

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55132; File No. SR-NYSE-2006-57)

January 19, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change Amending Rule 180 to Require Member Organizations to Use the Automated Liability Notification System of a Registered Clearing Agency

I. Introduction

On August 3, 2006, the New York Stock Exchange LLC (“NYSE”) filed with the Securities and Exchange Commission (“Commission”) and on November 15, 2006, amended proposed rule change SR-NYSE-2006-57 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> Notice of the proposal was published in the Federal Register on December 7, 2006.<sup>2</sup> One comment letter was received.<sup>3</sup> For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Prior to the rule change, NYSE’s Rule 180 provided that if securities were not delivered within the required time frame, the party who failed to deliver was liable for any resulting damages. Rule 180 also required that claims for damages had to be made promptly. It is industry practice when one party is owed and has not received securities that are the subject of a voluntary corporate action for the owed party to send to the failing counterparty a notice of the

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

<sup>2</sup> Securities Exchange Act Release No. 54818 (November 27, 2006), 71 FR 71010 (December 7, 2006) [File No. SR-NYSE-2006-57].

<sup>3</sup> Letter from John J. Wagner, Past President, 2003-2005, Corporate Actions Division, Inc., SIFMA, to Nancy M. Morris, Secretary, Commission (January 11, 2007).

liability that will be attendant with the failure to deliver the securities in time for the owed party to participate in the voluntary corporate action.

It is also customary in the industry for the failing counterparty that receives a liability notification either to reject the notice, to deliver the securities that are the subject of the liability notification, or to convert or exchange the securities to the corresponding corporate actions proceeds and deliver the proceeds. Liability notifications are usually sent by fax directly to the responsible failing counterparty or to its designees.

Failing counterparties are subjected to potential liability by their failure to respond to liability notifications. Failure to respond typically occurs because of processing errors, such as overlooking the faxed liability notification or not receiving it all, and because of the overall lack of uniformity in the process. There is currently no uniform method of notifying and confirming the transmission and receipt of liability notifications.

In response to a need for a reliable and uniform method of transmitting liability notifications, The Depository Trust Company (“DTC”) developed the SMART/Track for Corporate Action Liability Notification Service (SMART/Track”), a web-based system for the communication of liability notifications that is currently available to all DTC participants. SMART/Track allows DTC participants to easily create, send, process, and track corporate action liability notifications. Email notifications are automatically generated when liability notifications or replies to liability notifications are sent.

In response to an industry request that NYSE adopt a rule that would mandate the use of a system that would make uniform the method by which liability notifications are sent and received, NYSE is amending Rule 180. As amended, Rule 180 clarifies that if securities that

were to be delivered pursuant to the rules of a registered clearing agency are not so delivered, the contract may be closed as provided by the rules of that clearing agency. If the contracts are not so closed or if there is a failure to deliver securities which are to be delivered pursuant to NYSE Rule 176 or 177 and in the absence of any notice or agreement, the contract shall continue without interest until the following business day. However, in every such case of non-delivery, the party not delivering the securities shall be liable for any damages which accrue thereby.

Rule 180 is also being amended to require that when the parties to a failed contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and the contract was to be settled through the facilities of that registered clearing agency, the transmission of the liability notification must be accomplished through the use of the registered clearing agency's automated liability notification system.<sup>4</sup>

### III. Comment Letters

The Commission received one comment letter, which supported the rule as proposed.<sup>5</sup> The commenter stated, "The Corporate Actions Division of the Securities Industry and Financial Markets Association is 100% in favor of this rule change."

### IV. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

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<sup>4</sup> Currently DTC is the only registered clearing agency operating an automated liability notification service. At present, approximately 155 DTC participants are voluntarily using SMART/Track.

<sup>5</sup> Supra note 3.

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 perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>6</sup> Requiring the use of an automated liability notification system of a registered clearing agency should help reduce risk, costs, and delays resulting from processing errors and missing or inaccurate information that often occurs with manually processed liability notifications. Such an automated system should also provide broker-dealers with more timely receipt and distribution of such notices, immediate identification of the security affected by the notice, and a centralized system to manage and control all liability notifications. These benefits should, in turn, facilitate more efficient and cost-effective clearance and settlement of securities transactions.

Accordingly, for the reasons stated above the Commission finds that the rule change is consistent with NYSE's obligation under Section 6(b) of the Act to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

#### VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder. IT IS THEREFORE ORDERED,

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

pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-2006-57) be and hereby is approved.<sup>7</sup>

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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<sup>7</sup> In approving the proposed rule change, the Commission considered the proposal's impact on the efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 17 CFR 200.30-3(a)(12).