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