

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51264; File No. SR-NYSE-2005-07)

February 25, 2005

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”)

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

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<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.

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

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<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.

be marked “short-exempt.”<sup>9</sup> The Commission finds that 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

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<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 in the period between the close of the consolidated tape (*i.e.*, after 8:00 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).