

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52154; File No. SR-NYSE-2005-51)

July 28, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the “All or None” and “Fill or Kill” Order Types in the Exchange’s Equity Market

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 20, 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 NYSE. The Exchange filed the proposal 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 proposal 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 amend Exchange Rules 13, 79A.15, 123B, and 806 in order to eliminate the All or None (“AON”) and Fill or Kill (“FOK”) order types in the Exchange’s equity market. The text of the proposed rule change is available on NYSE’s

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<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).

Web site ([www.nyse.com](http://www.nyse.com)), at 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 and discussed any comments it received on 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

Exchange Rule 13 defines AON orders and FOK orders. An AON order is defined as:

A market or limited price order which is to be executed in its entirety or not at all, but, unlike a fill or kill order, is not to be treated as cancelled if not executed as soon as it is represented in the Trading Crowd. The making of "all or none" bids or offers in stocks is prohibited and the making of "all or none" bids or offers in bonds is subject to the restrictions of Rule 61 and Rule 86.

An AON order cannot be represented in the Exchange's published best bid/offer due to the conditional nature of its execution.

An FOK order is defined as:

A market or limited price order which is to be executed in its entirety as soon as it is represented in the Trading Crowd, and such order, if not so executed, is to be treated as cancelled. For purposes of this definition, a "stop" is considered an execution.

The Exchange proposes to eliminate the above two order types in its equity

market because, according to the Exchange, such order types are infrequently used and represent a very small percentage of order flow, less than one-tenth of 1% (approximately .06% for AON orders and .00028% for FOK orders). The average number of AON orders is approximately 12,000 per day and the average number of FOK orders is approximately 55 orders per day, out of approximately 20 million orders received by the Exchange per day. Approximately 65% of all AON orders are cancelled. In addition, the Exchange stated that, in informal discussions it had with both buy-side and sell-side customers, such customers did not object to the proposed elimination of these order types. Furthermore, the Exchange believes that the wider availability of immediate or cancel orders, as proposed in the Exchange Hybrid Market filings,<sup>5</sup> would provide a useful substitute for customers seeking similar types of executions. In addition, both order types would continue to exist for purposes of the Automated Bond System<sup>®</sup>, as discussed in Exchange Rule 86. Exchange Rule 13 also would be amended to clarify this.

In addition to Exchange Rule 13, the proposed rule change would eliminate references to AON orders and FOK orders in Exchange Rules 79A.15(6) (Miscellaneous Requirements on Stock and Bond Market Procedures), 123B (Exchange Automated Order Routing Systems), and 806 (Taking or Supplying Baskets Named in Order).

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<sup>5</sup> See Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004) (Amendment No. 1 to SR-NYSE-2004-05); 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004) (Amendment Nos. 2 and 3 to SR-NYSE-2004-05); and 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR-NYSE-2004-05).

## 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>6</sup> that an exchange have rules that are designed 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 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 believes that the proposed rule change would 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

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder<sup>8</sup> because the proposal: (i) does not significantly

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

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

affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission 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 satisfied the five-day pre-filing requirement. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to eliminate two infrequently used order types, which may increase the efficiency of the Exchange. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>9</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.<sup>10</sup>

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

<sup>9</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2005-51 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-NYSE-2005-51. 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 Section, 100 F Street, NE,

Washington, DC 20549. 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-2005-51 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.<sup>11</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).