

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52160; File No. SR-NYSE-2005-49)

July 28, 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 Removal of Size and Frequency Restrictions on Orders Entered through Direct+ in Investment Company Units, Trust Issued Receipts and streetTRACKS® Gold Shares

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 July 15, 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 the Exchange. On July 26, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange filed the proposed rule change as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act,⁴ which rendered 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.

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

The proposed rule change would amend NYSE Rule 13 in order to eliminate the 10,000 share size restriction for orders entered through NYSE Direct+® (“Direct+”) in Investment Company Units, as defined in paragraph 703.16 of the Listed Company Manual, Trust Issued Receipts (such as HOLDRs), as defined in NYSE Rule 1200, streetTRACKS® Gold Shares, as

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made non-substantive changes to the text of the proposed rule change.

⁴ 17 CFR 240.19b-4(f)(6).

defined in NYSE Rule 1300, and any other product subject to the same rules as Investment Company Units (collectively “ETFs”). In addition, the 30-second time restriction in NYSE Rule 1005 is proposed to be eliminated for ETF orders entered through Direct+. Below is the text of the proposed rule change. Proposed additions are in *italics* and proposed deletions are in [brackets].

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Rule 13. Definitions of Orders

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Auto Ex Order

Except as provided below, [A] an auto ex order is a limit order of 1099 shares or less priced at or above the Exchange’s published offer (in the case of an order to buy) or at or below the Exchange’s published bid (in the case of an order to sell), which a member or member organization has entered for automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000-1005.

[Pursuant to a pilot program to run until December 23, 2004,] Auto ex orders in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), [or] Trust Issued Receipts (as defined in Rule 1200), streetTRACKS® Gold Shares (as defined in Rule 1300), or any product subject to the same rules as Investment Company Units may be entered as limit orders in an amount greater than 1099 shares. [The pilot program shall provide for a gradual, phased-in raising of order size eligibility, up to a maximum of 10,000 shares. Each raising of order size eligibility shall be preceded by a minimum of a one-week advance notice to the Exchange’s membership.]

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Rule 1005. Orders May Not Be Broken Into Smaller Amounts

Except for orders in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), Trust Issued Receipts (as defined in Rule 1200), or streetTRACKS® Gold Shares (as defined in Rule 1300), or any product subject to the same rules as Investment Company Units, [A] an auto ex order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such order in a stock[, Investment Company Unit (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipt (as defined in Rule 1200)], unless the orders are entered by means of separate order entry terminals, and the member or member organization responsible for entry of the orders to the Floor has procedures in place to monitor compliance with the separate terminal requirement.

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Rule 1300. streetTRACKS® Gold Shares

(a) The provisions of this Rule 1300 series apply only to streetTRACKS® Gold Shares, which represent units of fractional undivided beneficial interest in and ownership of the streetTRACKS® Gold Trust. While streetTRACKS® Gold Shares are not technically Investment Company Units and thus are not covered by Rule 1100, all other rules that reference “Investment Company Units,” as defined and used in [Para.] paragraph 703.16 of the Listed Company Manual, including, but not limited to Rules 13, 36.30, 98, 104, 460.10, and 1002[, and 1005] shall also apply to streetTRACKS® Gold Shares. When these rules reference Investment Company Units, the word “index” (or derivative or similar words) will be deemed to be “gold

spot price” and the word “security” (or derivative or similar words) will be deemed to be “streetTRACKS[®] Gold Trust”.

(b) As is the case with Investment Company Units, paragraph (m) of the Guidelines to Rule 105 shall also apply to streetTRACKS[®] Gold Shares. Specifically, Rule 105(m) shall be deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in physical gold, gold futures or options on gold futures, or any other gold derivatives. However, an approved person of an equity specialist entitled to an exemption from Rule 105(m) under Rule 98 may act in a market making capacity, other than as a specialist in the streetTRACKS[®] Gold Shares on another market center, in physical gold, gold futures or options on gold futures, or any other gold derivatives.

(c) Except to the extent that specific provisions in this Rule govern, or unless the context otherwise requires, the provisions of the Constitution, all other Exchange Rules and policies shall be applicable to the trading of streetTRACKS[®] Gold Shares on the Exchange. Pursuant to Exchange Rule 3 (“Security”), streetTRACKS[®] Gold Shares are included within the definition of “security” or “securities” as those terms are used in the Constitution and Rules of the Exchange.

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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

Executions of ETF Orders in Direct+ Under Existing Rules

With respect to ETFs, Direct+ currently provides for the automatic execution of straight limit orders (i.e. orders without tick restrictions) of 10,000 shares or less⁵ against trading interest reflected in the Exchange’s published quotation. ETF orders capable of execution via Direct+ are defined in NYSE Rule 13 as “auto ex” orders. It is not mandatory that all eligible ETF limit orders be entered as auto ex orders; rather, the member organization entering the ETF order (or its customer if enabled by the member organization) can choose to enter an ETF auto ex order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange’s published bid or offer price is in the customer’s best interest. Where the customer’s interests are best served by being afforded the opportunity for price improvement, the member organization (or customer) may enter a limit or market order in an ETF by means of the SuperDot® (“DOT”) system for representation in the auction market.

ETF Direct+ orders are entered through DOT with the indicator NX added to identify the order as an auto ex order. The ETF auto ex order receives an automatic execution when its limit price is equal to or better than the published bid or offer, without being exposed to the price

⁵ See Information Memorandum 03-28 (June 20, 2003) (Amendments to Direct+). The Commission approved increasing the size of Direct+ orders in Investment Company Units and Trust Issued Receipts to a maximum level of 10,000 shares. See Securities Exchange Act Release Nos. 47024 (December 18, 2002), 67 FR 79217 (December 27, 2002) (SR-NYSE-2002-37) and 50828 (December 9, 2004), 69 FR 75579 (December 17, 2004) (SR-NYSE-2004-66) (extending Direct+ through December 23, 2005).

improvement mechanism of the auction market, provided the bid or offer is still available⁶. The transaction report is returned through DOT to the member organization (or customer) that entered it.

Current Direct+ rules restrict the frequency of entry of all auto ex orders including those in ETFs. An ETF auto ex order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such ETF order, unless the orders are entered by means of separate order entry terminals, and the member or member organization responsible for entry of the orders to the Floor has procedures in place to monitor compliance with the separate terminal requirement.⁷

Proposed Rule Change

In the hybrid market filings,⁸ the Exchange is proposing, among other things, to remove size and frequency restrictions on auto ex orders. However, in order to increase the ability of customers to automatically execute orders in ETFs, the Exchange is proposing to:

- (i) amend NYSE Rule 13 to eliminate the 10,000 share restriction for auto ex orders in ETFs; and
- (ii) eliminate the 30-second frequency restriction in NYSE Rule 1005 for orders in ETFs.

These proposals would be implemented prior to the implementation of the hybrid market.

The Exchange believes that this proposed change should be implemented for ETFs because of their unique nature (i.e., they are derivatively priced in relation to the values of the

⁶ See NYSE Rule 1000.

⁷ See NYSE Rule 1005.

⁸ See Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004); 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004); and 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (SR-NYSE-2004-05).

underlying component securities, and the high degree of liquidity in ETFs), and to enable the Exchange to remain competitive with other market centers, where there are no size and frequency restrictions on orders in ETFs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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 proposed rule change also is designed to support the principles of Section 11A(a)(1),¹¹ in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition 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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1).

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

As required under Rule 19b-4(f)(6)(iii),¹⁴ the Exchange provided the Commission with written 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 the filing of the proposed rule change. The Exchange has requested that the Commission waive the 30-day operative delay to immediately expand the availability of Direct+ for orders in ETFs by eliminating order size and frequency restrictions. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because this filing should enhance the execution of transactions in ETFs. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁵

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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in the 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 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-2005-49 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9309.

All submissions should refer to File Number SR-NYSE-2005-49. 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 -2005-49 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.¹⁶

Margaret H. McFarland
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).