

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51695; File No. SR-NYSE-2005-30)

May 13, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Reduction of Transaction Fees for Exchange-Listed Exchange Traded Funds

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 April 27, 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, II, and III, below, which Items have been prepared by the NYSE. On May 9, 2005, the NYSE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change has been filed by the NYSE as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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, as amended, from interested persons.

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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> See Partial Amendment, dated May 9, 2005 (“Amendment No. 1”). In Amendment No. 1, the NYSE made technical corrections to the rule text of the proposed rule change.

For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on May 9, 2005, the date on which the Exchange submitted Amendment No. 1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce the Exchange Traded Fund (“ETF”) transaction fees for transactions in Exchange-listed ETFs<sup>6</sup> to \$0.30 per round-lot for on-Floor proprietary transactions (specialist and other), capped at \$300 per trade, and \$0.30 per round-lot for off-Floor transactions (customer and broker/dealer), capped at \$100 per trade. The Exchange stated that it intends the reduction in these ETF transaction fees to take effect on April 27, 2005. Proposed new language is italicized; proposed deletions are in [brackets].

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2005 Price List

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Transaction Fees

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Regular Session Trading

Equity Transactions

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Exchange Traded Funds – Public Agency and Principal

Transactions

Broker/Dealer – price per round-lot	<del>[\$0.60]</del> <u>0.30</u>
Maximum price per trade	100.00
System Orders under 5,100 shares (4)	No Charge

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<sup>6</sup> Telephone conversation on May 13, 2005, among Michael Cavalier, Assistant General Counsel, NYSE; David Hsu, Special Counsel, Division of Market Regulation (“Division”), Commission; and David Michehl, Attorney, Division, Commission.

Specialists and other on-floor proprietary trading – price per round-lot	[0.63] <u>0.30</u>
Maximum price per trade	300.00
Exchange Traded Funds admitted to dealings on an unlisted trading privileges (UTP) basis (5)	No Charge

Notes:

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(4) Not inclusive of orders of a member or member organization trading for its own account as a competing market maker, or trading as an agent for the account of a non-member competing market maker. Competing Market Maker: a specialist or market-maker registered as such on a registered stock exchange (other than the NYSE), or a market- maker bidding and offering over-the-counter, in a New York Stock Exchange traded security.

(5) There is a transaction fee moratorium on ETF Products traded on a UTP basis. This moratorium will be in effect until further notice.

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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 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

The Exchange currently imposes transaction fees for trades in ETFs of \$0.63 per 100 shares for specialists (capped at \$300 per trade) and \$0.60 per 100 shares for customer and broker-dealer orders (capped at \$100 per trade). There is no charge for System orders (i.e., orders entered through SuperDot) up to 5,099 shares, subject to certain exceptions for competing market maker orders. The Exchange does not currently charge transaction fees for transactions in ETFs traded on the Exchange pursuant to unlisted trading privileges. For purposes of the Exchange's ETF transaction fee schedule, ETFs include Investment Company Units, Trust Issued Receipts and streetTRACKS® Gold Shares.

The Exchange proposes to reduce the ETF transaction fees for transactions in Exchange-listed ETFs<sup>7</sup> to \$0.30 per round-lot for on-Floor proprietary transactions (specialist and other), capped at \$300 per trade, and \$0.30 per round-lot for off-Floor transactions (customer and broker/dealer), capped at \$100 per trade. The Exchange believes reduced transaction fees are necessary for the Exchange to maintain or improve its competitive position compared to other markets trading ETFs, and that reduced costs would benefit Exchange members and the investing public. The Exchange stated that it intends the reduction in these ETF transaction fees to take effect on April 27, 2005.

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<sup>7</sup> Id.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and 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, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose 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, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>10</sup> and paragraph (f)(2) of Rule 19b-4 thereunder,<sup>11</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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:

##### 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-2005-30 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-2005-30. 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, as amended, 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 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-2005-30 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>12</sup>

Margaret H. McFarland  
Deputy Secretary

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