

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52838; File No. SR-NYSE-2005-66)

November 28, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 thereto to Amend Rule 460 (Specialists Participating in Contests)

I. Introduction

On September 29, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change, 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> to amend NYSE Rule 460 (Specialists Participating in Contests). On October 25, 2005, the NYSE amended the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on November 3, 2005.<sup>3</sup> The Commission received no comments on the proposal. This order grants accelerated approval to the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to add an exemption to NYSE Rule 460, which generally restricts business transactions between a specialist or his affiliates and any company in whose stock the specialist is registered. The exemption, in new NYSE rule 460.25, would apply to business transactions between a specialist or his affiliates and the sponsor of any Exchange Traded Funds (“ETFs”) in which the specialist is registered. For purposes of the proposed rule, ETFs are Investment Company Units (defined in paragraph 703.16 of the Exchange’s Listed

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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 Securities Exchange Act Release No. 52688 (October 27, 2005), 70 FR 66879.

Company Manual), Trust Issued Receipts, such as HOLDRs (defined in NYSE Rule 1200), and derivative instruments based on one or more securities, currencies or commodities.

Since ETFs are based on derivatives or indices representing multiple securities, or a single commodity or currency, and the specialist registered to that ETF is not a market maker in any of the underlying component securities, commodities or currencies, the Exchange believes that any potential for conflicts which might have an undue influence or impact on the ETF trading price is removed. Furthermore, while the ETF sponsor generally oversees the performance of the trustee of the ETF and the trust's principal service providers, the trustee is responsible for the day-to-day administration of the trust.

The rule would provide that any fee or other compensation paid in connection with the business transaction to a specialist or his affiliates not have any relationship to the trading price or daily trading volume of the ETF. The rule also would provide that a specialist or his affiliates must notify and provide a full description to the Exchange of any business transaction or relationship it may have with any sponsor of an ETF in which the specialist is registered, except those of a routine and generally available nature.

The Exchange requested accelerated approval of the proposed rule change on November 25, 2005, prior to the thirtieth day after the date of publication of the notice in the Federal Register.<sup>4</sup>

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder

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<sup>4</sup> Telephone conference between Donald Siemer, Director, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on November 21, 2005.

applicable to a national securities exchange.<sup>5</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> in that it is designed 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.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice in the Federal Register. The Commission notes that the proposal was noticed for the full 21-day comment period, and no comments were received. Accelerated approval will also accommodate the Exchange's trading of certain derivative products.

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<sup>5</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2005-66), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jonathan G. Katz  
Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).