

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54850; File No. SR-NYSE-2006-105)

November 30, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Prohibit Specialists from Charging Commissions on Transactions in their Specialty Securities

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 November 30, 2006, the New York Stock Exchange LLC (“Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 adopt new Rule 104B prohibiting specialist firms from charging commissions on transactions in their specialty securities, including exchange traded fund (“ETF”) securities, and to make changes to Rules 104 and 123B to reflect the fact that specialists will no longer be able to charge commissions. In connection with the elimination of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

specialist commissions, the Exchange proposes in a separate filing (the “Fee Filing”)⁵ to institute a program of revenue sharing for the specialists. The proposed rule changes will take effect as of December 1, 2006. The amendments to the Exchange’s Rules are included in Exhibit 5 to the Exchange’s filing.

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.

The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 104B prohibiting specialist firms from charging commissions on transactions in their specialty securities, including ETF securities, and to make changes to Rules 104 and 123B to reflect the fact that specialists will no longer be able to charge commissions. In connection with the elimination of specialist commissions, the Exchange proposes, in the separate Fee Filing, to: (i) eliminate the specialist trading privilege fee and the specialist allocation fee, and (ii) institute a program of revenue sharing for the specialists. In the Fee Filing, the Exchange is also: (i) eliminating its \$750,000 monthly fee cap

⁵ See SR-NYSE-2006-106 (filed on November 30, 2006).

on equity transactions, (ii) adopting a flat equity transaction fee of \$0.000275 per share, and (iii) applying the \$0.0030 per share ETF fee to ETFs traded on an unlisted trading privilege basis. We are requesting that the Commission make the effectiveness of this filing operative on December 1, 2006, the same day the changes contained in the Fee Filing take effect.

The Exchange proposes to implement new Rule 104B prohibiting specialist firms from charging commissions on transactions in their specialty securities, including ETFs, and to make technical conforming changes to Rules 104 and 123B to reflect the fact that specialists will no longer be able to charge commissions on equity or ETF transactions.⁶ The elimination of specialist commissions will take effect on December 1, 2006, and will not have retroactive effect. Therefore, specialist firms will not be prohibited from collecting commissions owed on transactions completed before that date.

Subsection (4) of Supplementary Material .20 of Rule 104 (“Dealings by Specialists”) provides that, for those members registered as a regular specialist subject to the Commission’s Net Capital Rule,⁷ the term “net liquid assets” refers to excess net capital computed in accordance with the provisions of Rule 325 (“Capital Requirements”) with certain adjustments, including deductions for floor brokerage and/or commissions receivable. Similarly, Rule 123B(b)(1) and Supplementary Material .10 to Rule 123B provide that a specialist may not charge floor brokerage (i.e., a commission) for the execution of an order which he or she receives by means of the Exchange’s automated order routing system, known as SuperDot, if

⁶ The ETF transactions with respect to which specialists will be prohibited from charging commissions will include transactions in Investment Company Units pursuant to Exchange Rule 1100, Trust Issued Receipts pursuant to Exchange Rule 1200, and streetTRACKS[®] Gold Shares pursuant to Exchange Rule 1300, Currency Trust Shares pursuant to Exchange Rule 1300A, Commodity Trust Shares pursuant to Exchange Rule 1300B or any security governed by Exchange Rule series 1100, 1200, 1300, 1300A or 1300B.

⁷ See 17 CFR 240.15c3-1.

such order is executed within five minutes of receipt by the specialist. As, under new Rule 104B, specialists will be prohibited from charging any commissions in relation to trades in their specialty securities, the foregoing provisions will cease to be relevant and the Exchange proposes to delete them upon adoption of new Rule 104B.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6⁸ of the Securities Exchange Act of 1934 in general and furthers the objectives of Section 6(b)(5)⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, and to 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

Written comments were neither solicited nor received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹ Because the Exchange has designated the foregoing proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

(iii) does not become operative for 30 days from the date on which it was filed, 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 and Rule 19b-4(f)(6)(iii) thereunder.¹²

The Exchange requests that the Commission waive the 30-day operative delay specified in Rule 19b-4(f)(6)(iii) with respect to the proposed rule change.¹³ The Exchange represents that the specialist firms affected by the proposal have all agreed to the elimination of commissions contingent upon the Exchange's implementation of the revenue sharing program proposed in the Fee Filing. As the proposal and the revision to the Exchange's trading fees are both parts of an integrated plan in which (i) the revenues generated from the revised fees will partially offset the cost to the Exchange of the payments the Exchange will make to the specialists under the revenue sharing program, and (ii) the cost to customers of the increased transaction fees will be offset at least partially by the elimination of commissions, it is essential that the proposals in this filing takes effect at the same time as the fee change. Therefore, the Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

The Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative on December 1, 2006.¹⁴ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest

¹² The Exchange provided written notice to the Commission 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 filing, as required by Rule 19b-4(f)(6)(iii).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

because the Exchange has represented that the elimination of specialist commissions will benefit investors by helping to offset their increased transaction fees under the Fee Filing.

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.

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 No. SR-NYSE-2006-105 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 Number SR-NYSE-2006-105. 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 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-2006-105 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).