

the 13,000 contracts canceled is both (1) greater than the base level of 5,000 contracts and (2) more than five times in excess of the 2,500 contracts executed (which would be 12,500 contracts), the ISE would impose the fee on an aggregate of 10,500 contracts (13,000 contracts canceled minus the 2,500 contracts executed). The fee on Clearing EAM would be \$1,050, which would have the information necessary to pass the charge to its customer, Firm A.

2. Statutory Basis

The ISE states that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act,⁸ that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In particular, these fees would permit the Exchange to recover capacity costs more equitably among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE states that the proposed rule change does not impose in 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 not solicited, and does not intend to solicit, comments on this 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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to section 19(b)(3) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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 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 SR-ISE-2005-31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to SR-ISE-2005-31. 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 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 SR-ISE-2005-31 and should be submitted on or before August 26, 2005.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52182; File No. SR-NYSE-2005-16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Rescind the "Nine-Bond Rule"

August 1, 2005

On February 11, 2005, the New York Stock Exchange, Inc. ("NYSE") 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 rescind NYSE Rule 396, commonly known as the "Nine-Bond Rule." The proposed rule change was published for comment in the **Federal Register** on June 29, 2005.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

NYSE Rule 396 prohibits a member, member organization, or affiliated person or firm from effecting any transaction in any NYSE-listed bond in the over-the-counter market, either as principal or agent, without first satisfying all public bids and offers on the NYSE at prices equal to, or better than, the price at which such portion of the order is executed over-the-counter. The rule contains a number of exceptions, including one for any order submitted for ten bonds or more.

The Commission finds that the NYSE's proposal to rescind Rule 396 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,⁵ which requires that the rules of the exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest. Eliminating NYSE Rule 396 should facilitate the efficient execution of bond transactions on the NYSE without compromising smaller customer orders. The Commission notes that the approval

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51899 (June 22, 2005), 70 FR 37461.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78ff(b)(5).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 19b-4(f)(2).

¹¹ 17 CFR 200.30-3(a)(12).

of the proposed rule change in no way diminishes or otherwise affects the best execution obligations of NYSE members, member organizations, or affiliated persons that are otherwise imposed by federal securities law or agency law.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NYSE-2005-16) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52181; File No. SR-NYSE-2005-04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, Amending Interpretation of NYSE Rule 311 (“Formation and Approval of Member Organizations”) To Codify Certain Qualification Requirements for and Criteria for Dual- or Multi-Designation of Principal Executive Officers

August 1, 2005.

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 January 6, 2005, the New York Stock Exchange, Inc. (“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 prepared by the Exchange. On July 25, 2005, the NYSE amended the proposed rule change (“Amendment No. 1”).³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 C.F.R. 240.19b-4.

³ In Amendment No. 1, the Exchange deleted the provision codifying Chief Operations Officer exemptions for certain introducing firms, proposed an amendment codifying limitations on the employment of principal executive officers, and made technical corrections to the purpose section and the rule text.

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

The Exchange proposes amendments to the Interpretation of NYSE Rule 311 (“Formation and Approval of Member Organizations”) to codify: (i) Qualification requirements for Chief Operations Officers (“COOs”) and Chief Financial Officers (“CFOs”); (ii) criteria for the dual-designation of introducing firm COOs and CFOs; (iii) criteria for the other dual-designation and multi-designation of principal executive officer functions; (iv) criteria for co-designation of such functions; and (v) limitations on the employment of principal executive officers. The text of the proposed rule change is available on the NYSE Web site (<http://www.nyse.com>), at the NYSE’s Office of the Secretary 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 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

NYSE Rule 311(b)(5) requires the designation of “principal executive officers” exercising senior principal executive responsibility over various prescribed areas of each member organization’s business.⁴ The Interpretation of NYSE Rule 311(b)(5)⁵ further specifies that persons so designated, such as CFOs or COOs must be either members or allied members, must satisfy an examination requirement that is acceptable to the

⁴ The rule lists certain areas of responsibility that are applicable to all member organizations, such as operations, compliance with the rules and regulations of regulatory bodies, finance and credit, and those areas which may or may not be present in a member organization, such as sales, underwriting, and research.

⁵ See Interpretation Handbook at NYSE Rule 311(b)(5)/01.

Exchange and must also have work experience and background commensurate with their responsibilities. The Exchange is proposing amendments to the Interpretation of NYSE Rule 311 in order to codify and clarify the following:

- The qualification requirements for CFOs and COOs;
- That member organizations with limited operational activities may dually designate a single person to act as both CFO and COO, where circumstances permit;
- That the Exchange’s approval is required for dual-designations other than CFO/COO and for all principal executive officer multi-designations;
- That the Exchange’s approval is required for the co-designation of functions requiring a principal executive officer; and
- That the prior written approval of the Exchange, pursuant to NYSE Rule 346 (e), is required for arrangements involving the dual-employment of principal executive officers.

Proposed Amendments to the Interpretation of NYSE Rule 311(b)(5)

CFO/COO Qualification—Clearing Firms

The Financial and Operations Principal Qualification Examination (Series 27) addresses Exchange and Federal regulatory requirements relating to a broad range of broker-dealer functions, including:

- Maintenance of Books and Records;⁶
- Net Capital Requirements;⁷
- Customer Protection Rule;⁸
- Financial Reporting;⁹
- Processing of Funds and Securities; and
- Federal Reserve Board Regulations.¹⁰

The material covered by the Series 27 Examination, in large part, reflects the functions and responsibilities associated with a clearing firm. Accordingly, since rescinding the Allied Member Examination (Series 41) in January 1986,¹¹ the Exchange has required that the CFO and COO at a clearing firm be Series 27-qualified. The proposed amendments to the Interpretation of NYSE Rule 311(b)(5) (*see* proposed new Section/02) would codify this requirement.

⁶ 17 CFR 240.17a-3; 17 CFR 240.17a-4.

⁷ 17 CFR 240.15c3-1.

⁸ 17 CFR 240.15c3-3.

⁹ 17 CFR 240.17a-5; 17 CFR 240.17a-11.

¹⁰ 15 U.S.C. 78g; 15 U.S.C. 78h.

¹¹ See NYSE Information Memo Number 86-3 dated January 29, 1986.