

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51747; File No. SR-NYSE-2005-26)

May 26, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Extend the Closing Time of Crossing Session II and to Amend its Crossing Sessions III and IV to Eliminate the Share Size Restriction and the Process by Which an Order is Executed if There is No Execution Prior to 4:00 p.m.

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 April 8, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) submitted to the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On May 19, 2005, NYSE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NYSE proposes to amend its Off-Hours Trading Facility (“OHTF”) - Crossing Sessions II, III, and IV, in particular. The Exchange proposes to extend the closing time of Crossing Session II from 6:15 p.m. to 6:30 p.m. The NYSE also proposes to amend rules governing Crossing Sessions III and IV to eliminate the 10,000 share size restriction and the process by which an order is executed if there is no execution prior to 4:00 p.m. The text of the proposed rule change is available on the NYSE’s Web site (<http://www.nyse.com>), at the NYSE’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made clarifying changes to the Purpose section of the filing.

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 NYSE 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

Background

The Exchange's OHTF consists of four sessions. Crossing Session I permits the execution, at the Exchange's closing price, of single-stock, single-sided closing price orders and crosses of single-stock, closing price buy and sell orders. Crossing Session II provides an opportunity for members and member organizations to cross program trading orders in NYSE-listed securities on the Exchange between 4:00 p.m. and 6:15 p.m., based on the aggregate price of the program. Matched buy and sell orders for a minimum of 15 NYSE-listed stocks that have a minimum dollar value of \$1 million may be transmitted to the Exchange for execution in Crossing Session II. These orders are transmitted via the Exchange's Electronic Filing Platform, detailing the total number of stocks, total number of shares, and total dollar value.

Crossing Session III allows for the execution on the NYSE of "guaranteed price coupled orders," whereby member organizations could fill the unfilled balance of a customer order at a price which was guaranteed to the customer prior to the close of the Exchange's 9:30 a.m. to 4:00 p.m. trading session. Crossing Session IV is a facility whereby member organizations may fill the unfilled balance of a customer's order at a price such that the overall order is filled at a price

that is no worse than the volume weighted average price (“VWAP”) for the subject security on that trading day. The member organization is required to document its VWAP agreement with the customer and the basis upon which the VWAP price would be determined. Crossing Sessions III and IV were approved by the Commission as pilot programs (the “Pilots”) in SR-NYSE-2002-40.⁴ The Pilots are currently approved until February 1, 2006.⁵

The Exchange proposes to make the following amendments to Crossing Sessions II, III, and IV.

Crossing Session II

The Exchange proposes to expand the hours of operation of Crossing Session II from 6:15 p.m. to 6:30 p.m. each day that the Exchange is open for its regular 9:30 a.m. to 4:00 p.m. trading session.⁶ Expanding the time of operation of Crossing Session II is intended to enhance the usefulness and practicality of Crossing Session II by making it available to member organizations for a greater time period and to make it consistent with the closing time of Crossing Sessions III and IV. Orders in both Crossing Sessions III and IV can be entered beginning at 4:00 p.m. and must be completed by 6:30 p.m.

Exchange Rule 51 provides for the operation of Off-Hours Trading “during such hours as the Exchange may from time to time specify.” Should the Commission approve the proposed

⁴ See Securities Exchange Act Release No. 48857 (December 1, 2003), 68 FR 68440 (December 8, 2003).

⁵ See Securities Exchange Act Release No. 51091 (January 28, 2005), 70 FR 6484 (February 7, 2005) (SR-NYSE-2005-01).

⁶ See Securities Exchange Act Release No. 46547 (September 25, 2002), 67 FR 61706 (October 1, 2002) (SR-NYSE-2002-38) (expanding hours of operation of Crossing Session from 5:15 p.m. to 6:15 p.m.).

rule change, the Exchange will alert its membership and other market participants of the new operating hours for Crossing Session II.

Crossing Sessions III and IV

Exchange Rule 907 (iii) states that a guaranteed price coupled order or an order to be executed at the VWAP is for the portion of the customer's order that could not be executed prior to 4:00 p.m., but in any event must be at least 10,000 shares. The Exchange is proposing to eliminate the 10,000 share size restriction in Exchange Rule 907 (iii) for both types of orders in Crossing Sessions III and IV, in order to increase the availability of Crossing Sessions III and IV to member organizations. In addition, the Exchange is proposing to amend the rule to provide that if there is no execution prior to 4:00 p.m, the entire order would be eligible for execution in the crossing session, rather than just the portion of the customer's order that could not be executed prior to 4:00 p.m.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is 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 believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2005-26 on the subject line.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2005-26. 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. Copies of such filing also will 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-2005-26 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.⁹

Margaret H. McFarland
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).