

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51790; File No. SR-NYSE-2004-42)

June 6, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc; Order Approving Proposed Rule Change and Amendment No. 1 to Eliminate the Requirement that a Floor Official Approve Certain Transactions on the Exchange's Automated Bond System

I. Introduction

On August 10, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate the requirement that an Exchange Floor Official approve transactions in certain bonds on the NYSE's Automated Bond System ("ABS") that are made two points or more away from the last sale, or more than 30 days after the last sale. The NYSE filed Amendment No. 1 to the proposed rule change on March 30, 2005.³ The proposed rule change, as amended, was published for comment in the Federal Register on May 2, 2005.⁴ The Commission received one comment from the public supporting the proposed rule change.⁵ This

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, which replaced and superceded the original filing in its entirety, the NYSE supplemented its rationale for the proposal by, among other things, describing the process that a Floor Official follows when considering whether to approve a transaction that would occur at a price that is at least two points away or more than 30 days from the last transaction; recounting some of the history of bond trading on the NYSE; explaining that the Exchange has not found it necessary to re-instate the two-point / 30-day provision for convertible bonds since it eliminated its applicability to convertible bonds in 1998; and noting that Exchange Rule 86(g) requires all orders to be entered into ABS at a limit price, and that ABS automatically asks a user to reconfirm the price of an order that is entered at a price two or more points away from the last sale.

⁴ See Securities Exchange Act Release No. 51613 (April 25, 2005), 70 FR 22736.

Order approves the proposed rule, as amended.

II. Description

The Exchange proposed to eliminate the requirement in NYSE Rule 86(g) that a Floor Official approve any transaction in ABS in non-convertible bonds that would occur at a price two or more points away from the most recent transaction in that bond or more than 30 days after the most recent transaction. The proposal also would eliminate the ability of a Floor Official to “bid up” or “offer down”⁶ an order submitted to ABS two or more points away from the last sale in a particular bond or more than 30 days following a sale of that bond before approving a transaction for such order.

The Exchange also proposed to codify in NYSE Rule 86(g) two features the NYSE represents have been programmed into ABS since its inception: (1) the acceptance of priced orders only; and (2) price confirmation, by the entering firm, of orders entered at a price two or more points away from the last sale price.

III. Comment Received

⁵ See email from Joseph P. Riveiro, Investec (US), Inc. to the Commission, dated May 8, 2005 (“Investec Email”)

⁶ If, for example, an order is entered into ABS to buy 10 XYZ bonds at 93 when the last sale for XYZ occurred at 90, the Floor Official could determine that XYZ bond should be “bid up” at a decided price increment away from the limit order for a decided period of time, typically one “point” for one minute. The NYSE bond supervisor would then enter the bidding-up starting price, price increment, time increment, and final price into ABS, upon which a message appears on all ABS screens alerting subscribing firms that bidding up in XYZ has commenced. An ABS user could execute against that “bid” by entering an order to sell at 91 into the system. If, after one minute, the “bid” at 91 generated no interest among ABS users, the order would be bid at 92 for one minute. If that “bid” generated no interest, then the order would, after one minute, be bid at 93 or be matched (traded) at 93, depending on whether there was a contra-side order to sell at 93 in the ABS at that point in time. Telephone conversation between Fred Siesel, Consultant, NYSE, and Tim Fox, Attorney, Commission on April 18, 2005.

As stated above, the commenter supported the NYSE's proposal.⁷ In sum, the commenter stated that he believed that NYSE Rule 86(g) has frustrated trading in ABS, and that he believed that the elimination of Floor Official approval would facilitate an increase in the volume and consistency in the execution of non-convertible bonds on ABS.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,⁹ which requires, among other things, that a national securities exchange's rules be designed, to prevent fraud and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and to 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 Commission believes that the NYSE proposal, as amended, is designed to accomplish these ends by facilitating the efficient and timely execution of orders in non-convertible bonds submitted to ABS. The Commission believes that the proposed codification in NYSE Rule 86 of the existing practice that a subscriber firm confirm an order that is submitted to ABS at a price two or more points away from the last sale should minimize the risk that ABS will execute an order at a price that the user did not intend. The Commission further believes that the

⁷ See Investec Email supra note 5.

⁸ In approving this proposal, 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(b)(5).

proposal to require that orders submitted to ABS be priced is appropriate because it reflects the existing practice on ABS, which the Commission believes promotes the price discovery process.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSE-2004-42), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).