

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53235; File No. SR-NYSE-2005-92)

February 6, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Increasing Certain Fees Charged by the Exchange to Its Members and Member Organizations

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 December 23, 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 February 2, 2006, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the NYSE under 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.

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

The NYSE proposes to modify certain fees that the Exchange charges its members and member organizations. The proposed rule change increases the following fees: (1) Margin Extension Fees; (2) The Series 7 (General Securities Registered Representative) Examination

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

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

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

Development Fee; (3) Statutory Disqualification Fees; and (4) the session fee for the regulatory element of the continuing education requirements of NYSE Rule 345A (“Continuing Education for Registered Persons”). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in [brackets].

NYSE 2005 Price List

\* \* \* \* \*

Pages 1 – 8 No changes.

Registration Fees

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Credit Extensions

Amount per extension [~~\$2.00~~]\$4.00<sup>6</sup>

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Statutory Disqualification Filing Fee [1,000.00]\$1,500.00

Statutory Disqualification Review Fee \$1,000.00<sup>7</sup>

\* \* \* \* \*

Regulatory Element Fee \$75.00<sup>8</sup>

Testing Fees Please call 212.656.2578 for information.

Qualification Examinations

Series 7 Fee \$100.00<sup>9</sup>

<sup>6</sup> The \$4.00 fee is effective as of January 1, 2006. The fee was \$2.00 prior to January 1, 2006.

<sup>7</sup> The \$1,000.00 fee is effective as of January 1, 2006. There was no fee before for the review of statutory disqualification applications, prior to January 1, 2006.

<sup>8</sup> The \$75.00 fee is effective as of January 1, 2006. The fee was \$60.00, prior to January 1, 2006.

<sup>9</sup> The \$100.00 fee is effective as of January 1, 2006. The fee was \$90.00, prior to January 1, 2006.

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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, 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. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase certain qualification examination and regulatory fees<sup>10</sup> it assesses on its members and member organizations.

Margin Extension Fees

Under Regulation T<sup>11</sup> of the Federal Reserve System and Rule 15c3-3<sup>12</sup> under the Act, broker-dealers may file on behalf of customers requests to extend under "exceptional circumstances" the time period which customers have to pay for a security purchased or to deliver a security sold. Since January 1978, the Exchange has charged member organizations a \$2 fee per extension request for processing these extensions of time through the Exchange's

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<sup>10</sup> The 2005 Price List delineates Regulatory Fees, except for Qualification Examinations. The Price List can be found at [http://www.nyse.com/pdfs/2005pricelist\\_a.pdf](http://www.nyse.com/pdfs/2005pricelist_a.pdf). It will be updated in 2006 to also include qualification examination fees.

<sup>11</sup> 12 CFR 220.1-12.

<sup>12</sup> 17 CFR 240.15c3-3.

automated Margin Extension Systems ("MEX").<sup>13</sup> MEX maintains a history of Regulation T extensions submitted to the Exchange for each customer, and thus helps prevent excessive numbers of requests and customer abuses of the extension privilege.

As a result of enhancements to the MEX systems, increasing costs associated with providing these services to broker-dealers on behalf of customers and expenses incurred in monitoring for compliance with applicable margin and sales practice rules the Exchange is proposing to increase this fee to \$4 an extension request. The proposed fee increase would be effective January 1, 2006.

#### Series 7 Examination Development Fee

The Series 7 (General Securities Registered Representatives Qualification Examination) is developed, maintained, and owned by the Exchange. It is intended to safeguard the investing public by helping to ensure that registered representatives are competent to perform their jobs. Given this purpose, the Series 7 examination seeks to measure accurately and reliably the degree to which each candidate possesses the knowledge, skills and abilities needed to perform the critical functions of a registered representative. The examination is 6 hours and consists of 250 multiple-choice questions.

Currently the fee for the Series 7 examination is \$225. Of the \$225, the NASD receives \$135 and the Exchange receives \$90. The NASD's fee is based on the cost to NASD to schedule and administer the examination, maintain records, and undertake systems changes.

The Exchange development fee includes costs incurred to develop and implement the Series 7 examination as well as to monitor for compliance with applicable registration, reporting

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<sup>13</sup> See NYSE Information Memo 77-59, dated December 30, 1977 in which the Exchange announced a new fee schedule for charges for specific services, including extension charges, provided by the Exchange.

and sales practices rules. NASD has filed a proposed rule change increasing the administration fee to \$150.<sup>14</sup> This fee applies to all NYSE members and member organizations that are also members of NASD and to NYSE only members and member organizations.

The Exchange proposes to increase the development fee from \$90 to \$100. The total examination and development fees for each individual who takes the Series 7 examination for registration as a Registered Representative will be \$250. The fee would be effective January 1, 2006.

Since the implementation of the Series 7 examination, the Exchange has continued to update, as necessary, the examination content and questions, maintain statistics and conduct various committee meetings. Accordingly, this fee will be reassessed on an on-going basis, as is the case with various other NYSE qualification examinations.

#### Statutory Disqualification Fees

NYSE Rule 346(f) (Limitations-Employment and Association with Members and Member Organizations) provides, in part, that except as otherwise permitted by the Exchange no member, member organization, allied member, approved person, or employee shall have associated with it any person who is known to be subject to a statutory disqualification as defined in Section 3(a)(39)<sup>15</sup> of the Act. NYSE Rule 346 further provides that any member organization seeking permission to have such person continue to be or become associated with it shall pay a fee in an amount to be determined by the Exchange.

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<sup>14</sup> See Securities Exchange Act Release No. 52981 (December 19, 2005), 70 FR 76480 (December 27, 2005) (SR-NASD-2005-133). The actual change proposed in the filing is an increase in the Series 7 fee from \$225 to \$250, of which \$150 is the administration fee paid to the NASD.

<sup>15</sup> 15 U.S.C. 78c(a)(39).

The Act prohibits a person (including broker-dealers) subject to a statutory disqualification (e.g., a suspension or bar by the Commission or another exchange or being convicted of certain criminal activities) from being associated with a broker-dealer unless specific application to the Commission for such association is made by a self-regulatory organization (“SRO”) on behalf of the person. The SRO makes such application after investigation of the facts surrounding the request. Specifically, Rule 19h-1<sup>16</sup> under the Exchange Act provides, in part, that any SRO proposing to admit or continue any person’s association with a member, notwithstanding a statutory disqualification, as defined in section 3(a)(39) under the Exchange Act,<sup>17</sup> shall file a notice with the Commission of such proposed admission or continuance.<sup>18</sup>

In connection with a Rule 19h-1 filing made on behalf of an individual, the various Exchange Divisions, including Member Firm Regulation and Enforcement, review various documents, including a description of the individual’s proposed duties and responsibilities. In conducting such reviews, the Exchange examines the circumstances surrounding the statutory disqualification and requests verification that all terms and conditions of the disqualification are met. Further, the Exchange reviews the firm’s disciplinary and examination history, including any open matters before its Enforcement division. The purpose of the review is to ensure that

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<sup>16</sup> 17 CFR 240.19h-1.

<sup>17</sup> As a result of the Sarbanes-Oxley Act, persons found to have violated certain state securities and insurances regulations and banking laws are also now subject to statutory disqualification.

<sup>18</sup> Under Rule 19h-1, a member organization willing to employ a person subject to a statutory disqualification makes an application to the Exchange for approval. If the Exchange approves the employing firm’s application, it would submit it to the Commission.

adequate supervisory procedures are in effect. In connection with the Rule 19h-1 filing, the Exchange also responds to comments by Commission staff.<sup>19</sup>

When such filings are made on behalf of an entity (e.g., a member firm), the process is similar to what is described above. In addition, the Exchange will request information from a firm as to what procedures were put in place to prevent a recurrence, and/or verification of payment of fines and/or compliance with an undertaking. The Exchange's Enforcement Division reviews the filings/applications and documents in making an evaluation into the nature of the crime and/or offense committed by the statutory disqualification, and where appropriate, conducts further background research, e.g., examining court decrees, in completing its review.

Currently, pursuant to NYSE Rule 346(f), when a member organization seeks approval to remain or become associated with a person subject to any statutory disqualification, the Exchange imposes a \$1,000 fee for filing the notice pursuant to Commission Rule 19h-1 under the Act.<sup>20</sup> In instances, where the Exchange is not required to make such a notice filing (e.g., clerical and ministerial persons engaged in securities activities) but nevertheless reviews the request, it currently assesses no fee. Although no fees are currently charged for such reviews, the Exchange, as noted below, nevertheless incurs expenses in connection with such reviews.

As a result of costs associated with the development and maintenance of a new system<sup>21</sup> to track statutory disqualifications, the increased cost of processing filings and the increased costs of conducting examination oversight of statutory disqualifications, the Exchange is

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<sup>19</sup> In certain instances, the Commission may request additional information or recommend that additional supervisory controls be in place before approving an application.

<sup>20</sup> See Securities Exchange Act Release No. 26674 (March 29, 1989), 54 FR 13801 (April 5, 1989) (SR-NYSE-88-45).

<sup>21</sup> In May 2005, Member Firm Regulation implemented its new Statutory Disqualification/Special Supervision (SD/SS) System to track statutory disqualifications.

proposing that a fee in the amount of \$1,000 be charged in instances where reviews are performed but a Rule 9h-1 filing is not required.<sup>22</sup> In instances where the Exchange is making the Rule 19h-1 filing, it is proposing that such fee be increased from \$1,000 to \$1,500.<sup>23</sup> The proposed fees of \$1000 and \$1500 are comparable to those charged by NASD.<sup>24</sup> The proposed fee increase would be effective January 1, 2006.

#### Regulatory Element Fee

NYSE Rule 345A provides in part, that no member or member organization shall permit any registered person to continue to, and no registered person shall continue to perform duties as a registered person unless such person has complied with the Regulatory Element<sup>25</sup> continuing education requirements of NYSE Rule 345A.

The Regulatory Element requires each subject registered person to complete a standardized, computer-based, interactive continuing education program within 120 days of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. The purpose of this requirement is to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice-related industry rules and issues. There are three Regulatory Element programs: The S201 Supervisor Program, the S106 Series 6 Program, and the S101 General Program for Series 7 and all other registrations. Persons who fail to complete the Regulatory Element within the prescribed time frame are deemed inactive and may not perform, nor receive compensation for, functions requiring registration.

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<sup>22</sup> See Securities Exchange Act Release No. 25383 (February 23, 1988), 53 FR 6046 (February 29, 1988) (SR-NASD-88-3)

<sup>23</sup> See Securities Exchange Act Release No. 34897 (October 26, 1994), 59 FR 54648 (November 1, 1994) (SR-NASD-94-57).

<sup>24</sup> See supra notes 21 and 22.

<sup>25</sup> See NYSE Rule 345A(a).

The Regulatory Element is a component of the Securities Industry Continuing Education Program (“Program”) under NYSE Rule 345A. The Securities Industry/Regulatory Council on Continuing Education (“Council”)<sup>26</sup> was organized in 1995 to facilitate cooperative industry and regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and developing specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program, and developing and updating information about the Program for industry-wide dissemination.

It is the Council’s responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.<sup>27</sup> In December 2003, the Council voted to reduce the Regulatory Element session fee from \$65 to \$60, effective January 1, 2004, in order to reduce the reserves to a level necessary to support current and expected programs and expenses. The Council decided to review the reserve level and evaluate the Regulatory Element session fee on an annual basis. The 2004 financial review and evaluation produced no change in the Regulatory Element session fee. In September 2005, the Council’s annual financial review and evaluation revealed that unless the Regulatory Element session fee were adjusted, the Council’s reserves were likely to be insufficient in 2006. The reasons for the declining surplus are: (1) lower than projected session volume resulting in a significant decrease

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<sup>26</sup> The Council currently consists of 20 individuals, 14 of whom are securities industry professionals associated with NASD member firms and six of whom represent self-regulatory organizations (the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, the Municipal Securities Rulemaking Board, NASD, the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.).

<sup>27</sup> The Regulatory Element session fee was initially set at \$75 when NASD established the continuing education requirements in 1995. The session fee was reduced in 1999 to \$65 and again in 2004 to \$60. The proposed increase returns the Regulatory Element session fee to its original 1995 level.

in actual revenue over projected revenue; (2) higher delivery-related expenses beginning in 2006; and (3) costs associated with the rebuilding of PROCTOR<sup>®</sup>.<sup>28</sup> At its September 2005 meeting, the Council voted unanimously to increase the Regulatory Element session fee from \$60 to \$75 effective January 1, 2006, in order to meet costs and maintain an adequate reserve in 2006.<sup>29</sup>

The proposed implementation date is January 1, 2006.

## 2. Statutory Basis

The NYSE believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>30</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>31</sup> of the Act in particular, in that it is designed to provide 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

NYSE does not believe that the proposed rule change will impose 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

NYSE has neither solicited nor received comments on the proposed rule change.

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<sup>28</sup> PROCTOR<sup>®</sup> is an NASD technology system that supports computer-based testing and training. The Regulatory Element program uses PROCTOR<sup>®</sup> to package content, deliver, score and report results, and maintain and generate statistical data related to the Program.

<sup>29</sup> See Securities Exchange Act Release No. 52947 (December 13, 2005), 70 FR 75517 (December 20, 2005) (SR-NASD-2005-132).

<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>32</sup> and Rule 19b-4(f)(2) thereunder,<sup>33</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>34</sup>

### 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-2005-92 on the subject line.

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<sup>32</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>33</sup> 17 CFR 240.19b-4(f)(2).

<sup>34</sup> The effective date of the original proposed rule change is December 23, 2005, and the effective date of Amendment No. 1 is February 2, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 2, 2006, the date on which the NYSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2005-92. 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 the filing also will be available for inspection and copying at the principal offices 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-2005-92 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>35</sup>

Nancy M. Morris  
Secretary

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<sup>35</sup> 17 CFR 200.30-3(a)(12).