

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53359; File No. SR-NYSE-2006-09]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Automatic Conversion of CAP-DI Orders

February 24, 2006.

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 21, 2006, 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. NYSE filed the proposed rule change as effecting a change in an existing order-entry or trading system pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(5) thereunder,<sup>4</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 from interested persons.

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

NYSE is proposing to amend Exchange Rule 123A.30(a)(iv)(P), which was part of the pilot ("Pilot")<sup>5</sup> which put into operation Phase 1 of the NYSE HYBRID MARKET<sup>SM</sup> ("Hybrid Market") initiative, as proposed in SR-NYSE-2004-05<sup>6</sup> and amendments thereto ("Hybrid Market filings") and certain

system changes discussed in SR-NYSE-2005-57.<sup>7</sup> The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the principal office of the Exchange, 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 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 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

###### I. Purpose

The Exchange proposed a Pilot to put into operation Phase 1 of the Hybrid Market initiative with respect to a group of securities, known as Phase 1<sup>8</sup> Pilot securities ("Pilot securities"). Following Commission approval, the Pilot commenced during the week of December 12, 2005 and will terminate the earlier of: (1) March 14, 2006, or (2) Commission approval of the Exchange's Hybrid Market proposal, if granted.

Commencing with the Pilot, the Exchange systemically ensures that the specialist's participation when trading along with CAP-DI orders is in accordance with the parity requirements of Exchange Rule 123A.30. The system assigns the proper number of shares to the specialist and CAP-DI orders. The Exchange filed SR-NYSE-2005-57<sup>9</sup> for immediate effectiveness pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(5) thereunder<sup>11</sup> to effect this change.

*Automatic Conversions of CAP-DI Orders. Current Exchange Rule 123A.30 provides that specialists have the ability, subject to certain restrictions*

*noted in the rule, to convert CAP-DI orders to participate in transactions or to bid or offer, without an electing trade.*

Exchange Rule 123A.30(a)(P)<sup>12</sup> provides in part that the elected or converted portion of a "percentage order that is convertible on a destabilizing tick and designated immediate execution cancel election" ("CAP-DI order") may be automatically executed. An elected or converted CAP-DI order on the same side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume associated with the bid (offer) remaining after the electing order is filled in its entirety. An elected or converted CAP-DI order on the contra-side of the market as an automatically executed electing order may participate in a transaction at the bid (offer) price if there is volume remaining in the electing order.

In addition, the Exchange added new section (iv)(P) to proposed Exchange Rule 123A.30(a)(P) to provide that when a specialist is bidding or offering and an automatic execution occurs with such bid/offer, marketable CAP-DI orders on the Display Book<sup>®</sup> on the same side as the specialist's interest will be automatically converted to participate in this execution, with the system assigning the proper number of shares to the specialist and auto-converted CAP-DI orders, as discussed above. This will allow CAP-DI orders to better participate in executions.

However, in certain instances, an automatic conversion of marketable CAP-DI orders will not occur even though the specialist is trading for its own account. This will occur where the execution that included automatically converted CAP-DI orders elects a contra-side stop or stop limit order. In this situation, pursuant to current Exchange Rule 123A.40, the specialist, as party to the election of the stop order, owes such elected stop order an execution at the same price as the specialist traded. The execution of such stop orders, in which the specialist is the contra-party, may be manual<sup>13</sup> or automatic,<sup>14</sup> depending upon whether

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<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).

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

<sup>5</sup> See Securities Exchange Act Release No. 52954 (December 14, 2005), 70 FR 75519 (December 20, 2005).

<sup>6</sup> See Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004); 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004); and 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005). See also Amendment No. 6, filed on September 16, 2005, and Amendment No. 7, filed on October 11, 2005.

<sup>7</sup> See Securities Exchange Act Release No. 52362 (August 30, 2005), 70 FR 53701 (September 9, 2005). While submitted as effective upon filing, the Exchange intended to implement these changes upon approval of the Hybrid Market filings by the Commission, if such approval is granted.

<sup>8</sup> See Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005).

<sup>9</sup> See *supra* note 7.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(5).

<sup>12</sup> This rule is parallel to amendments made to Rule 123A.30. See Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005).

<sup>13</sup> If there is no specialist interest remaining in the bid/offer, and the specialist must guarantee an execution to the stop order at the electing price pursuant to Exchange Rule 123A.40, the specialist must do a manual transaction to guarantee that the stop order receives the same price as the specialist.

<sup>14</sup> If there is specialist interest remaining in the bid/offer and the specialist must guarantee an execution to the stop order at the electing price pursuant to Exchange Rule 123A.40, the Display Book system will automatically execute the

any specialist interest remains at the execution price. In either situation, marketable CAP-DI interest at that price will not be automatically converted to participate along with the specialist in the execution of such elected stop order. The specialist is, however, alerted to the fact that there are CAP-DI orders on the Display Book® capable of trading so that it can take appropriate action and manually trade such CAP-DI interest.

**Modification to the Pilot.** The Exchange is proposing to modify Exchange Rule 123A.30(a)(iv)(P) to clarify that when a specialist is bidding, offering, or trading and an automatic execution occurs with the specialist's proprietary interest, which elects contra-side stop or stop limit orders, marketable CAP-DI orders on the Display Book® on the same side as the specialist will be automatically converted to participate in the execution of such contra-side stop or stop limit orders with the system assigning the proper number of shares to the specialist and CAP-DI orders. In other words, in all circumstances where the specialist is trading for its own account and the specialist, as party to the election of a stop order, owes an elected stop order an execution at the same price as the specialist traded pursuant to current Exchange Rule 123A.40, an automatic conversion of marketable CAP-DI orders will occur. This modification, however, will not effect the proper allocation of shares to CAP-DI orders.

The Exchange believes that this modification is beneficial for the market in that it reduces the chances for error by removing the responsibility from the specialist to manually ensure the CAP-DI interest trading is allocated correctly. This will allow CAP-DI orders to better participate in executions. This modification is part of a package of software corrections to the Pilot which the Exchange would like to implement as quickly as possible. This modification will expire upon the termination of the Pilot.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>16</sup> in particular, 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 exchange believes that the proposed rule change is also designed to support the principles of section 11A(a)(1) of the act<sup>17</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

### 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.<sup>18</sup>

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

Because the proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; or
- (iii) have the effect of limiting access to or availability of the system, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f)(5) of Rule 19b-4 thereunder.<sup>20</sup> The Exchange believes that this modification to the Pilot would allow the Pilot to continue in effect and reduce the chance of error by the specialist by allowing the system to automatically convert CAP-DI orders and execute with the proper allocation.

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-comment@sec.gov](mailto:rule-comment@sec.gov). Please include File Number SR-NYSE-2006-09 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-2006-09. 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-2006-09 and should be submitted on or before March 23, 2006.

remaining specialist interest against the elected stop order at the same price the specialist traded.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78K-1(a)(1).

<sup>18</sup> See telephone conversation between Jeffrey Rosenstock, Principal Rule Counsel, Market Surveillance, NYSE, and Kelly Riley, Assistant Director, Division of Market Regulation, Commission, dated February 23, 2006.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 20 CFR 240.19b-4(f)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53354; File No. SR-NYSE-2006-08]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .26 to Exchange Rule 301 To Waive the Posting Requirements in Relation to Transfers for Nominal Consideration Between Employees of the Same Member Organization and New Leases

February 23, 2006.

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 17, 2006, the New York Stock Exchange, Inc. ("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 prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</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 from interested persons.

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

The Exchange proposes to amend Supplementary Material .26 to Exchange Rule 301 to waive the posting requirements in relation to transfers for nominal consideration between employees of the same member organization and new leases.

The text of the proposed rule changes 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.

#### 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 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 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

The Exchange proposes to amend Supplementary Material .26 to Exchange Rule 301 to waive the posting requirements in relation to transfers for nominal consideration between employees of the same member organization and new leases.

Article II, section 10, of the Exchange Constitution authorizes the Exchange's board of directors to (i) approve the transfer of membership of a regular member and the lease of such a membership and (ii) adopt, amend and repeal such rules as it may deem necessary or proper relating to the posting of notice of the proposed transfer or lease of a membership and other similar matters. Supplementary Material .26 to Exchange Rule 301 sets forth the current posting requirements for transfers and leases of seats, requiring that a proposed transfer or lease of a membership must be posted on the Exchange's bulletin board and in the Exchange's Weekly Bulletin at least 10 days before board consideration of such transfer or lease.

A large percentage of Exchange memberships and leases of memberships are held on behalf of member organizations by individuals who are employees of those member organizations. When an employee who owns a membership on behalf of a member organization leaves that member organization, the member organization may instruct the employee to transfer such membership to another employee of the member organization for a nominal consideration ("nominal transfer"). Similarly, if a lessee member leaves his member organization, the member organization may cause another employee to sign a new lease to enable the member organization to retain the departed employee's floor trading rights.

On December 6, 2005, the members of the Exchange and the shareholders of Archipelago Holdings, Inc.

("Archipelago") voted to approve a merger between the Exchange and Archipelago. Upon consummation of the merger, all membership interests in the Exchange will be exchanged for a combination of cash and common stock of NYSE Group, Inc. After the merger, the right to trade on the floor of the Exchange will be pursuant to a system of trading licenses. In light of the fact that memberships will cease to exist upon consummation of the merger and the time and resources it takes to process transfers and leases of membership, the Exchange announced that it would not process any transfers or new leases of memberships entered into after the close of business on Friday, December 30, 2005.

At the time the Exchange announced its decision to cease processing transfers of memberships and new leases, the Exchange believed that the merger would be completed before the end of January 2006. As completion of the merger has taken longer than anticipated, a backlog has developed of memberships beneficially owned by member organizations that are not available for use by such member organizations. This problem is a consequence of the inability of those member organizations to cause the nominal transfer to continuing employees of memberships held by departed employees so as to allow those continuing employees to transact business on the trading floor. Similarly, member organizations have been unable to execute new leases in the names of continuing employees when the employee who had been a lessee member on behalf of the member organization has departed. In addition, member organizations frequently meet their expanding needs for trading floor personnel by causing employees to enter into new leases. The Exchange's decision not to process new leases has prevented member firms from expanding their floor trading capacity in this manner and has forced them to operate with fewer floor trading personnel than they consider desirable.

Some member organizations have experienced difficulty in effectively conducting their business as a result of this inability either to have employees admitted as members in place of departed employees or to acquire memberships by entering into new leases to expand their trading floor capacity. The Exchange has responded to this problem by recommencing the processing of nominal transfers and new

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<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).

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