

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51999; File No. SR-NYSE-2004-69)

July 08, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto to Establish Rules for the Trading of Unlisted Debt Securities on the Exchange's Automated Bond System

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 December 3, 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 NYSE. On March 15, 2005, the NYSE filed Amendment No.1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NYSE proposes Exchange Rules 1400 and 1401 relating to the trading of unlisted debt securities on its Automated Bond System® ("ABS"). The text of the proposed rule change, as amended, is available on NYSE's Web site (<http://www.nyse.com>), at the NYSE's principal office, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1, which replaced and superceded the original filing in its entirety, restated the scope of the NYSE's requested exemption, described in Section II(A)(1), below; provided the name of the tracking service, Xcitek, that would provide the NYSE a customized on-line reference for corporate actions relevant to bonds; provided additional discussion of the definition of "Debt Securities" under proposed NYSE Rule 1400; described additional scenarios in proposed NYSE Rule 1401 under which the Exchange would suspend trading on ABS of unlisted Debt Securities; and discussed the effect that the proposed rule change would have on existing NYSE Rule 396.

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 had 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

On May 26, 2005, separately from this rule proposal, the Exchange submitted a letter (the “2005 Exemptive Request Letter”) to the Commission requesting that the Commission, pursuant to Section 36 of the Act,⁴ issue an exemption from Section 12(a) of the Act⁵ that would permit NYSE members and member organizations to trade certain debt securities on ABS that are not registered under Section 12(b) of the Act.⁶ Section 12(a) provides in relevant part that it shall be unlawful for any “member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange.” The Exchange requested that this exemption be granted in connection with debt securities that satisfy the following conditions:

⁴ 15 U.S.C. 78mm.

⁵ 15 U.S.C. 78l(a).

⁶ 15 U.S.C. 78l(b).

- (a) The issuer of the debt securities registered the offer and sale of that class of debt securities under the Securities Act of 1933 (“1933 Act”);⁷
- (b) The issuer of the debt securities or the issuer’s parent, if the issuer is a wholly owned subsidiary, has at least one class of common or preferred equity securities registered under Section 12(b) of the Act and listed on the NYSE; and
- (c) The transfer agent for the debt securities is registered under Section 17A of the Act.⁸

In the 2005 Exemptive Request Letter, the NYSE stated that it would take or has taken the following steps in connection with the exemptive request:

- (a) The NYSE would provide definitions of “listed” debt securities and “traded” debt securities on the ABS log-on screen and on the NYSE’s Web site;
- (b) The NYSE would distinguish between “listed” debt securities and “traded” debt securities on ABS and on the NYSE Web site’s bond issue directory;⁹
- (c) The NYSE would directly provide each member organization and each listed company notification via letter and/or e-mail prior to the date that trading of the debt securities commences on ABS to clarify the distinction between “listed” debt

⁷ 15 U.S.C. 77a *et seq.*

⁸ 15 U.S.C. 78q-1.

⁹ The NYSE would distinguish debt securities "listed" on ABS from those "traded" on ABS on the three different screens used to view the market and through which orders may be entered: (1) the book showing all the orders in a particular security; (2) the summary book showing aggregate interest at each price in a particular security; and (3) the display of the best bid/offer, price range, and calculated accrued interest in a particular security. As would be clearly noted on the ABS log-on screen, “listed” debt securities would be identified by a letter or symbol, and “traded” debt securities would be identifiable due to the absence of such letter or symbol. The location of the indicator would be the same on all three screens.

securities and “traded” debt securities and to provide notification that eligible listed debt securities would be delisted and, instead, traded on ABS;

- (d) The NYSE would issue a press release upon launch of this initiative stating that “listed” debt securities trade along side “traded” debt securities on ABS; and
- (e) The NYSE has contracted with Xcitek, LLC (“Xcitek”), a third-party bond issue tracking service, for the provision of information prior to the date that action on the NYSE’s exemption request is taken by the Commission.

Xcitek’s tracking service provides the NYSE a customized on-line reference for corporate actions relevant to bonds, including:

- Notification of calls (redemptions) of traded bonds;
- Notification of tender offers for traded bonds;
- Notice of defaults in payment of interest on traded bonds;
- Notice of consent solicitations for traded bonds; and
- Notice of corporate actions for traded bonds (includes tender offers, issuer name changes, and CUSIP number changes).

The tracking system does not provide notification of changes in trustees, obligors, or transfer agents with respect to traded debt securities. The NYSE has entered into a one-year contract with Xcitek to provide this information electronically on a daily basis. Xcitek independently obtains, researches, and organizes the information. The NYSE does not itself verify information provided by Xcitek. To the extent that, in the future, Xcitek is no longer willing or able to provide this information, the NYSE would contract with another third party for the provision of similar information.

Exchange bond trading is conducted through ABS, which began operations in 1977. If the Commission grants the NYSE's request for exemptive relief, the Exchange would allow NYSE members and member organizations to commence trading certain debt securities on ABS that are not registered under Section 12 of the Act.¹⁰ ABS is a Web-based trading system for fixed income securities to which Exchange member firms may subscribe and through which they enter and match customer bond orders on a strict price-and-time priority basis. The system provides member subscribers with access to screens that display the order "book" in each bond in best-priced order and in the time sequence received. Completed, locked-in trades are submitted to the Depository Trust Clearing Corporation with calculated accrued interest. ABS centralizes bond trading and facilitates the high-speed dissemination of last sale prices and quotations to market data providers via the Exchange's dedicated bond quote line. ABS primarily serves the "small-lot" corporate bond market. Small-lot bond buyers and sellers are primarily individuals, bank trust accounts, and small institutions. In addition, bond dealers use ABS to offset so-called "tail-end" bond positions acquired in the course of large-lot trading. ABS is the only system, known to the NYSE, to provide the public with real-time disclosure of debt quotations and trade prices, exclusive of mark-ups/mark-downs, commissions, or other charges.

In connection with its request for exemptive relief, the Exchange proposes to adopt NYSE Rules 1400 and 1401 that would specify that certain unregistered, unlisted debt securities may be traded by NYSE members and member organizations on ABS and to specify the quantitative standards that must be met and the qualitative standards that would be considered by the NYSE for unlisted debt securities to be initially and continually traded on ABS.

¹⁰ 15 U.S.C. 78j.

Proposed NYSE Rule 1400 would state that the term “Debt Securities” for purposes of determining which securities are eligible to be traded on ABS would include any unlisted note, bond, debenture, or evidence of indebtedness that is:

- (1) statutorily exempt from the registration requirements of Section 12(b) of the Act, or
- (2) eligible to be traded absent registration under Section 12(b) of the Act pursuant to any exemption granted by the Commission in response to the 2005 Exemptive Request Letter.

Debt Securities that fall into the first category include those issued by entities that are themselves exempt from the registration under the Act on a statutory basis, such as those issued by the Tennessee Valley Authority and the International Bank for Reconstruction and Development (World Bank).

For purposes of the second category, proposed NYSE Rule 1400 would provide that - to be eligible to be traded by NYSE members, brokers, and dealers on ABS on an unregistered, unlisted basis - the term “Debt Securities” would mean securities that,

“if they were to be listed on the NYSE, would be listed under Sections 102.03 or 103.05 of the NYSE’s Listed Company Manual; provided, however, that such securities shall not include any security that is defined as an "equity security" under Section 3(a)(11) of the Exchange Act. For the avoidance of doubt, note that the term Debt Securities does not include a security that, if listed on the NYSE, would have been listed under Sections 703.19 or 703.21 of the NYSE’s Listed Company Manual. The references in this Rule to Sections 102.03, 103.05, 703.19, and 703.21 of the NYSE’s Listed Company Manual are to those sections as in effect on January 31, 2005.”

The effect of this proposed definition would be to limit the class of unregistered, unlisted debt securities that may be traded on ABS by NYSE members and member organizations to straight-debt securities. Debt Securities that would not satisfy the proposed requirements for trading would include convertible debt securities (deemed equity securities under Section 3(a)(11) of the Act¹¹); structured products (required to be listed under Sections 703.19 or 703.21 of the NYSE Listed Company Manual); debt issued by listed company subsidiaries that are not wholly owned; foreign government debt; and debt issued by an issuer that does not have equity securities listed on the NYSE.

Proposed NYSE Rule 1401 would specify that the Exchange would permit only unlisted Debt Securities with an outstanding market value or principal amount of at least \$10 million to be traded by NYSE members and member organizations on ABS. Proposed NYSE Rule 1401 also would specify that trading would be suspended if:

- (a) the outstanding aggregate market value or principal amount of the Debt Securities has fallen to less than \$1,000,000; or
- (b) the Debt Securities either:
 - (1) no longer qualify for a statutory exemption from the registration requirements of Section 12(b) of the Act, or
 - (2) may no longer be traded by NYSE members or member organizations on an unregistered basis pursuant to any exemption granted by the Commission in response to the 2005 Exemptive Request Letter.

To ensure that Debt Securities have at least \$10,000,000 in aggregate market value or principal amount at the time trading commences, the NYSE would review two existing corporate

¹¹ 15 U.S.C. 78c(a)(11).

bond issue data bases that provide issue size information for the preponderance of corporate bonds.

To monitor the \$1,000,000 suspension threshold, the NYSE generally would utilize Xcitek to monitor partial redemptions and tender offers. The most prevalent reason for outstanding principal amounts to fall below \$1,000,000 is when the price of the bond declines because of a default or potential bankruptcy. The NYSE would monitor the prices of bonds in these situations. The NYSE also would monitor the media for warnings of possible difficulties in addition to ratings downgrades.

With respect to debt securities that are currently listed on the NYSE, the Exchange intends to apply to the Commission to delist debt securities that would satisfy the NYSE's requirements for traded debt and, instead, to trade those debt securities on ABS on an unlisted basis. As described above, the NYSE would contact listed companies to notify them that eligible listed debt securities would be delisted and, instead, traded on ABS.

The NYSE also would inform listed companies of its intention to identify currently outstanding or newly issued unlisted debt securities that would be eligible to be traded by NYSE members and member organizations on ABS. The NYSE's Fixed Income Markets Division would review a variety of sources, including 1933 Act filings and bond offerings posted daily in financial publications, to identify additional unlisted debt securities that have been issued by an NYSE equity-listed company or wholly owned subsidiary thereof and that satisfy the requirements of proposed NYSE Rules 1400 and 1401. The NYSE intends to provide an opportunity for NYSE members and member organizations to trade all eligible debt securities. Once unlisted debt securities are identified and verified as satisfying the requirements of proposed NYSE Rules 1400 and 1401, the NYSE would notify its members and member

organizations that such unlisted debt securities are eligible to be traded on ABS through ticker notices and postings on the ABS Web site.

Debt securities that do not satisfy the requirements of proposed NYSE Rules 1400 and 1401 could continue to be listed on the NYSE. Debt securities that would not satisfy the proposed requirements for trading include convertible debt securities; debt securities that were listed under Sections 703.19 and 703.21 of the NYSE's Listed Company Manual; debt issued by listed company subsidiaries that are not wholly owned; foreign government debt; and debt issued by an issuer that does not have an equity security listed on the NYSE.

Debt securities traded on ABS would not be subject to the provisions of the NYSE's Listed Company Manual that relate to debt securities that are listed on the NYSE. While both traded and listed debt securities would be subject to the same quantitative thresholds for initial trading/listing and continued trading/listing, listed debt securities are also subject to other requirements, including:

- Providing immediate notice to the NYSE and the public of defaults or other unusual circumstances relating to the payment of interest;
- Providing immediate notice to the NYSE and the public of any corporate action it (or third parties) may take towards the redemption, retirement, or cancellation of the security;
- Certain requirements for transfer agents; and
- Submission of a listing application to list the securities.

As noted above, in the case of traded debt securities, the NYSE would obtain notice regarding defaults and redemptions through the third-party tracking system.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act¹² that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to, and perfect the mechanism of a free and open market; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change, as amended, could result in 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NYSE consents, the Commission will:

- A. by order approve such proposed rule change, as amended; or
- B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

¹² 15 U.S.C. 78f(b)(5).

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. Please include File Number SR-NYSE-2004-69 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-2004-69. 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 Room, 100 F Street, NE, Washington, DC 20549-9303. 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 publicly available. All submissions should refer to File Number SR-NYSE-2004-69 and should be submitted on or before [insert date 30 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

J. Lynn Taylor
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).