

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57009; File No. SR-NYSE-2007-108)

December 20, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Exchange Rule 325 Relating to Financial Responsibility Requirements of Member Organizations

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on November 30, 2007, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as one that is concerned solely with the administration of the self regulatory organization pursuant to Section 19(b)(3)(A)(iii)⁴ of the Act and Rule 19b-4(f)(3)⁵ thereunder, 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(3).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 325 to eliminate the requirement under subparagraph (e) that any member organization that employs individuals to execute orders on the Floor of the Exchange must provide evidence of financial responsibility in the amount of \$100,000 for each such individual. The Exchange is further seeking to make technical amendments to the text of Exchange Rule 700. The amended text of these Rules is attached as Exhibit 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 self-regulatory organization 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 self-regulatory organization 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

Through this filing, the NYSE seeks to amend Exchange Rule 325 to eliminate the requirement under subparagraph (e) that any member organization that employs individuals to execute orders on the Floor of the Exchange must provide evidence of financial responsibility in the amount of \$100,000 for each such individual.

Current Exchange Rule 325 (Capital Requirements, Member Organizations, General Provisions)

Currently, Exchange Rule 325 provides that member organizations must comply

with the net capital requirements prescribed by Rule 15c3-1 of the Act.⁶ Exchange Rule 325 prescribes additional financial requirements beyond Rule 15c3-1, including, pursuant to subparagraph (e), the requirement that member organizations that employ individuals to execute orders on the Floor of the Exchange must provide evidence of financial responsibility in the amount of \$100,000 for each such individual. In accordance with Rule 325(e), evidence of financial responsibility may be provided by any of the following: a guarantee by a clearing organization, an escrow account, a letter of credit, or pledged securities. Rule 325(e) further provides that the Exchange will consider alternate methods of compliance with this financial responsibility requirement.

Background

Subparagraph (e) of Exchange Rule 325, which prescribes financial responsibility requirements for members, was initially approved on April 11, 1978.⁷ It was adopted in response to the creation of two new classes of members, i.e. lessees and physical access members, whereby for the first time there were individuals trading on the Floor who did not own actual memberships on the Exchange.⁸ In adopting Rule 325(e), the Exchange felt that it was important to its reputation for integrity and fairness that all members were able to demonstrate the ability to cover (1) any liabilities to other members incurred in the ordinary course of business on the Floor of the Exchange or (2) any amounts due the

⁶ 15 U.S.C. 78a, et seq.

⁷ See Securities Exchange Act Release No. 14652 (April 11, 1978), 43 FR 16581 (SR-NYSE-78-6).

⁸ See Securities Exchange Act Release No. 25015 (October 9, 1987), 52 FR 39321 (October 21, 1987) (SR-NYSE-87-27).

Exchange.⁹

The Rule was subsequently amended several times to raise the dollar amounts in response to increased levels of market activity, volatility and order size.¹⁰ It was also amended to provide for alternate methods of proof of financial responsibility, including permitting members to pledge their seats or to use surety bonds to satisfy the requirement.¹¹ On February 27, 2006, the Rule was amended to hold member organizations, rather than individual members, responsible for presenting evidence of financial responsibility for each individual the member organization employs.¹² This amendment was made to reflect the changes in the nature of membership incident to the Exchange's merger with Archipelago Holdings, Inc.¹³

⁹ See Securities Exchange Act Release No. 25015 (October 9, 1987), 52 FR 39321 (October 21, 1987) (SR-NYSE-87-27). See also NYSE Information Memorandum 1987-04 (January 21, 1987).

¹⁰ See Securities Exchange Act Release No. 17206 (October 9, 1980), 45 FR 69082 (SR-NYSE-80-23); Securities Exchange Act Release No. 26176 (October 13, 1988), 53 FR 41009 (October 18, 1988) (SR-NYSE-87-27); Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-05-77).

¹¹ See Securities Exchange Act Release No. 17206 (October 9, 1980), 45 FR 69082 (SR-NYSE-80-23); Securities Exchange Act Release No. 26176 (October 13, 1988), 53 FR 41009 (October 18, 1988) (SR-NYSE-87-27); Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-05-77).

While the Rule provides (and has provided) for several different methods of proof of financial responsibility, in practice many members pledged their seats or used surety bonds to satisfy the Rule.

¹² See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-05-77). See also NYSE Information Memorandum 2005-99 (December 15, 2005).

¹³ As a result, there are no longer transferable memberships and seats on the Exchange that may be used to meet the requirement of the Rule.

Proposed Amendments to Exchange Rule 325

The Exchange proposes to amend the financial responsibility requirements of Exchange Rule 325 by deleting subparagraph (e). The NYSE believes that the requirements of Exchange Rule 325(e) essentially function as additional capital requirements for those member organizations that employ individuals to execute orders on the Floor. Given the robust net capital requirements already in place for member organizations pursuant to both SEC Rule 15c3-1 and Exchange Rule 325, the financial responsibility requirement under subparagraph (e) is unnecessary. In addition, when compared with the levels and volumes of trading member organizations currently engage in, the modest extra capital required by Rule 325(e) no longer effectively advances the purpose of ensuring financial responsibility. As such, the Exchange seeks to delete subparagraph (e) of Exchange Rule 325 in its entirety.

Technical Amendments to Rule 700

The Exchange also proposes to make technical changes to Exchange Rule 700. Subparagraph (a) of Exchange Rule 700 provides, in part, that “Except as may be specifically provided in the Rules in this series, (i) Rules 6, 45 through 298 and Rule 440B shall not apply to option transactions and (ii) Rule 325(e) shall not apply to members whose transactions on the Exchange are in options solely.”

The Exchange seeks to delete subparagraph (a)(ii) of Rule 700, as Rule 325(e) will no longer exist. In addition, the Exchange proposes to delete the designation “(i)” in this clause since there will no longer be subsection (ii).

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)¹⁴, which requires 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)¹⁵ of the Act in that it seeks to ensure economically efficient execution of securities transactions, to make it practicable for brokers to execute investors' orders in the best market, and to provide an opportunity for investors' orders to be executed without the participation of a dealer.

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, which is concerned solely with the administration of the self-regulatory organization, has become effective as of November

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78k-1(a)(1).

30, 2007 pursuant to Section 19(b)(3)(A)(iii)¹⁶ of the Act and Rule 19b-4(f)(3) thereunder.¹⁷ 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 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, as amended, 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-2007-108 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-2007-108. 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

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(3).

(<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 such filing will also be available for inspection and copying at the principal office of the 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-2007-108 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

Deletions [bracketed]

Capital Requirements Member Organizations General provisions

Rule 325 (a) Each member organization shall comply with the net capital requirements prescribed by Rule 15c3-1 under the Securities Exchange Act of 1934 (the "Exchange Act") and with the additional requirements of this Rule 325.

* * * * *

[(e) In addition to the net capital requirement prescribed in Rule 15c3-1 promulgated under the Securities Exchange Act of 1934, each member organization which employs individuals to execute orders on the floor of the Exchange, must present evidence of financial responsibility in the amount of \$100,000 for each such employee by one of the following methods;

(1) A written guarantee by a member organization which is a member of a qualified clearing agency and has excess net capital of not less than \$100,000 for each member for whom such guarantee has been extended or

(2) \$100,000 held by an independent agent in escrow, or

(3) a letter of credit issued by a bank or other party acceptable to the Exchange in the amount of \$100,000, or

(4) marketable securities with a total value of at least \$100,000 (after appropriate haircuts, to be determined in the same manner as haircuts are determined for capital requirements) on deposit with an organization acceptable to the Exchange and readily available, or

Such written guarantee, escrow account, letter of credit or marketable securities shall be available solely for sums due the Exchange and such sums as the Board of Directors shall determine are due by such member to member organizations as the result of losses arising directly from the closing out under the Rules, of contracts entered into, in the ordinary course of business in the market on the floor of the Exchange for the purchase, sale, borrowing or loaning of securities.

The Exchange will consider alternate methods of compliance with the financial responsibility standard.]

Applicability, Definitions and References

Rule 700. (a) The Rules in this 700 series (Rules 700 through 794) shall be applicable to (i) the trading on the Exchange of option contracts issued by The Options Clearing Corporation, (ii) the terms and conditions, and the exercise and settlement, of option contracts so traded, and (iii) the handling of orders, and the conduct of accounts and other matters, relating to option contracts dealt in by any member or member organization.

Except as may be specifically provided in the Rules in this series, [(i)] Rules 6, 45 through 298 and Rule 440B shall not apply to option transactions [and (ii) Rule 325(e) shall not apply to members whose transactions on the Exchange are in options solely].

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