

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56024; File No. SR-NYSE-2007-61)

July 6, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 97, Limitation on Members' Trading Because of Block Positioning

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 6, 2007, the New York Stock Exchange LLC ("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 substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 97 to permit members or member organizations that hold long positions as a result of block transactions with customers to send proprietary buy intermarket sweep orders ("ISOs") in the course of facilitating another customer's buy or sell order. The text of the proposed rule change is available on the NYSE's

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

Web site (<http://www.nyse.com>), at the NYSE, and at the Commission's Public Reference Room.

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. 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 aspects 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 is proposing to amend NYSE Rule 97 in order to permit member organizations that hold long positions as a result of a block transaction with a customer to execute proprietary ISOs on a plus tick during the last 20 minutes of the trading day if they are required under Regulation NMS⁵ to send a buy ISO in the course of facilitating another customer's buy or sell order during that time period.

NYSE Rule 97 governs block facilitation transactions by NYSE member organizations on behalf of customers. The rule states that if, as a result of facilitating one or more customer sell order(s) in a stock during the trading day, a member organization ends up holding a long position in the stock in a proprietary account, then during the last 20 minutes of trading, the member organization is prohibited from buying such stock as principal on a "plus tick" if the transaction would take place at a price above the lowest price at which it acquired the long position. The Exchange states that the underlying purpose of Rule 97 was to address concerns

⁵ 17 CFR 242.600 et seq.

that a member firm might engage in manipulative practices by attempting to “mark-up” the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired.

Under Regulation NMS, member organizations may not trade through a protected quotation in another market, but may satisfy their obligation to the protected order by sending ISOs to the protected market at the same time that they send orders to the inferior-priced market. Depending on the size of the block that is being facilitated and the size of the protected quotes, block customers may -- pursuant to Rules 600(b)(30)(ii) and 611(b)(6) of Regulation NMS⁶ -- decline to take and process better priced executions that result from the sending of the ISO orders. This may occur, for example, where the ISO amounts are de minimis in relation to the size of the block being facilitated. In those situations, the firm would be required – based on the customer’s instructions -- to print the block at the inferior price and send the ISOs, which would be marked and booked as principal (rather than as agent).

The aforementioned may result in a conflict between NYSE Rule 97 and Regulation NMS. That is, if, during the last 20 minutes of trading, a member organization facilitates a customer order that trades through protected bids or offers, and in compliance with Rules 600(b)(30)(ii) and 611(b)(6) of Regulation NMS, the member firm simultaneously routes proprietary ISOs to execute against the full displayed size of any protected quotation in that security (“ISO facilitation”), the ISO facilitation could violate Rule 97 if the ISO orders would trade on a plus tick at a price above the lowest facilitation price. In essence, the implementation of Regulation NMS requires firms to choose between violating Regulation NMS or violating Rule 97.

⁶ 17 CFR 242.600(b)(30)(ii) and 17 CFR 242.611(b)(6).

To resolve this potential conflict, the Exchange proposes adding an exemption to Rule 97 so that when facilitating a customer order that would otherwise require the firm to either violate Rule 97 or trade through protected quotations, member organizations can comply with their Regulation NMS obligations without also violating Rule 97.⁷ This exemption would be available only when: (1) the firm has acquired a proprietary position as a result of a previous block facilitation for a customer; (2) the facilitation trade during the last 20 minutes of trading would cause the firm to trade through a better priced offer on another market, such that the firm is obligated by Rule 611 of Regulation NMS to send proprietary ISOs when it facilitates the customer's order; (3) the customer has declined better-priced ISO executions; and (4) the better-priced offers in away markets are such that NYSE Rule 97 would prohibit the firm from sending a proprietary buy order. In such cases, the firm would be permitted to send the proprietary buy ISOs, provided that the ISOs were limited in quantity to the aggregate size of better priced protected quotations in other markets. For purposes of this amendment, the Exchange further proposes adopting the definitions of Regulation NMS in connection with the terms "protected quotation" and "intermarket sweep order."⁸ The Exchange notes that the firm would still be subject to the anti-manipulation provisions of the NYSE and Commission rules and regulations.

The Exchange believes that the exemption is appropriate in view of the pending compliance date for Regulation NMS and the fact that a firm's intention in these situations is not to manipulate the market or to mark up its long position, but rather to facilitate a legitimate customer order. Under these circumstances, the Exchange believes that the amendment is in the public interest, since it would facilitate Regulation NMS compliance.

⁷ A similar issue arises under NYSE Rule 92, which can also conflict with Regulation NMS Rule 611. See Securities Exchange Act Release No. 56017 (July 5, 2007) (SR-NYSE-2007-21).

⁸ See 17 CFR 242.600(b)(58) and (30).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁹ that an Exchange have rules that are designed 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

The rule proposal was developed in response to concerns expressed by certain member organizations and the Securities Industry and Financial Markets Association (“SIFMA”), an industry organization that represents the interests of more than 650 securities firms, banks and asset managers. During the drafting of the rule filing and proposed rule, SIFMA, on behalf of its members, submitted materials for the NYSE's consideration in connection with the relief requested. The Exchange has incorporated these comments into the final rule proposal, but the Exchange has neither solicited nor received written comments on the final proposed rule change.

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,

⁹ 15 U.S.C. 78f(b)(5).

the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹² normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would facilitate member compliance with their respective intermarket sweep order routing obligations under Rule 611 of Regulation NMS.¹⁴ For these reasons, the Commission designates that the proposed rule change become operative immediately.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 17 CFR 242.611(b)(6).

¹⁵ 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).

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. Please include File Number SR-NYSE-2007-61 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-NYSE-2007-61. 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 Room, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2007-61 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).