

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56392; File No. SR-NYSE-2007-42)

September 12, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Rule 103B (“Specialist Stock Allocation”)

On April 20, 2007, 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, as amended (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Rule 103B (“Specialist Stock Allocation”). On July 20, 2007, NYSE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on August 8, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

The Exchange proposes to permit member organizations to establish policies and procedures to isolate the activities of the member organization that trade ETFs in a specialist capacity while at the same time registered as a specialist in any of an ETF’s component securities. At a minimum, these policies and procedures would have to include information barriers preventing the flow of non-public information between a member organization’s ETF specialist and the member organization’s specialist in an associated component security. Further, the trading of an ETF and its underlying component securities by the same specialist firm would be pre-conditioned on the review of the Exchange’s Division of Member Firm Regulation for the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 56183 (August 2, 2007), 72 FR 44601 (“Notice”).

adequacy of the firm's information barriers.<sup>4</sup> Thereafter, the Exchange would periodically evaluate the integrity of information barriers for breaches and weaknesses to ensure that they are adequately designed. In addition, the Exchange will periodically assess its surveillance and examination procedures to determine whether they are adequate in preventing manipulative or improper trading. The Exchange explained that the current rule requiring organizational separation was originally implemented, at least in part, to address the issue of "wash sales" in the context of ETF and component securities.<sup>5</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which require 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. This proposal should eliminate certain redundancies and expenses that result from the current rule requiring organizational separation while ensuring that the relevant activities and information of member organizations that trade ETFs and any of an ETF's component securities in a specialist capacity remain isolated and confidential.

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<sup>4</sup> See, for example, comparable provisions of NYSE Information Memo 91-22 (June 21, 1991), the NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures for procedural structures to assure the effective containment of trading information.

<sup>5</sup> See Securities Exchange Act Release No. 44272 (May 7, 2001), 66 FR 26898 (May 15, 2001) (SR-NYSE-2001-07).

<sup>6</sup> 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).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NYSE-2007-42), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).