

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56753; File No. SR-NYSE-2007-97)

November 6, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify that a Member Organization May Still Use the Express Consent Procedure for Obtaining Consent from a Customer to Trade Along on an Order-By-Order Basis Under Rule 92(b)

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 October 31, 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, II, and III below, which Items have been substantially prepared by NYSE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ which renders it 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 clarify the consent provisions for trading along under NYSE Rule 92 in an NYSE Regulation, Inc. (“NYSE Regulation”) Information Memo (“Information Memo”). The text of the proposed rule change is available at NYSE, the Commission’s Public Reference Room, and www.nyse.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

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 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 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

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 that, among other things, expanded the consent provisions for trading along under Rule 92(b).⁵ Under the pre-amended version of the rule, members or member organizations could trade along with a customer order that could be executed at the same price so long as the customer had given express permission, including an understanding of the relative price and size of allocated execution reports ("express consent procedure"). Under the express consent procedure, members or member organizations needed to obtain and document such consent on an order-by-order basis.

As amended, a member or member organization can trade along with a customer order under Rule 92(b) so long as the member organization "periodically provides written disclosures to its customers and obtains and documents affirmative consent" ("affirmative consent procedure"). Because the affirmative consent procedure is broader than the express consent procedure, the Exchange did not keep the text of the express consent procedure in the rule.

⁵ See Securities Exchange Act Release No. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR-NYSE-2007-21).

As explained in the Information Memo, in expanding the consent procedures under Rule 92(b), the Exchange did not intend to prohibit the use of the express consent procedure for obtaining trade-along consent in a given instance. The Information Memo clarifies that a member organization may still use the express consent procedure for obtaining consent from a customer to trade along on an order-by-order basis under Rule 92(b). Accordingly, if a customer does not want to provide blanket affirmative consent, a member organization may still obtain consent on an order-by-order basis to trade along with an order from that customer.

In addition, the Information Memo advises member organizations of a recent NYSE Regulation Hearing Panel decision concerning the express consent procedure. In that decision, a member organization was fined for failing to adhere to principles of good business practice because it did not record both the customer contact name and the percentage split when documenting whether a customer provided trade-along consent under the Rule 92(b) express consent procedure.⁶ The Information Memo informs member organizations that NYSE Regulation considers the failure to document the contact name of the person who provided the express consent to be a violation not only of NYSE Rule 401, but of NYSE Rule 92 as well.

The Information Memo also addresses the September 30, 2007 deadline that was part of the original filing. The purpose of that deadline was to provide member organizations with a grace period to make the written disclosures required under amended Rule 92. That three-month grace period provided firms with the opportunity to use the new affirmative consent process immediately upon approval of the amended rule, even before their written disclosures were finalized, so long as the process of making written disclosures and documenting the orally-provided consents was completed by September 30, 2007. Because the grace period has expired,

⁶ See In re Merrill Lynch, Pierce, Fenner & Smith Incorporated, NYSE Hearing Board Decision 07-005 (January 12, 2007).

member organizations must provide written disclosures to their customers and document the customers' affirmative consents before they may trade along with such customers.⁷

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁸ 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 Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁹ and subparagraph (f)(1) of Rule 19b-4 thereunder,¹⁰ because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

⁷ In addition, the Information Memo answers inquiries that NYSE Regulation has received from a number of member organizations regarding the scope and application of amended Rule 92(b). That portion of the Information Memo is not subject to this rule filing.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁰ 17 CFR 240.19b-4(f)(1).

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. Please include File Number SR-NYSE-2007-97 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-2007-97. 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 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-2007-97 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).