

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

The foregoing 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> because the proposal: (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 prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission 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. Nasdaq satisfied the five-day pre-filing requirement.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(b)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has asked the Commission to waive the 30-day operative delay.<sup>15</sup> The Commission believes that such waiver is consistent with the protection of investors and the public interest because the proposed rule change would lower listing fees for closed-end funds which may benefit those who invest in such funds by reducing the costs associated with the issuance of the shares. For this reason, the Commission designates the proposed rule change, as amended, to be effective upon filing with the Commission.<sup>16</sup>

At any time within 60 days of the filing of such 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>17</sup>

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

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

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> The effective date of the original proposed rule change is July 29, 2005 and the effective date of the amendment is August 15, 2005. For purposes of

### 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-NASD-2005-096 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station, Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-096. 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 NASD. 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-NASD-2005-096 and should be submitted on or before September 13, 2005.

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 August 15, 2005, the date on which the NASD submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52269; File No. SR-NYSE-2005-19]

#### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Require Members That Use Appendix E to Calculate Net Capital to File Supplemental and Alternative Reports**

August 16, 2005.

On March 8, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 under the Act.<sup>2</sup> The proposed rule change amends NYSE Rule 418 to require member organizations approved by the Commission to use Appendix E to Rule 15c3-1 under the Act<sup>3</sup> to calculate net capital ("CSE broker-dealers") to file supplemental and alternative reports with the Exchange. The proposed rule change was published for comment in the **Federal Register** on July 14, 2005.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

Rule 17a-5 under the Act<sup>5</sup> contains broker-dealer reporting requirements. Broker-dealers file the monthly and quarterly reports required by Rule 17a-5(a) on Form X-17A-5 (the "FOCUS Report").<sup>6</sup> Pursuant to Rule 17a-5(a)(5),<sup>7</sup> CSE broker-dealers are required to file certain additional monthly and quarterly reports. The Exchange has created a modified FOCUS Report form for CSE broker-dealers. The form contains new line items to capture the

<sup>18</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> 17 CFR 240.15c3-1e. The Commission amended Rule 15c3-1 to establish this voluntary, alternative method of computing net capital, which is applicable to firms that qualify for consolidated supervised entity ("CSE") treatment. Securities Exchange Act Release No. 49830 (June 8, 2004), 69 FR 34428 (June 21, 2004).

<sup>4</sup> See Securities Exchange Act Release No. 51980 (July 6, 2005), 70 FR 40767 (July 14, 2005).

<sup>5</sup> 17 CFR 240.17a-5.

<sup>6</sup> 17 CFR 249.617.

<sup>7</sup> 17 CFR 240.17a-5(a)(5).

additional required reports. The proposed rule amendment is designed to require CSE broker-dealers to provide the additional reports to the Exchange.

Under NYSE Rule 418, the Exchange may at any time require any member or member organization to be audited in accordance with the requirements of Rule 17a-5. The proposed amendment adds NYSE Rule 418.25, which would require member organizations that are CSE broker-dealers to file such supplemental and alternative reports as may be prescribed by the Exchange. A copy of the modified FOCUS report that CSE broker-dealers would have to file with the Exchange under proposed Rule 418.25 is available on the Exchange's Internet Web site (<http://www.nyse.com>). The Commission finds that the NYSE's proposal to amend Rule 418 is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange.<sup>8</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. *It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSE-2005-19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52274; File No. SR-NYSE-2005-21]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Temporary Reallocation of Securities Among Specialists

August 16, 2005.

On March 11, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NYSE Rule 103.11 to introduce new procedures regarding the temporary reallocation of securities traded on the Exchange from one specialist organization to another specialist organization. On June 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on July 14, 2005.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>5</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of an exchange be designed 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. The Commission notes that the Exchange has determined that the temporary reallocation of a security is most likely to be required for

regulatory reasons and has therefore proposed to transfer the responsibility for such decisions from the Chief Executive Officer to the Chief Regulatory Officer ("CRO") or his or her designee.<sup>8</sup> The Commission also notes that the Exchange has proposed to specify that only non-specialist Board of Executive ("BoE") Floor Representatives may join the CRO (or his or her designee) in making reallocation decisions in order to avoid any potential conflicts of interest that may exist with specialist BoE Floor Representatives participating in such decisions. The Commission also notes that the Exchange has provided an alternative that, if there are not two non-specialist BoE Floor Representatives available to participate with the CRO (or his or her designee) in the reallocation decision, the most senior non-specialist Floor Governor or Governors, based on his or her current length of service as a Floor Governor, would be authorized to act in place of the non-specialist BoE Floor Representative or Representatives. The Commission believes that the proposed changes to the Exchange's procedure for the temporary reallocation of securities are designed to appropriately assign the responsibility for making reallocation decisions to the Exchange's regulatory group and disinterested members of the BoE (or disinterested Floor Governors), and thereby to minimize the potential for conflicts of interest and strengthen regulatory independence.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSE-2005-21) as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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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 provided information concerning the designee of the Chief Regulatory Officer and corrected technical errors in the rule text.

<sup>4</sup> See Securities Exchange Act Release No. 51985 (July 7, 2005), 70 FR 40768.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> The Commission notes that the Exchange has represented that it expects that the designee would be an officer in the Exchange's regulatory group, with the Executive Vice President of the Market Surveillance Division being the primary designee. See Amendment No. 1.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).