

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51872; File No. SR-NYSE-2005-42)

June 17, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Specialist Marketing and Investor Education Fee for Investment Company Units

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on June 13, 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 and II, below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Exchange as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2)⁴ thereunder, 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 charge a fee to specialists allocated listed Investment Company Units (“ICUs”) in circumstances where the Exchange undertakes to provide funds to a third party for marketing and investor education in connection with the listing of those ICUs.

Below is the text of the proposed rule change. Proposed new language is in italics.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

* * * * *

2005 Price List

* * * * *

Facility and Equipment Fees

* * * * *

Specialist Marketing and Investor Education Five-sixths (83.33%) of the amount
Fee—payment by the payable by the Exchange
specialist unit allocated an issue of Investment
Company Units of any amount payable
by the Exchange to a third party for marketing
and investor education expenses in
connection with trading on the Exchange
—billed quarterly.**

Notes:

* * * * *

**The amount paid by a specialist unit will be apportioned each calendar quarter among the specialist units allocated ICUs subject to an Exchange payment to a third party. Such amount will be apportioned to a specialist unit based on the specialist unit's share of the "Notional NYSE ADV" for the ICUs subject to the payment. Notional NYSE ADV is defined as the average daily share volume on the NYSE for the quarter for an ICU multiplied by the average consolidated closing price for the quarter for such ICU.

The following hypothetical demonstrates how the apportionment will operate. Assume three ICUs with a Notional NYSE ADV for the preceding calendar quarter of 50,000, 100,000 and 150,000, respectively. The three ICUs are allocated to Specialist Units A, B and C, respectively. Specialist Units A, B and C would be billed 16.67%, 33.33% and 50% of the amount apportioned to the specialist units for the quarter (i.e., in the aggregate, five-sixths of the amount payable by the Exchange). Each calendar quarter, the Exchange will notify each specialist unit of the amount payable for the preceding quarter.

* * * * *

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 anticipates that it may undertake in the future to provide funds to third parties for marketing and investor education with respect to certain listings of ICUs, also known as Exchange Traded Funds. In such circumstances, the Exchange believes it is appropriate for the specialists allocated those listed ICUs to participate in the provision of such funds to the relevant third party. The Exchange therefore proposes to implement a Specialist Marketing and Investor Education Fee to be imposed in connection with payments made to third parties in

connection with the listing of any ICUs subject to such third party payments. This fee would be separate from the current Specialist License Fee.⁵ The Exchange believes that the fee would be imposed in a fair and equitable manner on all specialists trading the securities subject to a third party fee or payment.

The amount paid by the specialists would be calculated and apportioned following each calendar quarter among the specialist units allocated ICUs that are subject to an Exchange payment to third parties. This amount would represent five-sixths (83.33%) of the annual amount payable by the Exchange, as apportioned for the quarter. Such amount would be apportioned to specialist units for each ICU that is subject to the fee, calculated based on the "Notional NYSE ADV" for each relevant ICU. Notional NYSE ADV would be defined as the average daily share volume on the NYSE for the calendar quarter for the particular ICU multiplied by the average consolidated closing price for the quarter for such ICU.

The following hypothetical demonstrates how the apportionment would operate. Assume three ICUs with a Notional NYSE ADV for the preceding calendar quarter of 50,000, 100,000, and 150,000, respectively. Also assume that the three ICUs are allocated to Specialist Units A, B, and C, respectively. Specialist Units A, B, and C would be billed 16.67%, 33.33% and 50% of the amount apportioned to the specialist units for the quarter (i.e., in the aggregate, five-sixths of the amount payable by the Exchange). Each calendar quarter, the Exchange would notify each specialist unit of the amount payable, if any, under the Specialist Marketing and Investor Education Fee for the preceding quarter.

The Exchange believes that the Notional NYSE ADV is an appropriate mechanism for allocating the fee among the specialists as it takes into account both trading volume and share

⁵ See Securities Exchange Act Release No. 50109 (July 28, 2004), 69 FR 47192 (August 4, 2004) (File No. SR-NYSE-2004-35)

price. Therefore, a relatively high-priced ICU with a relatively low share volume might be subject to a fee comparable to a relatively low-priced ICU with relatively high share volume. According to the Exchange, the proposed manner of apportioning the fee among specialist units attempts to equalize the fee among ICUs with different trading characteristics, instead of apportioning the fee based on a single characteristic (e.g., NYSE share volume).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,⁸ and Rule 19b-4(f)(2)⁹ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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 Number SR-NYSE-2005-42 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2005-42. 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 Section, 100 F

Street, NE, Washington, DC 20549. 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-2005-42 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.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).