

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53579; File No. SR-NYSE-2006-12)

March 30, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to NYSE Rule 103.12 Regarding Time Tracking Requirements of Specialists and Clerks

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 February 28, 2006, the New York Stock Exchange LLC (“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. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and paragraph (f)(6) of Rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission.<sup>5</sup> On March 30, 2006, NYSE filed Amendment No. 1 to the proposed rule change.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> NYSE has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> Amendment No. 1 replaces and supersedes the original filing in its entirety. In Amendment No. 1, the Exchange: (i) revised the purpose section of the filing to provide additional details regarding how the IDTrack reports and electronic signature component will work; (ii) removed unnecessary language from the rule text; and (iii) withdrew the proposed addition of subparagraph (C) of NYSE Rule 103.12 to the “List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A,” which the Exchange represents it will file separately at a later date.

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

The Exchange is proposing to amend NYSE Rule 103.12 (Registration of Specialists) by requiring specialists and specialist clerks to electronically sign and certify as accurate the end-of-day IDTrack<sup>SM</sup> reports identifying: (1) the time they spent on the Floor of the Exchange working in those capacities; and (2) the identity of the specialty stocks in which they worked during the trading day. IDTrack is an electronic touch screen application that electronically records the login and logout time of specialists and specialist clerks during the trading day and the names of the specialty stock in which they work during a particular trading day. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

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. 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

As part of the settlement with the Commission,<sup>7</sup> the Exchange agreed to undertake certain initiatives concerning the oversight of the Floor. In one of these undertakings, the Exchange is

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<sup>7</sup> See Securities Exchange Act Release No. 51524 (April 12, 2005) announcing Administrative Proceeding File No. 3-11892 (the "Administrative Proceeding").

required to develop systems to track the identity of specialists and their clerks and the times when each specialist and clerk act as such while on the Floor.

NYSE Rule 103.12, adopted in 2005,<sup>8</sup> requires specialist firms to track the identity of specialists and their clerks, the times when each specialist and clerk acts as such while on the Floor, and the identity of the specialty stocks in which the specialist and the clerk worked on any given trading day. The rule also requires that specialist firms independently make and keep, in the regular course of business, records of the times that each of the firm's specialists and clerks work in these capacities on the Floor. The specialist firms must be able to provide these records to the Exchange within the time frame and in a format determined by the Exchange.

To facilitate the Exchange's ability to monitor specialist and clerk activity, in November 2005 the Exchange installed a system to capture this information electronically. This system, known as IDTrack, requires specialists and clerks to log in to the IDTrack system and register their presence with respect to specialty stocks in which they worked. IDTrack is an electronic touch screen application that electronically records the login and logout times of specialists and specialist clerks during the trading day, and the names of the specialty stocks in which they are working. The IDTrack system also provides electronic reports and information to the Exchange's Division of Market Surveillance and to specialist firms with respect to this information. The IDTrack reports do not replace the specialist firms' obligations under NYSE Rule 103.12 to make and keep their own records regarding specialist and specialist clerk activity during the trading day.

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<sup>8</sup> See Securities Exchange Act Release No. 52251 (August 12, 2005), 70 FR 48790 (August 19, 2005) (SR-NYSE-2005-47).

The Exchange is proposing to enhance the IDTrack application and improve accountability by developing supplemental components to the end-of-day report. The end-of-day report will continue to detail the login and logout times and the specialty stocks of specialists and clerks throughout the trading day. However, the Exchange will further require that each specialist and clerk provide their electronically written signature to certify as accurate the daily IDTrack report at the end of the trading day, thereby improving the reliability of the information in the reports.

The electronic signature will be written using an optical pen attached to the touch screen terminal. In the event a specialist or clerk disagrees with the information in the end-of-day report, a “comment” section is available on the electronic screen to enter a comment regarding a disputed fact, *i.e.*, a disputed login/logout time or stock name. Comments added by the specialists and specialist clerks on the actual trading day of the report in question will become part of the end-of-day report. If the specialists and clerks do not make entries in the comment section on that day, then they forfeit their ability to directly enter such comments in their IDTrack end-of-day report.<sup>9</sup>

The proposed rule requires each specialist and specialist clerk to electronically sign and certify as accurate each end-of-day report, even if they disagree or have comments regarding information in the report. In the event that a specialist or clerk has a question or concern about the information in the end-of-day report, the IDTrack system directs them to contact Exchange personnel as soon as the issue arises. Specialists and clerks are also directed to inform their firms’ compliance officers with concerns or questions about their end-of-day report. Despite any

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<sup>9</sup> Comments may be entered in a separate electronic screen by a firm’s “administrative user” when the administrative user reviews the “pending report” list, but the original end-of-day report cannot be altered by any user after the trade date in question.

questions, concerns or comments about the information in the end-of-day report, the specialists and clerks are required to electronically sign the report at the end of each trading day.

IDTrack includes an “administrative user” screen to administer certain aspects of the system. The administrative user may be the firm’s compliance office or a designee of the compliance officer. The administrative user may view a list of unsigned “pending” reports of their firm’s specialists and clerks. Through the use of this screen, administrative users may file an end-of-day report for their firm’s specialists or clerks without the required signatures, but the administrative user must enter a comment into their electronic screen explaining this action. To ensure the integrity of IDTrack electronic reports, IDTrack users, including specialists, clerks and administrative personnel, will not be able to override the information in IDTrack reports.

Thus, under the proposed rule change, the Exchange will have an electronically signed record of the times that specialists and their clerks spend on the Floor of the Exchange working in those capacities, and the identity of specialty stocks in which the specialists and clerks worked on any given trading day. As with other Exchange rules, failure by a specialist or specialist clerk to sign the end-of-day report at the end of the trading day or comply with IDTrack obligations may result in disciplinary action.<sup>10</sup>

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<sup>10</sup> See Securities Exchange Act Release No. 52768 (November 10, 2005), 70 FR 70014 (November 18, 2005) (SR-NYSE-2005-64) (adding NYSE Rule 103.12 to the NYSE List of Exchange Rule Violations and Fines under Rule 476A). The Exchange intends to propose, in a separate rule filing, an amendment to Rule 476A that will apply to all requirements under Rule 103.12, including this proposed rule change, Rule 103.12(C).

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>11</sup> 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 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 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## 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) does not become operative for 30 days after the date of the 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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

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<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide 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 filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay to allow NYSE to immediately enhance its IDTrack system, so that the tracking of the time specialists and clerks spend on the Floor, and the signing and certification of the daily IDTrack reports comply with the requirements of the Administrative Proceeding. The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative delay so that the NYSE may meet the requirement in the Administrative Proceeding.<sup>14</sup>

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>15</sup>

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<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 30, 2006, the date the NYSE filed Amendment No. 1.

#### 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-2006-12 on the subject line.

##### 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 No. SR-NYSE-2006-12. 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 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 No. SR-NYSE-2006-12 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>16</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).