

to make this rule change effective on July 1, 2006. 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>11</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-061 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-NASD-2006-061. 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 offices 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-2006-061 and should be submitted on or before June 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53934; File No. SR-NYSE-2006-39]

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Increasing the Maximum Weighting of Certain Component Stocks in Indexes or Portfolios Underlying Investment Company Units**

June 1, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 17, 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 NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

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

The Exchange proposes to amend section 703.16(B)(2)(c)<sup>3</sup> of the NYSE Listed Company Manual ("Manual") to increase from 25 percent to 30 percent

the maximum weight of the most heavily weighted component stock of an index or portfolio underlying a series of Investment Company Units.

The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's principal office, 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 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 III below. The NYSE 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**

Section 703.16 of the Manual provides listing standards for Investment Company Units ("ICUs") to permit listing and trading of these securities pursuant to Rule 19b-4(e) under the Exchange Act.<sup>4</sup> Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Rule 19b-4(c)(1) under the Exchange Act,<sup>5</sup> if the Commission has approved, pursuant to section 19(b) of the Exchange Act,<sup>6</sup> the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.<sup>7</sup> These standards are frequently referred to as "generic" listing standards.

In 1996, the Commission approved Section 703.16 of the Manual, which sets forth the rules related to the listing of ICUs.<sup>8</sup> In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to unlisted trading

<sup>11</sup> The effective date of the original proposed rule change is May 12, 2006, and the effective date of Amendment No. 1 is May 15, 2006. For purposes of 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 May 15, 2006, the date on which Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>12</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> The Commission corrected the reference to the relevant NYSE's Manual citation provided in the Form 19b-4 filed with the Commission in connection with the instant proposed rule change. Telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE and Tim Fox, Special Counsel, Commission on May 23, 2006.

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

<sup>5</sup> 17 CFR 240.19b-4(c)(1).

<sup>6</sup> 15 U.S.C. 78s(b).

<sup>7</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

<sup>8</sup> See Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR-NYSE-95-23).

privileges, of ICUs under Section 703.16 of the Manual and Exchange Rule 1100.<sup>9</sup>

Section 703.16(B)(2) of the Manual provides that, upon the initial listing of a series of ICUs under Rule 19b-4(e), component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio underlying such series must have a minimum market value of at least \$75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90 percent of the weight of the index or portfolio. These standards assure that the underlying index component stocks are generally actively traded and with substantial market capitalization.

Currently, Section 703.16(B)(2)(c) of the Manual provides that the most heavily weighted component stock in an underlying index cannot exceed 25 percent of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65 percent of the weight of the index or portfolio. The Exchange proposes to increase from 25 percent to 30 percent the permissible weight of the most heavily weighted component stock in an underlying index. The five most heavily weighted stocks would continue to be required to represent no more than 65 percent of the weight of the index or portfolio. This change will provide additional flexibility to issuers of ICUs to be listed pursuant to Rule 19b-4(e) in developing ICUs based on indexes or portfolios.

The Exchange notes that unit investment trusts and mutual funds are subject to Internal Revenue Code Subchapter M requirements applicable to regulated investment companies. In order to maintain regulated investment company status, these entities would be required to rebalance their portfolios quarterly to avoid any one stock exceeding a 25 percent weighting in the trust's or fund's portfolio.<sup>10</sup>

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b)

of the Exchange Act,<sup>11</sup> in general, and furthers the objectives of section 6(b)(5) of the Exchange Act,<sup>12</sup> in particular, in that the proposal 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.

### *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 Exchange Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

## III. 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 Exchange 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-2006-39 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-39. 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 NYSE. 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-2006-39 and should be submitted on or before June 29, 2006.

## IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Exchange Act,<sup>14</sup> which requires 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 believes that the proposed rule change is reasonably designed to provide additional flexibility in listing ICUs under the Exchange's generic listing standards. The Commission further believes that the proposed rule change will serve to protect investors and the public interest by maintaining the size and liquidity requirements applicable to the securities underlying the relevant index or portfolio.

Under section 19(b)(2) of the Exchange Act,<sup>15</sup> the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The

<sup>13</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>9</sup> See Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR-NYSE-00-46).

<sup>10</sup> According to the NYSE, under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company, the securities of a single issuer can account for no more than 25 percent of a fund's total assets, and at least 50 percent of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5 percent of such fund's total assets.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. The Commission notes that it has previously approved similar proposals by the American Stock Exchange ("Amex") and Chicago Board Options Exchange ("CBOE") to increase to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index.<sup>16</sup>

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to section 19(b)(2) of the Exchange Act.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NYSE–2006–39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53932; File No. SR–NYSE–2006–01]

### Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change Relating to Exchange Rule 1000 (NYSE Direct+)

June 1, 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 January 17, 2006, the New York Stock Exchange, Inc.<sup>3</sup> (n/k/a 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, II, and III below, which Items have been prepared by the Exchange. 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 Exchange Rule 1000 (NYSE Direct+®) to eliminate subsection (v), an exception to Exchange Rule 1000 which suspends the Exchange's Direct+ facility if the specialist publishes a bid and/or offer that is more than five cents away from the last reported transaction price when an Exchange Rule 127 block cross transaction is being executed.<sup>4</sup> The Exchange proposes to replace this procedure with a rule that requires the specialist to quote a 100 × 100 share market price when all Exchange Rule 127 block cross transactions are being executed, regardless of the amount the cross price is away from the last reported transaction price in the subject security on the Exchange. 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 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 purpose of this proposed rule change is to simplify and improve the protective measures afforded to Direct+ customers when automatic executions are delayed due to the completion of an Exchange Rule 127 block cross transaction.

Exchange Rule 1000 provides that auto ex orders receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and are immediately reported as Exchange transactions. NYSE Direct+ currently provides for the automatic execution of straight limit orders ("auto ex orders") of 1,099 shares or less (10,000 shares or less for Investment Company Units, as defined in paragraph 703.16 of the Listed Company Manual, and any securities governed by the same rules as Investment Company Units, such as streetTRACKS® Gold Shares,<sup>5</sup> and Trust Issued Receipts, such as HOLDRs, as defined in Exchange Rule 1200) against trading interest reflected in the Exchange's published quotation. Exchange Rule 1000 subsections (i) through (vi) allow for exceptions to Exchange Rule 1000, making Direct+ unavailable when any exception is in place. Exchange Rule 1000(ii) provides that Direct+ is unavailable when the execution price of an automatic execution "would be more than five cents away from the last reported transaction price in the subject security on the Exchange." Exchange Rule 1000(v) specifically provides that when a transaction outside the NYSE's published bid or offer pursuant to Rule 127 is in the process of being completed, the specialist should "publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange." The proposed amendment seeks to amend the current Rule 1000(v) procedure.

Exchange Rule 127 (Block Positioning) describes the process required for proper execution of a block cross transaction. Exchange Rule 127 requires a member seeking to cross block orders outside the prevailing quotation to inform the specialist of his or her intention to execute the transaction at a pre-determined, specified price that is either a premium

<sup>16</sup> See Securities Exchange Act Release Nos. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR–Amex–2001–25) (Approving an increase for indexes underlying Portfolio Depositary Receipts and Index Fund shares listed on the Amex) and 44908 (October 4, 2001), 66 FR 52161 (October 12, 2001) (SR–CBOE–2001–38) (Approving an increase for indexes underlying Index Portfolio Receipts and Index Portfolio Shares listed on the CBOE).

<sup>17</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> The Exchange is now known as the New York Stock Exchange LLC. See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006).

<sup>4</sup> On March 22, 2006, the Commission approved the Exchange's proposal to establish a "Hybrid Market." See Securities Exchange Act Release No. 53539, 71 FR 16353 (March 31, 2006) ("Hybrid Market Approval Order"). In the Hybrid Market Approval Order, the Commission approved the Exchange's plan to implement the Hybrid Market in multiple phases. To date, the Exchange has not implemented the approved changes to Exchange Rule 1000. The Commission notes that in this proposal, the Exchange proposes to amend existing Exchange Rule 1000, rather than the text of Rule 1000 as approved in the Hybrid Market Approval Order. Once the Exchange implements the approved text to Exchange Rule 1000, the Commission notes that Rule 1000, as approved in the Hybrid Market Approval Order, would supersede the changes proposed herein.

<sup>5</sup> See Exchange Rule 1300.