

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49926; File No. SR-NYSE-2004-11)

June 28, 2004

Self-Regulatory Organizations; New York Stock Exchange, Inc; Order Approving Proposed Rule Change and Amendments No. 1 and No. 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto Amending NYSE Rule 122 Concerning Orders with More than One Broker

I. Introduction

On February 20, 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 amend NYSE Rule 122 to provide that a Floor Broker may send a portion of an order to a specialist’s Display Book for representation by the specialist either manually or via a hand-held terminal while retaining the remainder of the same order, as long as the broker does not bid (offer) or execute the retained portion of the order at a price at which the booked order may also be represented in a bid (offer) or executed. The Exchange submitted Amendment No. 1 to the proposed rule change on April 5, 2004.³ The Exchange submitted Amendment No. 2 to the proposed rule change on April 20, 2004.⁴ The proposed rule change and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated April 2, 2004 (“Amendment No. 1”). In Amendment No. 1, the NYSE replaced and superseded the Exchange’s original filing in its entirety.

⁴ See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Division, Commission, dated April 19, 2004 (“Amendment No. 2”). In Amendment No. 2, the NYSE clarified and expanded its rule text.

Amendments No. 1 and 2 were published for comment in the Federal Register on May 5, 2004.⁵ The Commission received no comment letters on the proposal, as amended. The Exchange submitted Amendment No. 3 to the proposed rule change on June 18, 2004.⁶ This order approves the proposed rule change and Amendments No. 1 and 2. Simultaneously, the Commission provides notice of filing of Amendment No. 3 and grants accelerated approval of Amendment No. 3.

II. Discussion and Commission Findings

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 exchange⁷ and, particularly, Section 6(b)(5) of the Act.⁸ The Commission believes that the proposed amendments to NYSE Rule 122 setting forth conditions under which a Floor Broker may send a portion of an order to a specialist either manually or via a hand-held terminal for representation by the specialist while retaining the remainder of the same order 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 believes that the ability to send orders from the Floor Broker's hand-held device directly to the specialist's limit order book may improve a broker's efficiency by allowing greater order management capabilities, while retaining

⁵ See Securities Exchange Act Release No. 49625 (April 28, 2004), 69 FR 25160.

⁶ See letter from Darla C. Stuckey, NYSE, to Nancy J. Sanow, Division, Commission, dated June 17, 2004 ("Amendment No. 3"). In Amendment No. 3, the NYSE corrected a typographical error in the proposed rule text.

⁷ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

the goals of the rule which, according to the NYSE, are to negate the possibility that the same customer could have unequal representation in the auction in parity situations, and to deter creating the appearance that there is greater trading interest in a stock. The Commission notes that the Exchange has represented that the proposed rule change, as amended, does not impose any new requirements or obligations and is consistent with current Exchange practice.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published in the Federal Register, pursuant to Section 19(b)(2) of the Act.⁹ Amendment No. 3 deleted reference to “an order” from the first sentence of the language proposed to be added to NYSE Rule 122. The Commission believes that the proposed change in Amendment No. 3, which only makes a technical change to the proposed rule text, raises no new issues of regulatory concern and, therefore, believes that good cause exists, consistent with Section 6(b)(5)¹⁰ and Section 19(b)¹¹ of the Act, to accelerate approval of Amendment No. 3.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment for (<http://www.sec.gov/rules/sro.shtml>); or

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2004-11 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-2004-11. 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 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-2004-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-2004-11) and Amendments No. 1 and 2 thereto are approved, and that Amendment No. 3 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).