SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55337; File No. SR-NYSE-2006-04)

February 23, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto Relating to NYSE Rule 116 ("Stop" Constitutes Guarantee) and NYSE Rule 123B (Exchange Automated Order Routing Systems)

I. Introduction

On February 9, 2006, the New York Stock Exchange LLC (f/k/a New York Stock Exchange, Inc.) ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposal to amend NYSE Rule 116 ("Stop" Constitutes Guarantee) and NYSE Rule 123B (Exchange Automated Order Routing Systems) regarding a specialist's ability to "stop" stock and report such a transaction. On April 5, 2006, NYSE filed Amendment No. 1 to the proposed rule change. On September 8, 2006, NYSE filed Amendment No. 2 to the proposed rule change. The proposed rule change was published for comment in the Federal Register on October 18, 2006.[3] The Commission received one comment regarding the proposal.[4] This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 54592 (October 12, 2006), 71 FR 61524.

4 See letter from George Rutherfurd, Consultant, dated April 24, 2006 to Commission's rule-comments e-mail.

II. Description of the Proposal

NYSE Rule 116 provides that an agreement by a member to "stop" stock at a specified price constitutes a guarantee of a purchase or sale by the member of the security at that price. Paragraph .30 in the Rule's Supplementary Material provides three circumstances in which a specialist may stop stock, including: (i) at the opening or reopening of trading in a stock; (ii) when a broker in the trading crowd is representing another order at the stop price; or (iii) when requested to by another member.[5] The practice of stopping stock by specialists on the Exchange refers to a guarantee by a specialist that an order he or she receives will be executed at no worse a price than the contra side price in the market at the time the order was stopped, with the understanding that the order may in fact receive a better price.

The Exchange proposes to remove the provisions in NYSE Rule 116.30 that permit a specialist to "stop" stock. According to the Exchange, the practice of specialists stopping stock makes less sense in the Hybrid Market, primarily due to the dynamics of increased speed of trading and automated functioning of the market. The Exchange further stated that the procedures in NYSE Rule 116.30(3) for granting stops are not an efficient mechanism for seeking price improvement an automated market due to the time required to perform the current manual procedures.

III. Comment Summary

The Commission received one comment letter on the proposal,[6] to which NYSE has filed a response letter.[7] In the comment letter, the commenter argued the proposal is

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5 A specialist may only stop stock when requested to by another member if certain other conditions are met. See Exchange Rule 116.30(3).

6 See note 4 supra.

not in the public interest because the Hybrid Market, and specifically NYSE's Auction Market and Auction Limit Orders, do not provide investors with the price improvement opportunities that the NYSE's auction market did. The commenter stated that he believed that specialists in the Hybrid Market have been relieved of their responsibility to obtain price improvement for orders.

In its response letter, NYSE noted that specialists are not currently obligated to stop stock and further noted that, in fact, specialists infrequently choose to stop stock. NYSE reiterated its belief that there are many opportunities for price improvement in the Hybrid Market and stated that specialists were not "being relieved of their responsibility to obtain price improvement." The Exchange argued that it was eliminating a practice that its data showed was rarely used. The Exchange also argued that retaining the manual process for the specialist to stop stock would increase specialist risk if used.

The commenter also asserted that NYSE could easily reprogram its systems to replicate electronically the manual practice of stopping stock. In response, NYSE disagreed, indicating that there are difficulties inherent in maintaining the stopping stock functionality amid systems designed to enable increased automatic executions. Further, NYSE argued that the decision to remove systemic support for stopped orders was based in part on data that showed that specialists do not stop stock frequently.

IV. Discussion

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

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[7] See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated January 19, 2007.

securities exchange[8] and, in particular, the requirements of Section 6 of the Act.[9] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

According to the Exchange, the practice of stopping stock by specialists is rarely used. Therefore, the Exchange decided that it would not develop an electronic, systemic process to support this little used, voluntary function. The Exchange also argued that retaining a manual process to stop stock in the Hybrid Market would be inefficient. Accordingly, the Commission finds that eliminating specialists' ability to stop stock is reasonable and consistent with the Act.

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8 In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR-NYSE-2006-04), as modified by Amendment Nos. 1 and 2, be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon
Deputy Secretary

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11 15 U.S.C. 78s(b)(2).

12 17 CFR 200.30-3(a)(12).