

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54539; File No. SR-NSX-2006-06)

September 28, 2006

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving Proposed Rule Change to Allow the Primary Market Print Protection Rule to be Applied on an Optional Basis

On April 12, 2006, the National Stock Exchange, Inc. (“NSX” 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 amend NSX Rule 11.9(u), which pertains to the preferencing of public agency limit orders that a dealer represents as agent, to eliminate the specific requirement that a Designated Dealer execute eligible limit orders if certain conditions occur in the primary market (referred to as the “primary market print protection” or the “limit order protection” provision). Pursuant to the proposal, dealers and members would still be permitted, but not required, to guarantee the execution of a limit order as principal upon the occurrence of a transaction in another market. The Commission published the proposed rule change for comment in the Federal Register on June 27, 2006.³ The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.⁴ In particular, the Commission believes that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54018 (June 20, 2006), 71 FR 36576.

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

proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires among other things, that the rules of the Exchange 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 Commission notes that the Exchange voluntarily enacted its rule-based execution guarantees in 1996,⁶ when the guarantees were used, among other things, as a competitive tool to attract order flow to the Exchange. The Commission notes that it has approved a substantially similar proposal of another national securities exchange.⁷ In that context, the Commission discussed how the environment had changed since the adoption of voluntary rule-based execution guarantees and “that consequently, the guarantees may no longer serve to foster competition between the markets.”⁸ The Commission notes that the deletion of the rule-based mandate regarding limit order protection does not in any way affect the Exchange’s rules relating to trading ahead prohibitions or best execution obligations, or any other dealer obligations within NSX’s rules. In addition, the Commission notes that, under the proposed rule change, dealers and members would still be permitted, but not required, to provide such guarantees if they wished to do so.⁹

⁵ 15 U.S.C. 78f(b)(5).

⁶ See Securities Exchange Act Release No. 37046 (March 29, 1996), 61 FR 15322 (April 5, 1996) (File No. SR-CSE-95-03).

⁷ See Securities Exchange Act Release No. 52652 (October 21, 2005), 70 FR 62151 (October 28, 2005) (order approving File No. SR-CHX-2004-17).

⁸ Id. at 62152.

⁹ In addition, the Commission notes that it recently approved File No. SR-NSX-2006-08 which, among other things, adopted a new NSX Rule 11.9 as part of a new trading system for the Exchange, which is not yet operational. See Securities Exchange Act

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NSX-2006-06) be, and hereby is, approved.

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

Nancy M. Morris
Secretary

Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).