

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 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-2005-10 and should be submitted by March 24, 2005.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) thereunder.<sup>12</sup> The proposed rule change would facilitate the listing and trading of options on certain types of narrow-based securities indexes on the Exchange for the benefit of its members and their customers, specifically those that are calculated using the modified capitalization-weighted methodology and otherwise meet all applicable generic listing standards under ISE Rule 2002(b). Accordingly, the Commission believes that approving this proposed rule change, as amended, would promote a fair, orderly, and competitive options market.

The Exchange has requested that this proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.<sup>13</sup> The Commission finds good cause for approving this proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that accelerating the effectiveness of the proposed rule change, as amended, would facilitate the availability of additional investment choices to investors. In addition, the Commission notes that it has previously approved the modified market capitalization methodology in generic listing standards for other derivative products. Accordingly, the Commission

believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,<sup>14</sup> to approve the proposal, as amended, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-ISE-2005-10), as amended, is hereby approved on an accelerated basis.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-848 Filed 3-2-05; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51264; File No. SR-NYSE-2005-07]

#### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Proposed Changes to Exchange Rules 440F ("Public Short Sale Transactions Effected on the Exchange") and 440G ("Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations")

February 25, 2005.

On January 11, 2005, the New York Stock Exchange, Inc. (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "SEC" or the "Commission") the proposed rule change 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 thereunder,<sup>3</sup> a proposed rule change relating to the inclusion of certain short-exempt sales on Reports of Short Interest (*i.e.*, NYSE Forms SS20 and 121). This order approves the proposed rule change.

The proposed rule change was published for notice and comment in the **Federal Register** on January 26, 2005.<sup>4</sup> The Commission did not receive comments on the foregoing proposed rule change.

The Commission has carefully reviewed the proposed rule change and

finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of section 6 of the Exchange Act.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest; and the prompt and accurate clearance and settlement of securities transactions.<sup>7</sup>

The Commission notes that the NYSE proposal amends Exchange Rule 440F, which requires members and member organizations to report round-lot short sale transactions for public customers on Form SS20, and Exchange Rule 440G, which requires members and member organizations to report round-lot short sale transactions for members, allied members or member organizations on Form 121, to include certain short-exempt sale transactions. Currently, short-exempt sales are excluded when computing the total short interest on the forms, under Rules 440F and 440G, respectively. However, the Commission's Pilot Order issued pursuant to Rule 202T of Regulation SHO<sup>8</sup> greatly increased the number of short-exempt sales transactions. Under the terms of the Commission's Pilot Order, sales in certain "designated securities" should be marked "short-exempt."<sup>9</sup> The Commission finds that

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

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

<sup>8</sup> 17 CFR 242.202T.

<sup>9</sup> See Securities Exchange Act Release No. 50104 (July 28, 2004), 69 F.R. 48032 (August 6, 2004) ("Pilot Order"), available at <http://www.sec.gov/rules/other/34-50104.htm>; see also Securities Exchange Act Release No. 50747 (November 29, 2004), 69 FR 70480 (December 6, 2004), available at <http://www.sec.gov/rules/other/34-50747.htm> (Second Pilot Order). The Pilot Order provided for a one-year pilot program ("Pilot Program"), under which short sale price tests are suspended for short sales in: (1) Certain "designated securities" identified in Appendix A to the SEC's Pilot Order; (2) any security included in the Russell 1000 Index effected between 4:15 p.m. EST and the open of the consolidated tape on the following day; and (3) any security not included in (1) and (2) above effected

Continued

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(1).

<sup>14</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<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.

<sup>4</sup> See Securities Exchange Act Release No. 51054 (January 18, 2005), 70 FR 3758.

including the designated securities subject to the Pilot Order, regardless as to whether they are marked "short-exempt," is consistent with the requirements of the Exchange Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act, that the proposed rule change (SR-NYSE-2005-07) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. E5-846 Filed 3-2-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51249; File No. SR-NYSE-2005-05]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Requirements for Listing Stock Index Warrants

February 24, 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 January 7, 2005, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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 NYSE 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

The Exchange proposes to eliminate Exchange Rules 414(l) and 414(n). The Exchange also proposes to amend

in the period between the close of the consolidated tape (*i.e.*, after 8 p.m. EST) and the open of the consolidated tape the following day. The Commission's Second Pilot Order delayed the start date of the Pilot Program to May 2, 2005.

<sup>10</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).

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

section 703.17 of the NYSE's Listed Company Manual ("Manual") to incorporate those provisions.

#### 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 and discussed any comments it received on the proposed rule change. The text of the proposed rule change is available on NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room. 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

Exchange Rule 414(l) requires that stock index warrants base settlement value on opening prices when 25 percent or more of the value of the index consists of securities primarily traded in the United States. Exchange Rule 414(n) requires that issuers of stock index warrants to notify the Exchange immediately of any changes in the number of warrants outstanding that the Exchange may prescribe due to the early exercise of the warrants. The Exchange believes it is appropriate that the requirements set forth in Exchange Rules 414(l) and 414(n) be set forth in the Manual rather than in Exchange Rules, as the Exchange Rules are generally applicable only to member organizations while the Manual is generally applicable to listed companies. The Exchange represents that the proposed amendments to Section 703.17 of the Manual incorporate the substantially similar provisions of Exchange Rules 414(l) and (n).

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,<sup>5</sup> in general, and section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is 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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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 foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NYSE has asked that the Commission waive the 30-day operative delay and the five-day pre-filing notice requirement. The Commission believes that waiver of the five-day pre-filing notice requirement is consistent with the protection of investors and the public interest, since the proposed rule change relocates provisions from the Exchange Rules to the Manual, without substantial change to the rule text. Thus, the Commission waives this pre-filing notice provision. However, waiver of the 30-day operative period is unnecessary because the Exchange currently does not trade stock index warrants.<sup>9</sup>

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> Telephone conference between John Carey, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on February 24, 2005.