

approved the Nasdaq Exchange's registration as a national securities exchange on January 13, 2006.⁷ As noted in the Nasdaq Exchange Order, once the Nasdaq Exchange begins operations as a national securities exchange, a security will be considered for listing on the Nasdaq Exchange only if it is registered pursuant to Section 12(b) of the Act or is subject to an exemption. Further, in the Nasdaq Exchange Order, the Commission noted that Nasdaq had notified Commission staff that it intended to request appropriate regulatory relief to facilitate the efficient registration of its issuers' securities under Section 12(b) of the Act. Nasdaq also represented that it would seek an exemption for certain issuers that are currently not required to be registered under Section 12(g) of the Act.⁸ The Commission noted in the Nasdaq Exchange Order that it expected Nasdaq to provide notice to the public and its issuers of any request and provide issuers with an opportunity to opt-out of the process. Nasdaq filed this proposed rule change to give it the authority to act on behalf of its issuers and to provide notice of its plans.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-2006-028) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53602; File No. SR-NYSE-2005-40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Exchange's Allocation Policy and Procedures (NYSE Rules 103A, 103B, 123E and 476A)

April 5, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 6, 2005, 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 NYSE. NYSE filed Amendment No. 1 to the proposed rule change on October 28, 2005.³ NYSE filed Amendment No. 2 to the proposed rule change on February 9, 2006.⁴ 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 proposing to amend NYSE Rules 103A, 103B, 123E and 476A with respect to the manner in which securities are allocated to specialist organizations.

The text of the proposed rule change is available on the Exchange's Web site

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange clarified certain aspects of the purpose section and rule text of the proposed rule change. Amendment No. 1 clarified that certain of the proposed amendments to NYSE Rules 103A, 103B and 123E are organizational changes that are intended to provide clarity with respect to the operation of the allocation policy and procedures. Amendment No. 1 also further explained the Exchange's decision to move from a subjective standard in the allocation process to an objective standard. Amendment No. 1 supersedes the original filing in its entirety.

⁴ In Amendment No. 2, the Exchange further clarified certain aspects of the purpose section and rule text of the proposed rule change. Amendment No. 2 clarified that the proposed amendments to NYSE Rule 103B includes a requirement that specialist firms describe in their blanket allocation applications any contacts they, or any individual acting on their behalf, have had with any employee of the listing company, or any individual acting on behalf of that company, with regard to its prospective listing on the Exchange. In addition, Amendment No. 2 further explained the data that will be provided to the Allocation Committee ("Committee"). Amendment No. 2 supersedes Amendment No. 1 in its entirety.

⁷ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (Findings, Opinion, and Order of the Commission approving the application of the Nasdaq Stock Market LLC for registration as a national securities exchange) ("Nasdaq Exchange Order"). The Nasdaq Exchange may not operate as a national securities exchange until certain conditions have been satisfied. See *id.*

⁸ 15 U.S.C. 78I(g).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

(<http://www.nyse.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room. The text of the proposed rule change is also available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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 proposes to amend NYSE Rules 103A, 103B, 123E and 476A with respect to the manner in which securities are allocated to specialist organizations on the Exchange.

The Exchange proposes to amend its allocation policy and procedures by placing greater emphasis on performance measures that objectively assess specialist market-making in order to provide more meaningful information for the Committee's consideration. The Exchange represents that this would be accomplished by eliminating the Specialist Performance Evaluation Questionnaire ("SPEQ"), a subjective tool that has become less meaningful as a result of the sharp reduction in the number of specialist firms, and replacing it with a series of objective measures that compare specialist performance against defined standards based on actual trading data. Unlike the SPEQ, which provided tier rankings for firms only, the objective performance measures will permit comparisons by stock, panel, and post, as well as by firm, and thus, will more clearly distinguish between strong and weak performance. In addition, the objective performance measures will evaluate individual specialist performance as well as performance of the entire firm. The SPEQ is limited to an evaluation of firm-wide performance. The use of these measures will also enable specialist

firms to better manage and more easily improve performance.

The objective performance measures will improve the allocation process by preventing specialist firms from proposing sub-par performers as the designated specialist for new listings and may serve to disqualify entire specialist firms from the allocation process for a period of time based on continued poor performance. In this way, the new measures will serve as a potent incentive to improved market-making and encourage superior specialist performance.

The Exchange is also proposing additional changes to the allocation policy (NYSE Rule 103B) and related changes to the rules governing performance improvement actions (NYSE Rule 103A), the issuance of summary fines (NYSE Rule 476A), and specialist combination review policy (NYSE Rule 123E).⁵

Allocation Policy and Procedures

NYSE Rule 103B contains the Exchange's requirements with respect to allocation of securities to specialist member organizations ("Allocation Policy"). The Exchange represents that the intent of the Allocation Policy is: (1) To ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between the specialist unit and security; and (4) to contribute to the strength of the specialist system.

The Exchange represents that decisions as to the allocation of securities on the Exchange are made by the Committee. This Committee is comprised of market professionals who use their judgment to make allocation decisions based on the allocation criteria specified in the Allocation

Policy. The current allocation criteria includes the SPEQ, objective performance measures, listing company input, allocations received, capital, disciplinary history, and the Committee's professional judgment.

Elimination of SPEQ

The Exchange states that the SPEQ is a quarterly survey on specialist performance completed by Floor Broker members of the Exchange. The SPEQ requires Floor Brokers to rate and provide written comments on the performance of specialist firms with whom they deal regularly on the Floor. Floor Broker evaluations of specialist firm performance focuses on five functional areas—dealer, service, competitiveness, communications and administrative. Floor Brokers rate specialist firms on a 0% to 100% scale, in ten-point increments, that reflect the percentage of the time that the broker feels the specialist firm engaged in the described behavior. An evaluation of 100% is defined as "always" and an evaluation of 0% is defined as "never".

The Exchange represents that the SPEQ process uses a relative scoring methodology that combines Floor Broker scores for any one specialist firm to determine each firm's overall performance and performance in each of the five functional areas. The scores are then arrayed from highest to lowest, and the specialist firms receive a ranking for the overall score and within each function. Also, a range of ranks is determined that identifies where a firm stood in relation to other units whose scores were not statistically different. From these rankings, the specialist firms are aligned into tiers, up to a maximum of four, with each tier containing those specialist firms with similar rankings. The Committee receives information on SPEQ results only as to the tier classifications.

Although SPEQ has been an important mechanism for evaluation of specialist performance for both allocation and performance improvement action purposes, the Exchange represents that certain weaknesses in its use as an assessment tool have become apparent. For example, SPEQ evaluations are subjective, with ratings based on personal experiences rather than comparisons with accepted objective standards. Further, except for the written comments, which are not incorporated into the formula for SPEQ rankings, SPEQ does not focus on market-making by individual specialists. Importantly, as the number of specialist firms has decreased, SPEQ tier classifications have become tightly

clustered with statistically insignificant differences among the firms.⁶ Also, SPEQ participants recognize the limitations of SPEQ and have requested a more meaningful process for evaluating specialist performance. For these reasons, the Exchange proposes eliminating SPEQ and replacing it with the objective measures described below. The Exchange represents that by addressing the deficiencies of SPEQ in today's environment, these measures will enable a more meaningful comparison of specialist performance at all levels, based on truly objective criteria.

Expansion of the Use of Objective Measures

The Exchange also proposes to add objective measures designed to evaluate market quality using pre-determined standards of performance based on actual trading data. The measures will rate the performance of stocks, individual specialists and specialist firms overall. Data will be provided to specialists on a daily basis, and monthly and quarterly to the Committee. In addition, the performance information derived from the objective measures will be made available to listing companies to aid in their decision as to the choice of a specialist firm.

The Exchange proposes to add two new objective measures of specialist performance and to change an existing measure. The Exchange represents that one new measure is price continuity. Price continuity measures the absolute value of the price change, if any, from one trade to the next, in the same stock. Currently, price continuity is part of the existing near neighbor analysis,⁷ which is among the information provided to specialists and the Committee. However, current continuity percentages are too tightly clustered because of tighter markets, making it difficult to derive useful data for comparison purposes. In addition, there are no trading standards specifically related to price continuity against which to measure performance. The Exchange proposes making price continuity an independent measure and has

⁵ See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving SR-NYSE-2005-77) ("Merger Release"). The Merger Release contains conforming language changes to reflect the new entities that will exist as a result of the Exchange's merger with Archipelago Holdings, Inc. In addition, the Merger Release amended NYSE Rule 103B, with respect to the allocation of the proposed new NYSE Group stock to: (i) Give NYSE Group the right to determine the number and identity of specialist firms that will be included in the group from which it shall choose its specialist, provided the group consists of at least four specialist firms; and (ii) provide NYSE Group with the same material with respect to each specialist firm applicant as would have been reviewed by the Committee in allocating other securities. Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division of Market Regulation ("Division"), Commission on February 28, 2006.

⁶ The Exchange states that there are currently seven firms registered as specialists in equity securities on the NYSE. As recently as 2000, there were 25 specialist firms.

⁷ An explanation of the near neighbor performance measure was given in SR-NYSE-1995-05. See Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35764 (July 11, 1995); See also Securities Exchange Act Release No. 38158 (January 10, 1997), 62 FR 2704 (January 17, 1997) (making permanent the near neighbor pilot). Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on February 28, 2006.

developed appropriate benchmarks and standards to enable an objective comparison of each individual specialist's market-making as it relates to price continuity. The Exchange has also developed a system to identify acceptable and unacceptable performance for this measure.

The second new objective measure is depth. Depth refers to the price movement of a stock during a sequence of transactions totaling a particular volume. Currently, depth is measured over 3,000-share volume sequences and is also part of the near neighbor analysis. The Exchange is proposing to make depth an independent measure⁸ and to add three new volume sequences—5,000, 10,000 and 25,000 shares—and has developed appropriate benchmarks and standards for this measure as well.

According to the Exchange, the benchmarks and standards developed for continuity and depth have been reviewed with two university professors from the Massachusetts Institute of Technology, with whom the Exchange consults on matters relating to allocation measures. For each measure, eligible securities⁹ are grouped by price and non-block volume into categories. Eligibility requirements for securities include minimum average price, volume, and number of trades.¹⁰ Each category has two performance benchmarks based on actual trading data. Each benchmark has upper and lower performance ranges. Each trading day, the performance of eligible securities will be compared with the upper and lower ranges for the two benchmarks used for each measure and assigned a classification of upper, middle or lower. Upper classifications are worth two points, middle classifications are worth one point and lower classifications are worth negative one point. The points earned for each of the two performance benchmarks within each measure will be combined to

determine an overall score for the relevant measure. The overall scores for each measure are combined to determine the security's daily score. Scores range from four points (for upper classifications in both continuity and depth) to negative two points (for lower classifications in both continuity and depth). Daily scores will be provided to specialist firms at the end of each day, monthly scores at the end of each month and quarterly scores at the end of each quarter.¹¹

The Committee will be provided with the monthly scores for each specialist firm. In addition, the Exchange will provide the Committee with average daily non-block volume and price activity and average continuity and depth scores for each of the maximum of twenty most active stocks¹² handled by the individual who is identified by his/her firm to be the designated specialist for the stock of the listing company. The information will include trading data for the current month through the week preceding the distribution of the security data sheet to the specialists plus the three preceding calendar months.

The existing measure to be changed is SuperDOT® turnaround for orders received by the specialist. Currently, this measure is based on the percentage of total post-opening market orders that are either executed or "stopped" within 60 seconds of the time they are received by the specialist. The Exchange proposes tightening this benchmark to 30 seconds to better reflect actual trading conditions and to focus performance on the individual post and panels rather than the firm overall performance.¹³

¹¹ Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on March 2, 2006.

¹² The Exchange represents that the average daily non-block volume is generally determined using data on the total number of shares traded during the most recent prior three months divided by the number of trading days in that period. The number of stocks is determined by creating a list of stocks traded most frequently by a specialist, ranked by average daily non-block volume. If the list contains less than twenty stocks, information on all stocks contained in the list is provided to the Committee. If the list contains more than twenty stocks, information on only the twenty most active stocks contained in the list is provided to the Committee. Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on April 4, 2006.

¹³ The Exchange intends to review the continued applicability of this measure after the implementation of the NYSE HYBRID MARKETSM. See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (order approving the NYSE HYBRID MARKETSM).

The Exchange believes that the use of these objective measures will provide for a more meaningful comparison of specialist performance and will promote better market-making as a result of the availability of more objective and detailed information and competition among the firms for allocations. Unlike the subjective criteria, which provided tier rankings for firms only, the objective performance measures will permit comparisons by stock, panel, and post, as well as by firm, and thus, will more clearly distinguish between strong and weak performance. The use of these measures will also enable specialist firms to better manage and more easily improve performance.

Although the Exchange believes that the objective measures provide the more meaningful comparison, it is also acknowledged that subjective input from the Floor brokers and off-Floor customers with direct knowledge of the performance of specialist firms and individual specialists, may serve a useful purpose in the evaluation process. To this end, the proposed rule change includes a provision for providing subjective information to the Committee. The Exchange continues to develop the specific format of how the subjective information will be provided to the Committee, in consultation with constituent committees¹⁴ that have previously provided feedback on the allocation process.

In addition, the Exchange proposes a number of other changes to NYSE Rule 103B. In summary, these changes are as follows:

A. As noted above, the Committee will receive performance information regarding both the specialist firm and the individual designated by the firm to handle the security should the firm receive the allocation. Currently, the Committee only receives performance information with respect to the firm.

B. In order to provide an incentive to specialist firms to ensure quality performance, provisions will be added that poor performance may result in the inability of an individual specialist or a specialist firm from applying for or receiving allocations, as follows:

¹⁴ The Exchange represents that the constituent committees consist of the Institutional Traders Advisory Committee, the Upstairs Traders Advisory Committee, the Exchange Traders Advisory Committee, the Market Performance Committee and the proposed Hybrid Performance Committee. Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on March 2, 2006.

⁸ Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on March 2, 2006.

⁹ Eligible securities are all Exchange-listed domestic common stocks.

¹⁰ An eligible security will be evaluated on any day when any of the following conditions exists: (a) The security's average trading price is between \$1 and \$200; (b) the security's Exchange non-block volume (trades under 25,000 shares) is at least 100 shares; or (c) the security had at least five depth sequences on the Exchange (for depth only) or at least five Exchange transactions (for continuity only); (d) an individual security's overall quarterly depth and continuity score will be calculated only if it had daily scores on more than 31 days in the quarter.

SPECIALIST FIRM

Criteria	Duration of criteria	Period of ineligibility
Overall depth or continuity score below 1.90 and more than one standard deviation below average score for all specialist firms.	Two consecutive months	One month.
Same as above	Three consecutive months	Two months.
Same as above	Three out of six months	Two months.
Overall 30-second DOT turnaround percentage below 90%	One month	One month.
Two panels at same post with 30-second DOT turnaround percentages below 75%.	One month	One month.

INDIVIDUAL SPECIALIST

Criteria	Duration of criteria	Period of ineligibility
Any of the assigned securities that the individual specialist handled most frequently during a month receive overall a depth or continuity score below 0.50 ¹⁵ .	Three consecutive months	Two months.
Same as above	Three out of five months	Two months.
Panel with 30-second DOT turnaround percentage below 75%	One month	One month.

¹⁵ Telephone conversation between Deanna Logan, Principal Rule Counsel, NYSE and David Michehl, Attorney, Division, Commission on April 4, 2006.

C. The composition of the nine-member Committee will be changed, as illustrated in the chart below, in order to equalize representation on the Allocation Panel and the Committee and to give non-Floor constituents a greater role in the allocation process.

Committee member type	Current rule	Proposed
Floor Broker	3 Governors (1 may be Independent)	4 At least 1 Floor Governor, Executive Floor Official or Senior Floor Official.
Allied Member	3 Others (1 must be Independent). 2	4 At least 1 Allied Member and at least 1 Institutional Representative.
Institutional Chairperson	1. Floor Broker	1 Floor Broker or Allied Member/Institutional Representative. In alternating terms, an additional Floor Broker or Allied Member/Institutional Representative will be chosen for the Committee. The Committee members will select a chairperson from the dominant group on the Committee that term. No reappointments as chairperson until all members of Allocation Panel in same category have served a term as chairperson.

D. Each standing Committee will be selected one month before its term commences and will elect its chairperson at that time. Currently, the rule provides that the chairperson is elected two months before his/her term starts.

E. The requirement that the Committee chairperson be approved by the Quality of Markets Committee ("QOM") of the Exchange Board of Directors will be eliminated. As a result of corporate governance changes in

December 2003, the Exchange's Board of Directors no longer has an active QOM.

F. In order to encourage more participation from various constituent representatives on the Committee, the term of service for Committee members will be modified as follows:

Current terms of service	Proposed terms of service
4-month term	2-month term.
Terms staggered so that every 2 months, 4-5 members rotate off	No staggered terms.
Reappointment possible, provided a minimum of 2 months have passed since expiration of term.	No reappointment until all members of Allocation Panel in same category have served a term.

G. Provide standing Committee with quarterly information identifying the individuals designated in each allocation application and the number

of allocations they received, to provide informational continuity among Committees.

H. As a mechanism to facilitate greater efficiency in the allocation process, the Committee quorum requirement is modified as follows:

Committee member type	Current rule	Proposed
Floor Broker	6, at least 2 Governors	Any 7 members of the standing Committee.
Allied Member	1.	
Institutional	None required.	

I. Increase the number of Allocation Panel members from 69+ to 75+ to encompass the need for added allied

member and institutional representation on the Committee.

J. Modify the composition of the Allocation Panel:

Panel member type	Current rule	Proposed
Floor Broker	28	20
Floor Broker Governors	10	10
Sr./Exec. Floor Officials	5 (minimum)	5 (minimum).
Allied Members	15 including those on MPC ¹⁶	20 including those on MPC.
Institutional	11 including those on MPC	20 including those on MPC.

¹⁶MPC stands for Market Performance Committee.

K. In order to make the process more efficient, the number of specialist firms selected for the interview pool under Option 2 of the Allocation Policy will be modified to four firms, including one firm designated as instrumental by the listing company. Currently, the rule provides that the pool may be composed of three, four or five firms.

with the date that allocation applications are solicited for that issuer.

N. Extend the "Allocation Sunset Policy" for initial public offerings ("IPOs") from three months to six months and for Exchange traded funds ("ETFs") from three months to one year. Updated information on objective performance measures and disciplinary data will be provided to companies after three months (IPOs) and six months (ETFs).

L. Redefine the "quiet period" for specialist contact with a listing company so that it commences solely

M. Extend the requirement that the specialist firm's designated specialist remain the primary specialist in an allocated security from six months to one year unless the listed company agrees to a change, in which case the specialist must provide written notice of the change and the listed company's agreement to the Committee and Market Surveillance.

O. Provide the Committee with more disciplinary history:

Current rule	Proposed
Provided as to firms only	Provided for designated specialist and firm.
Informal discipline (Summary Fines and Admonition and Education letters) is reported as follows: market maintenance—12 months from time of issuance; non-market maintenance—6 months from time of issuance.	All informal discipline for 12 months from time of issuance.
Significant pending Enforcement matters once action is authorized	Same.
Hearing Panel decisions, for 12 months after they become final	Final Hearing Panel decisions, for three years after they become final.

P. Eliminate the provision that NYSE Rule 103A performance improvement action criteria (timeliness of openings, SuperDOTreg; turnaround, etc.) be reported to the Committee. Currently, the rule requires this information to be reported as a "pass" or "fail". The revised system will provide the Committee with more detailed information.

a timely manner for firms that may be selected for interview pools on a "without prejudice" basis.

closed-end fund listings from the same issuer in the nine-month period will be able to select any specialist from this group or ask for the matter to be referred to the Committee, in which case the group dissolves. The fund will be given updated objective performance and disciplinary information before making its decision. If a specialist firm/individual is ineligible for an allocation, that firm will be dropped from the group. If an individual specialist is no longer with a firm at the time of a new allocation of a closed-end fund, the firm will be dropped from the group.

Q. In order to expedite the process, specialist firms will be required to designate an individual specialist for each listing, regardless of whether they apply for the allocation. Included in this requirement is the specialist firm's obligation to describe any contacts they, or any individual acting on their behalf, have had with any employee of the listing company, or any individual acting on behalf of that company, with regard to its prospective listing on the Exchange. This will enable staff to produce individual performance data in

R. Provide the listing company with the same objective performance measure information the Committee considered, with respect to the members of its interview pool. In addition, as noted in "N" and "T" herein, provide the listing company with disciplinary history for the firms in the interview pool and their designated specialists.

U. Delete references to QOM from NYSE Rule 103B.

S. Preclude specialists, and anyone acting in their behalf, from offering to pay for or subsidize the cost of services or other incentives provided to a listing company in whole or in part by third parties in order to avoid even the semblance of impropriety.

V. Substitute the term "admonition letter" for "cautionary letter."

T. Provide that interview pools for the allocation of closed-end funds by the same issuer will remain operative for a nine-month period following the selection of a specialist. Any further

W. Eliminate the requirement that the Committee chair receive orientation from the QOM.

X. In order to provide an incentive for ongoing enhancement of performance

by specialist firms, add the following to the list of factors considered by a special committee consisting of certain members of the Committee, which determines the allocation of ETFs under this policy: The extent to which a specialist organization has supported in the past, and will continue to support, the Exchange's efforts to strengthen and expand its ETF market.

Y. Allow the issuer of a structured product to participate in the specialist interview via a senior official of its subsidiary participating in the issuance of the structured product.

Additionally, the following amendments are proposed to NYSE Rule 103A:

A. Delete references to SPEQ.

B. Provide new criteria for performance improvement actions, as follows:

i. SuperDOT[®] market order turnaround:

In any case where a firm:

(a) Does not turn around 90% of its DOT orders in 30 seconds or less (previously 60 seconds) during any quarter (previously two quarters) in a rolling four-quarter period; or

(b) Has two panels at the same post with 30-second turnaround percentages below 75% for any one quarter.

ii. Market Depth:

In any case where a firm has:

(a) An overall quarterly Depth score below 1.90 and more than one standard deviation below the average quarterly Depth score for all specialist firms for two consecutive quarters, or

(b) An overall quarterly Depth score below 1.90 and more than one standard deviation below the average quarterly Depth score for all specialist firms for two out of four consecutive quarters, or

(c) More than ten percent of its eligible stocks with overall quarterly Depth scores below 0.50 and the percent is more than one standard deviation above the Floor average for two consecutive quarters.

iii. Price Continuity

In any case where a firm has:

(a) An overall quarterly Continuity score that is below 1.90 and more than one standard deviation below the average quarterly Continuity score for all specialist firms for two consecutive quarters, or

(b) An overall quarterly Continuity score that is below 1.90 and more than one standard deviation below the average quarterly Continuity score for all specialist firms for two out of four consecutive quarters, or

(c) More than ten percent of its eligible stocks with overall quarterly Continuity scores below 0.50 and the percent is more than one standard

deviation above the Floor average for two consecutive quarters.

Further, the Exchange proposes to eliminate references to SPEQ and add references to the proposed objective measures in NYSE Rule 123E (Specialist Combination Review Policy).

Finally, the Exchange proposes to add NYSE Rule 103B to the list of rules for which summary fines are available, specifically NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules) to allow the Exchange to sanction members' and member organizations' less serious violations of NYSE Rule 103B pursuant to the minor fine provisions of NYSE Rule 476A.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act¹⁷ because it is 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. The Exchange believes that the proposed rule change is consistent with these objectives in that it enables the Exchange to further enhance the process by which securities are allocated.

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

The Exchange believes that the proposed rule 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 not solicited, and does not intend to solicit, comments regarding the 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

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 such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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, 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. Please include File Number SR-NYSE-2005-40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2005-40. 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-2005-40 and should be submitted on or before May 3, 2006.

¹⁷ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53600; File No. SR-NYSEArca-2006-07]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to Exchange Fees and Charges

April 4, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 21, 2006, NYSE Arca, Inc. ("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 Exchange. On March 31, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii),⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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 proposes to amend its Schedule of Fees and Charges for Exchange Services ("Schedule") in order to assess a royalty fee on options contracts traded on certain Exchange Traded Funds ("ETFs"). The text of the proposed rule change, as amended, is available on the Exchange's Web site at <http://www.nysearca.com>, at the Exchange'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, as amended, and discussed any comments it received on the proposal. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule in order to assess a \$0.10 royalty fee on options contracts traded on the following ETFs: the Russell 1000 Index Fund (IWB), The Russell 1000 Value Index Fund (IWD), the Russell 2000 Index Fund (IWM), the Russell 2000 Value Index Fund (IWN), the Russell 2000 Growth Fund (IWO), and the Russell Midcap Index Fund (IWR). The Exchange proposes to charge \$0.10 per contract side on all market maker, firm and broker dealer transactions. According to the Exchange, consistent with the present Schedule, customers will not be assessed the royalty fee.

The Exchange also proposes to add additional language to footnote 6 of the Trade-Related Charges section of the Schedule. According to the Exchange, this language is being added to cross reference an existing section in the Schedule that contains information on how royalty fees associated with Options Strategy Executions are assessed. These fees are explained under the "Limit of Fees on Options Strategy Executions" section of the Schedule. The Exchange notes that the additional language to this footnote simply serves as a reference to the existing explanation.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its

members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change, as amended, 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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁹ since it establishes or changes a due, fee or other charge imposed by 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 the furtherance of the purposes of the Act.¹⁰

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. Please include File Number SR-NYSEArca-2006-07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ The effective date of the original proposed rule change is March 21, 2006, and the effective date of Amendment No. 1 is March 31, 2006. 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 March 31, 2006, the date on which the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made clarifying changes to the rule text and purpose section of the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).