

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54610; File No. SR-NYSE-2006-84)

October 16, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Pilot to Put into Operation Certain Rule Changes Pending before the Securities and Exchange Commission to Coincide with the Exchange's Implementation of Phase 3 of the NYSE HYBRID MARKET<sup>SM</sup>

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 October 13, 2006, the New York Stock Exchange LLC ("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. 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

NYSE proposes to make a technical amendment to Rule 104.10(6)(P3) which was part of the pilot ("Pilot")<sup>5</sup> to put into operation certain rule changes pending before the Commission to coincide with the Exchange's implementation of Phase 3 of the NYSE HYBRID MARKET<sup>SM</sup>

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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).

<sup>5</sup> See Securities Exchange Act Release No. 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006).

(“Hybrid Market”)<sup>6</sup>. The Exchange further proposes to add a security to those operating under the Pilot that are identified in Exhibit 3 of the Pilot filing. The text of the proposed rule change is available on the Exchange’s Web site ([www.nyse.com](http://www.nyse.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 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 self-regulatory organization 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

On October 5, 2006, the Exchange proposed a Pilot to, among other things, make operative certain proposed modifications to Exchange Rules that are the subject of pending rule filings<sup>7</sup> before the Commission to coincide with the Exchange’s implementation of Phase 3 of

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<sup>6</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

<sup>7</sup> See Securities Exchange Act Release Nos. 54504 (September 26, 2006), 71 FR 57011 (September 28, 2006) (proposing to amend the specialist stabilization requirements set forth in Exchange Rule 104.10) (“Stabilization Filing”); 54520 (September 27, 2006), 71 FR 57590 (September 29, 2006) (proposing to amend several Exchange Rules to clarify certain definitions and systemic processes) (“Omnibus Filing”); and SR-NYSE-2006-73 (filed on September 13, 2006) (proposing to amend Exchange Rule 127 which governs the execution of a block cross transaction at a price outside the prevailing NYSE quotation) (“Block Cross Filing”).

the Hybrid Market. The Pilot commenced following Commission approval, on October 5, 2006 and is scheduled to terminate at the close of business on October 31, 2006.

Through this filing the Exchange seeks to make a technical amendment to Rule 104.10(6)(P3). Specifically, pursuant to the Pilot, in order to eliminate possible confusion as to which Exchange Rules or sections apply to the securities operating pursuant to the Pilot (“Pilot securities”)<sup>8</sup>, the Exchange identified the rules operational during the Pilot with a “P3.” A typographical error identified subparagraph (iv) under Exchange Rule 104.10(6)(P3) with a “P4.” As a result, that subparagraph currently appears as follows:

(iv)(P4) Re-entry Obligations for Conditional Transactions:

The Exchange seeks to delete the number “4” after the letter “P” and replace it with the number “3” in order accurately reflect that subparagraph’s inclusion in the Pilot.

The Exchange further seeks to add a security to the Pilot securities. The Exchange identified the specific securities included in the Pilot securities in the form of an Exhibit 3 to the Pilot filing. Included in the Pilot securities was Agilent Technologies, Inc. which is traded on the Exchange under the stock symbol “A.” On or about October 16, 2006, Agilent will distribute the results of a spin-off. Anyone who purchases the stock after the distribution date would not be entitled to the distribution. Accordingly, on Monday, October 16, 2006, Agilent stock in an “ex-distribution” form will begin trading on the Exchange under the stock symbol “A.WD.” A.WD will trade at the same post and panel as Agilent. Given the relationship between Agilent and A.WD stock, the Exchange requests to have A.WD included in the Pilot securities.

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<sup>8</sup> Phase 3 Pilot Securities are also posted on the Exchange’s Web site.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that 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 also designed to support the principles of Section 11A(a)(1) of the Act<sup>11</sup> in that it seeks to assure economically efficient execution of securities transactions.

### 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.<sup>12</sup>

## 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) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78k-1(a)(1).

<sup>12</sup> The Commission notes that it has received comments on the Omnibus Filing and the Stabilization Filing.

the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the correction of the rule reference as a Pilot rule should provide clarity as to which rules are applicable to the Pilot securities. Further, the Commission believes that adding A.WD as a Pilot security is appropriate so that it and its related security, A, are traded in a similar manner on the Exchange. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</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. See 15 U.S.C. 78c(f).

#### 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-2006-84 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2006-84. 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-2006-84 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>17</sup>

Nancy M. Morris  
Secretary

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