SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57455; File No. SR-NYSE-2008-03)

March 7, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Rescind NYSE Rule 97 (Limitation on Member's Trading Because of Block Positioning)

I. Introduction

On January 11, 2008, the New York Stock Exchange LLC ("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 rescind NYSE Rule 97 (Limitation on Member's Trading Because of Block Positioning). The proposed rule change was published for comment in the Federal Register on February 6, 2008.[3] On February 20, 2008, NYSE filed Amendment No. 1 to the proposed rule change.[4] The Commission received one comment on the proposed rule change.[5] This order approves the proposed rule change, as modified.

II. Description of the Proposed Rule Change

NYSE Rule 97 governs block facilitation transactions by NYSE member organizations on behalf of customers. The rule states that if, as a result of facilitating one or more customer sell orders in a stock during the trading day, a member organization ends up holding a long

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 57236 (January 30, 2008), 73 FR 7022.

4 In Amendment No. 1, the Exchange made conforming amendments to NYSE Rules 123C and 800 to remove references to NYSE Rule 97, and corrected typographical errors in NYSE Rule 800. Because Amendment No. 1 is technical in nature, it is not subject to notice and comment.

5 See letter from Ann L. Vlcek, Securities Industry and Financial Markets Association ("SIFMA"), dated February 27, 2008 ("SIFMA Letter").

position in the stock in a proprietary account, then during the last 20 minutes of trading, the member organization is prohibited from buying such stock as principal on a "plus tick" if the transaction would take place at a price above the lowest price at which it acquired the long position. The Exchange states that Rule 97 was originally adopted to address concerns that a member firm might engage in manipulative practices by attempting to "mark-up" the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired. The rule has been since amended to reduce its scope and provide certain exceptions.[6]

The Rule was last amended in July 2007 to resolve a conflict between Regulation NMS under the Act ("Regulation NMS")[7] and NYSE Rule 97, to add an exemption to Rule 97 so that when facilitating a customer order that would otherwise require the firm to either violate Rule 97 or trade through protected quotations, member organizations can comply with their Regulation NMS obligations without also violating Rule 97.[8] The Exchange now proposes to rescind Rule 97 in its entirety.

III. Summary of Comments

The Commission received one letter on the proposed rule change.[9] The commenter supports the proposed rule change, agreeing with the Exchange's rationale for rescinding NYSE Rule 97. Specifically, the commentator agrees with the Exchange's view that the rule "no longer

---

6 See, e.g., Securities Exchange Act Release No. 46566 (September 27, 2002), 67 FR 62278 (October 4, 2002) (SR-NYSE-2001-24) (narrowing the scope of the prohibitions to transactions executed within the last 20 minutes of the trading day, and providing exceptions to the rule for member organizations that establish information barriers and certain hedging transactions).

7 17 CFR 242.600 et. seq.

8 See Securities Exchange Act Release No. 56024 (July 6, 2007), 72 FR 38643 (July 13, 2007) (SR-NYSE-2007-61).

9 See SIFMA Letter, supra note 5.

serves a useful purpose and may in fact hinder legitimate trading activity."[10] Furthermore, SIFMA believes that changes in the markets and new regulations, such as Regulation NMS, render the rule no longer viable.[11]

IV. Discussion and Commission Findings

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.[12] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission notes that other venues are available for market participants to effect block position transactions without the restrictions currently imposed by NYSE Rule 97. The Commission further notes that NYSE represented that NYSE Regulation, Inc. will continue to surveil in NYSE-listed securities for possible manipulative activity, including marking the close, which could be in violation of federal securities laws or Exchange Rules.[14]

---

10 See SIFMA Letter, supra note 5, at 1.

11 See id. at 2.

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

13 15 U.S.C. 78f(b)(5).

14 See Notice, supra note 3, at 7023.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR-NYSE-2008-03), as modified by Amendment No. 1 thereto, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon
Deputy Secretary

---

15 15 U.S.C. 78s(b)(2).

16 17 CFR 200.30-3(a)(12).