

purposes of," which is used in the remainder of the rule.<sup>8</sup>

NASD has filed this proposed rule change for immediate effectiveness so that these proposed non-substantive changes to the definition of "immediate family member" can become operational on January 15, 2007, the same time as the most recent changes to the definition of public arbitrator.<sup>9</sup> NASD believes this proposal will help clarify Rule 10308, and make it easier to determine the proper classification of an arbitrator.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that NASD's rules be 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. NASD believes that the proposed rule change is consistent with the provision of the Act noted above because it will assist in the administration of arbitrations by making Rule 10308 easier to understand and apply.

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

NASD does not believe that the proposed rule change will result in 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.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder<sup>12</sup> because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 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. As

required under Rule 19b-4(f)(6)(iii),<sup>13</sup> NASD provided the Commission with written notice of NASD's 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 filing date of the proposed rule change.

NASD has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest,<sup>14</sup> as such waiver is necessary so that the proposed rule changes will become effective with other amendments to Rule 10308 on January 15, 2007. For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

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.

## 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-2006-136 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-2006-136. 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 at the principal office of 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 the File Number SR-NASD-2006-136 and should be submitted on or before February 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55079; File No. SR-NYSE-2006-97]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to Exchange Rule 342 ("Offices—Approval, Supervision and Control")

January 10, 2007.

## I. Introduction

On October 26, 2006, the New York Stock Exchange LLC ("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 amending NYSE Rule 342.30 ("Annual Reports") to require submission of the process report prepared in connection with the Chief Executive Officer ("CEO") certification, as required under Rule 342.30(e)(iii), to the Board of Directors and Audit Committee (if such committee exists) of the member organization on or before April 1st of

<sup>8</sup> See, e.g., Rule 10308(a)(1), (2), (6), and (7).

<sup>9</sup> See *infra* note 7.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

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

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

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

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</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.

each year. The proposed rule change was published for comment in the **Federal Register** on December 7, 2006.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

### A. Description of the Proposal

#### 1. Background

NYSE Rule 342 requires supervision of the offices, departments and business activities of members and member organizations. NYSE Rule 342.30 requires members and member organizations to prepare an Annual Report addressing specified compliance issues by April 1 of each year. The Exchange proposed to amend Rule 342.30 to require the report required pursuant to Rule 342.30(e)(iii) (the "Process Report") in connection with a member organization's CEO certification to be submitted to the member organization's board of directors and audit committee (if such committee exists) on or before April 1st of each year. The purpose of the rule change was to better harmonize the requirements of Rule 342.30 with those of NYSE Rule 354 ("Reports to Control Persons").

#### Background

##### Rule 342.30

Rule 342.30 requires each member not associated with a member organization and each member organization to file with the Exchange, by April 1st of each year, a report (the "Annual Report") outlining its supervision and compliance efforts in prescribed regulatory areas during the preceding year and assessing the adequacy of its ongoing compliance processes and procedures. The Annual Report submitted to the Exchange is also required to include, pursuant to Rule 342.30(e), a certification by the CEO of each member organization confirming that the member organization has in place processes to:

(A) Establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange rules and Federal securities laws and regulations;

(B) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and

(C) test the effectiveness of such policies and procedures on a periodic

basis, the timing and extent of which is reasonably designed to ensure continuing compliance with Exchange and Federal securities laws and regulations.

Subsection (e)(iii) of Rule 342.30 requires these processes to be evidenced in the Process Report, which is to be reviewed by the CEO, the Chief Compliance Officer, and any other officers that the member organization may deem necessary to make the certification. Subsection (e)(iii) also requires the Process Report to be submitted to the member organization's board of directors and audit committee (if such committee exists), although the timing of this submission was not explicitly stated in the rule. Prior to the proposed rule change, the Exchange interpreted the rule to require the submission prior to CEO certification.

#### Rule 354

Subsection (a) of Rule 354 requires, in relevant part, that each member organization submit, by April 1st of each year, a copy of the Rule 342.30 Annual Report (also due to the Exchange by April 1st) to one or more of its control persons or, if the member organization has no control person, to the audit committee of its board of directors or its equivalent committee or group.

In order to better harmonize the Process Report submission requirements of Rule 342.30(e)(iii) with the Annual Report submission requirements of Rule 354(a), the Exchange proposed to amend Rule 342.30(e)(iii) to require each member organization to submit the Process Report to its board of directors and audit committee (if such committee exists) on or before April 1st of each year, consistent with the timing requirements of Rule 354(a) with respect to submission of the Annual Report. The Exchange stated that it believed that this would promote timely submission of the Process Report to member organizations' boards of directors and audit committees, while also serving the practical purpose of allowing member organizations to submit the Process Report together with the Annual Report so that the two may be reviewed as a single comprehensive package.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act in general and Section 6(b)(5) of the Act<sup>5</sup> in particular, which require that the rules of the Exchange be 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.<sup>6</sup> The proposed rule change promotes timely submission of substantive regulatory material to member organizations' governing bodies by coordinating the timing requirements of Rule 342.30(e)(iii) (Process Report) and Rule 354(a) (Submission of Annual Report to Control Persons). This should promote compliance by allowing member organizations' governing bodies to review both reports at the same time. The proposed rule change will also clarify the appropriate timing for submission of the Process Report and the Annual Report.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>7</sup> that the proposed rule change (SR-NYSE-2006-97) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55067; File No. SR-NYSE-2006-80]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Relating to NYSE Rule 1300 (Gold Shares) and NYSE Rule 51 (Hours of Business)

January 9, 2007.

## I. Introduction

On October 2, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission "Commission", pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Rule 1300 (Gold Shares) and NYSE Rule 51 (Hours for Business) to allow streetTRACKS® Gold Shares ("Gold Shares") to open for

<sup>6</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>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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> See Exchange Act Release No. 54847 (November 30, 2006), 71 FR 71012 (December 7, 2006) (the "Notice").

<sup>4</sup> 15 U.S.C. 78f(b)

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