

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-52435; File No. SR-NYSE-2005-62)

September 14, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Add Exchange Rule 123G Prohibiting Trade Shredding

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 9, 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 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 Exchange proposes to add NYSE Rule 123G to prohibit members, member organizations and associated persons from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment to the member, member organization or associated person without regard for the best interests of the customer.

The text of the proposed rule change appears below. Additions are in italics.

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Order Entry Practices

Rule 123G

No member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization may engage in conduct that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240. 19b-4.

has the intent or effect of unbundling orders for execution for the primary purpose of maximizing a monetary or in-kind amount received by the member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization as a result of the execution of such orders. For purposes of this section, “monetary or in-kind amounts” shall be defined to include commissions, gratuities, payments for or rebate of fees resulting from the entry of such orders, or any similar payments of value to the member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

“Trade shredding” is the practice of unbundling customer orders for securities into multiple smaller orders for the primary purpose of maximizing payments to the member or member organization, and thereby possibly disadvantaging the customer by, for example, charging excessive fees or commissions, or failing to obtain best execution of an order. Such

payments may create a conflict of interest between the customer and the member or member organization. For example, as a result of the manner in which market data revenues are calculated, market centers can derive a greater share of market data revenue by increasing the number of trades that they report to the consolidated tape. At the same time, some markets have adopted a practice of sharing these increased revenues with market participants, including non-members, who send in orders. Thus, the Commission has expressed concern that an incentive exists for market participants receiving rebates to engage in distortive behavior, such as trade shredding, as a means to increase their share of market data revenues. Other economic arrangements between members or member organizations and their customers may create similar incentives to engage in similarly distortive behavior.

The Commission has requested that all U.S. self-regulatory organizations implement rule changes to inhibit the practice of trade shredding. The NYSE does not rebate revenues from tape reporting to members or non-members. Thus, there is no incentive in this area for NYSE order providers to engage in trade shredding on orders sent to the Exchange. However, a member or member organization may engage in conduct that has an impact similar to trade shredding, in that it unbundles a customer's order for the primary purpose of maximizing payments to the member or member organization at the customer's expense and to the customer's detriment.

In response to the Commission's request, the Exchange proposes to adopt a new Rule 123G prohibiting all such practices. Specifically, new Rule 123G would prohibit a member, member organization or any associated person from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment of a type described in the rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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

The Exchange believes that the proposed rule change will impose no 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 comments on this proposal.

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 self-regulatory organization consents, the Commission will:

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

³ 15 U.S.C. 78f(b).

⁴ 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 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-2005-62 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-2005-62. 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 offices of 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-2005-62 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.⁵

Jonathan G. Katz
Secretary

⁵ 17 CFR 200.30-3(a)(12).