

this amendment is appropriate because it clarifies that the proposed rule does not require that NYSE members generate "automated exception reports."<sup>50</sup>

The Commission believes that the follow-up requirement in the proposed rule will ensure that members take active steps to contact customers who may be in inappropriate accounts.<sup>51</sup> Amendment No. 2 clarifies that NYSE members are only required to follow up with customers so long as they continue to be identified in the monitoring stage by adding the words "as appropriate" to the end of the first sentence of paragraph (4). The Commission agrees with the NYSE that a 12-month review cycle is a reasonable review period to flag customers who may be in inappropriate accounts. Because the proposed rule does not prescribe the means to follow up with customers, it should not be difficult to integrate the proposed requirements into member organizations' existing systems and procedures for follow-up customer contact.<sup>52</sup>

The Commission believes that the exception in the proposed rule for "Qualified Investors," as that term is defined in section 3(a)(54) of the Exchange Act, is appropriate.<sup>53</sup> As the NYSE correctly notes, underlying the Qualified Investor standard is the presumption that such persons are sophisticated investors who are capable of ensuring responsible handling of funds under management.<sup>54</sup> Accordingly, the level of disclosure required for retail customers may not be warranted for such investors.

The Commission finds good cause for approving Amendment No. 2 and

<sup>50</sup> Two commenters raised this concern. See SIA Letter and Stevens Letter. The Commission notes that identifying customers whose level of account activity may be inappropriate in the context of the customer's Program does not create "a presumption that certain customers should have been in different types of accounts," as one commenter was concerned. See Stevens Letter. Rather, the Commission believes it provides, as the NYSE states, "an opportunity to determine appropriateness." See Amendment No. 2. Nevertheless, the Commission expects that the NYSE will conduct regular examinations to determine the frequency with which firms are placing customers in NFBA Programs that are inappropriate for those customers. A high percentage of initial placements in inappropriate accounts by a particular member or registered representative may suggest a need for more vigorous procedures for determining the appropriateness of account placement.

<sup>51</sup> See proposed Rule 405A(4).

<sup>52</sup> The Commission does not agree with one commenter that it will be difficult to make effective contact with customers on an annual basis or necessitate a "tremendous use of personnel resource, unavailable to most firms." See Stevens Letter.

<sup>53</sup> See proposed Rule 405A(5).

<sup>54</sup> See Amendment No. 2.

Amendment No. 3 before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies certain aspects of the proposed rule that commenters found confusing, as well as makes minor changes to give members greater flexibility in the administration of the proposed rule. Amendment No. 3 corrects a non-substantive typographical rule text error included in Exhibit 5 of the Amendment No. 2 filing.

#### VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 and Amendment No. 3 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-NYSE-2004-13 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-2004-13. 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 20549-9303. 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-2004-13 and should be submitted on or before July 20, 2005.

#### VII. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>55</sup> that the proposed rule change (File No. SR-NYSE-2004-13) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>56</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51899; File No. SR-NYSE-2005-16]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Rescind the "Nine-Bond" Rule

June 22, 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 11, 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, II, and III 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.

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

The Exchange proposes to rescind NYSE Rule 396 (Off Floor Transactions in Bonds), commonly known as the "Nine-bond" rule. 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.

<sup>55</sup> 15 U.S.C. 78s(b)(2).

<sup>56</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.

## 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 IV 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

NYSE Rule 396 addresses off-floor trading of bonds. The rule, in essence, prohibits a member firm from effecting any transaction in any listed bond in the over-the-counter market, either as principal or agent, without first satisfying all public bids and offers on the Exchange at prices equal to, or better, than the price at which such portion of the order is executed over-the-counter. A member organization may execute, as agent, a transaction for a customer in the over-the-counter market in a listed convertible bond.

The rule contains several exceptions, including:

- Any order for the purchase or sale of ten bonds or more (hence the name of the rule);
- Orders involving less than one unit of trading (generally less than \$1,000);
- Orders where the customer has specifically directed that the trade not be executed on the floor of the Exchange;
- Orders for the purchase or sale of U.S. government bonds, municipal bonds, or bonds which have been called or otherwise are to be redeemed within 12 months; and
- Bond transactions related to primary or special distributions

The Exchange believes that the characteristics of bond trading no longer necessitate that NYSE Rule 396 be retained. In addition, in a separate submission, the Exchange has requested that the Commission provide an exemption from the provisions of section 12(a) of the Act<sup>3</sup> to permit NYSE members and member organizations to trade certain unregistered debt securities on the

Automated Bond System.<sup>4</sup> If the Commission grants this exemption, the Exchange could add substantially to the inventory of bonds traded in its market. Although the additional bonds would not be subject to NYSE Rule 396 since they would not be "listed" bonds, Rule 396 may be viewed as anti-competitive, particularly because the rule would apply only to a small segment of bonds traded on the Exchange. The Exchange, therefore, proposes to rescind NYSE Rule 396 in its entirety.

#### 2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,<sup>5</sup> in general, and with section 6(b)(5) of the Act,<sup>6</sup> in particular, which requires that NYSE rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change would 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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change; or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-NYSE-2005-16 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-2005-16. 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 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-2005-16 and should be submitted on or before July 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>4</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated May 26, 2005.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78j(a).