

SECURITIES AND EXCHANGE COMMISSION
(Release No. 50109; File No. SR-NYSE-2004-35)

July 28, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to a Specialist License Fee for Investment Company Units

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 June 30, 2004, 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, II, and III below, which Items have been prepared by the Exchange. 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 NYSE proposes to charge a Specialist License Fee to the specialist allocated an issue of investment company units ("ICUs") for which the Exchange pays a license fee to a third party in connection with trading of such series on the Exchange pursuant to unlisted trading privileges.³ The text of the proposed rule change is provided below. Proposed new language is italicized.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The NYSE represents that currently it does not incur third-party license fees for listed ICUs. Telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Frank N. Genco, Division of Market Regulation, Commission, on July 27, 2004.

Price ListSpecialist License Fee

<u>Specialist License Fee—payment by the specialist allocated an issue of Investment Company Units of any license fee payable by the Exchange to a third party in connection with trading on the Exchange of such issue pursuant to unlisted trading privileges—billed quarterly.*</u>	<u>As of July 1, 2004 through December 31, 2004, 100% of the amount payable by the Exchange, provided that the amount billed to the specialist for the third and fourth quarters of 2004 will not exceed the amount payable by the Exchange for the first and second quarters of 2004; as of January 1, 2005, 50% of the amount payable by the Exchange.</u>
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*A license fee applicable to multiple issues of Investment Company Units allocated to more than one specialist will be apportioned to such specialists based on the consolidated share volume represented by each issue subject to such license fee.

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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 NYSE 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 NYSE 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

The Exchange currently trades a number of issues of ICUs, also known as exchange-traded funds, for which the Exchange pays a license fee to a third party in connection with Exchange trading. The Exchange proposes to impose a Specialist License Fee on each specialist allocated an ICU issue that trades on the Exchange pursuant to unlisted trading privileges ("UTP") for which the Exchange pays a license fee. Between July 1, 2004, and December 31, 2004, the Exchange proposes to bill each such specialist quarterly for 100% of the applicable license fee payable by the Exchange, provided that the total amount billed to such specialist for the third and fourth quarters of 2004 will not exceed the amount of license fees payable by the Exchange for the first and second quarters of 2004. As of January 1, 2005, the Specialist License Fee will be billed to the specialist quarterly at 50% of the amount payable by the Exchange.

A license fee applicable to multiple issues of ICUs allocated to more than one specialist will be apportioned among such specialists based on the consolidated share volume represented by each issue subject to such license fee.

The Exchange believes it is appropriate to pass through to the specialist a portion of the ICU license fees payable by the Exchange in order to alleviate part of the financial obligation incurred by the Exchange in connection with trading ICUs for which third parties require licenses. The Specialist License Fee will operate on a partial cost recovery basis. The fee will apply to all ICUs currently traded on the Exchange pursuant to UTP for which the Exchange is required to pay a license fee, and to all such ICUs that may trade pursuant to UTP in the future.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁴ which requires that the rules of an exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and subparagraph (f)(2) of Rule 19b-4⁶ thereunder, because it establishes or changes a due, fee, or other charge.

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.⁷

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ See 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. Please include File Number SR-NYSE-2004-35 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-35. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-2004-35 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.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).