

replaced, as a technical change, several references to "Association" and "NASD Regulation" in NASD Rule 3010(b)(2) with "NASD."

The proposed rule change was published for comment in the **Federal Register** on April 4, 2005.<sup>4</sup> The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,<sup>5</sup> and, in particular, the requirements of Section 15A of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should ensure that members use the opt and exemption provisions of the Taping Rule consistent with the investor protection concerns that the Taping Rule is intended to address.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NASD-2005-033) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

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

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than 60 days following Commission approval. The effective date would be 30 days following publication of the *NtM* announcing Commission approval.

<sup>4</sup> See Securities Exchange Act Release No. 51434 (March 24, 2005), 70 FR 17134.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51661; File No. SR-NYSE-2005-15]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Elimination of Exchange Rules 499 and 501A

May 5, 2005.

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 9, 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 NYSE as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act.<sup>3</sup> On March 16, 2005, NYSE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On April 22, 2005, NYSE filed Amendment No. 2 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to eliminate NYSE Rules 499 and 501A. NYSE Rule 499 relates to the same requirements set out in Sections 801.00 to 804.00 of the Exchange's Listed Company Manual (the "LCM") and NYSE Rule 501A restates Section 12(d) of the Act.<sup>6</sup> The Exchange also proposes to eliminate references to NYSE Rule 499 in Section 801.00 of the NYSE LCM. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> In Amendment No. 1, NYSE clarified that NYSE Rule 499 has not been updated to reflect all of the current requirements of Sections 801.00 through 804.00 of the NYSE Listed Company Manual.

<sup>5</sup> Amendment No. 2 superseded the originally-filed proposed rule change and Amendment No. 1 in their entirety.

<sup>6</sup> 15 U.S.C. 78l(d).

#### 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 parts 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 eliminate NYSE Rules 499 and 501A. NYSE Rule 499 (Suspension from Dealings or Removal from List by Action of the Exchange) sets forth the requirements for the continued listing of securities on the NYSE, as well as the procedures for delisting securities that do not meet the continued listing criteria. These requirements and procedures are also set forth as NYSE Listed Company Manual Sections 801.00 through 804.00, although NYSE Rule 499 has not been updated to reflect all of the current requirements of Sections 801.00 through 804.00. For example, NYSE Rule 499 Supplementary Material .20, Numerical and Other Criteria, Item 8—REITS sets forth a quantitative continued listing standard for REITs of \$30,000,000 in both total market capitalization and stockholders' equity. For purposes of the equivalent Listed Company Manual Section 802.01 requirement, this standard was amended in July 1999<sup>7</sup> and June 2001<sup>8</sup> so that the current continued financial listing standard for REITs is average market capitalization over 30 consecutive trading days of at least \$15,000,000. Another example of the outdated nature of NYSE Rule 499 is Supplementary Material .20, Numerical and Other Criteria, Item 17—"A Class of Non-Voting Common Stock is Created." This item was actually eliminated from Section 802.01D of the Listed Company Manual in 1996.<sup>9</sup>

<sup>7</sup> See Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999) (File No. SR-NYSE-99-29).

<sup>8</sup> See Securities Exchange Act Release No. 44481 (June 27, 2001), 66 FR 35303 (July 3, 2001) (File No. SR-NYSE-2001-02).

<sup>9</sup> See Securities Exchange Act Release No. 37238 (May 22, 1996), 61 FR 27123 (May 30, 1996) (File No. SR-NYSE-96-06).

The Exchange believes it is appropriate that the requirements relating to the continued trading and delisting of listed companies' securities be set forth solely in the Listed Company Manual. The inclusion of NYSE Rule 499 in the Exchange Rules preceded the creation of the Listed Company Manual and is an historical anomaly, as the Exchange Rules are generally applicable only to members rather than listed companies. Accordingly, the Exchange believes that the continued listing and delisting requirements are more properly solely contained in the Listed Company Manual.

The Exchange also proposes to eliminate NYSE Rule 501A (Withdrawal from Listing and Registration Under Securities Exchange Act of 1934), which simply refers to and restates the Section 12(d) of the Exchange Act relating to the withdrawal or delisting of a security.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>10</sup> because it is designed to prevent fraudulent and manipulative acts and practices, 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.

### 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 with respect to the proposed rule change.

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

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 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, and the Exchange provided the Commission with written notice of its intent to file 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(F)(6) thereunder.<sup>12</sup> At any time within 60 days of the filing of this 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>13</sup>

Although Rule 19b-4(F)(6) under the Act<sup>14</sup> requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission is waiving this requirement at the Exchange's request in view of the fact that the proposed rule change seeks to eliminate Exchange Rules that are already contained in the NOSE Listed Company Manual. The NOSE has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative date will allow the immediate removal of NOSE Rules 499 and 501A and eliminate any confusion that has arisen from the inconsistent updating of NOSE Rule 499 over the years. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>15</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 Interned comment form (<http://www.Sec.gov/rules/fro.shtml>); or

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(F)(6).

<sup>13</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 22, 2005, the date NOSE filed Amendment No. 2.

<sup>14</sup> *Id.*

<sup>15</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(F).

- Send an E-mail to [rule-comments@Sec.gov](mailto:rule-comments@Sec.gov). Please include File Number JR-NOSE-2005-15 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, PC 20549-0609.

All submissions should refer to File Number JR-NOSE-2005-15. 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 Interned Web site (<http://www.Sec.gov/rules/fro.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, 450 Fifth Street, NW., Washington, PC 20549. Copies of such filing also will be available on NOSE's Web site (<http://www.NOSE.mom/regulation/construes/1098741855384.html>) and for inspection and copying at the principal office of NOSE. 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 JR-NOSE-2005-15 and should be submitted on or before June 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 17 CFR 200.30-3(a)(12).