

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52251; File No. SR-NYSE-2005-47)

August 12, 2005

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

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 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,³ and paragraph (f)(6) of Rule 19b-4 under the Act,⁴ which renders the proposal effective upon receipt of this filing by the Commission.⁵ On August 10, 2005, NYSE filed Amendment No. 1 to the proposed rule change.⁶ On August 12, 2005, NYSE filed Amendment No. 2 to the proposed rule change.⁷ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 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).

⁶ NYSE withdrew Amendment No. 1 on August 11, 2005.

⁷ 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

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,⁸ 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

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.

⁸ See Securities Exchange Act Release No. 51524 (April 12, 2005) announcing Administrative Proceeding File No. 3-11892 (the “Administrative Proceeding”).

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)⁹ that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,

⁹ 15 U.S.C. 78f(b)(5).

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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.¹²

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 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.

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 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, 2005.¹³

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:

¹³ 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. 15 U.S.C. 78c(f).

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-2005-47 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 [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).