

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60426; File No. SR-NYSE-2009-74)

August 4, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 103B to Modify the Composition of the Exchange Selection Panel; and Prohibit Any Ex Parte Communications During and Regarding the Selection Process between the DMM Units and the Individuals Serving on the Exchange Selection Panel

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on July 27, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend NYSE Rule 103B (“Security Allocation and Reallocation”) to: 1) modify the composition of the Exchange Selection Panel; and 2) prohibit any ex parte communications during and regarding the selection process between the DMM units and the individuals serving on the Exchange Selection Panel. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.⁴

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Commission notes that the Exchange inadvertently marked certain portions of the rule text incorrectly. Specifically, in paragraph (III)(B)(1) of Rule 103B the Exchange failed to indicate the deletion of a comma after “his or her designee” and failed to mark “;

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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange LLC (“NYSE” or “Exchange”) proposes to amend NYSE Rule 103B (“Security Allocation and Reallocation”) to: 1) modify the composition of the Exchange Selection Panel; and 2) prohibit any ex parte communications during and regarding the selection process between the DMM units and the individuals serving on the Exchange Selection Panel.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).⁵

Background

Currently, pursuant to NYSE Rule 103B, an issuer may select the DMM unit that will be assigned its security or delegate the selection of the DMM unit to the Exchange. If the issuer authorizes the Exchange to select the DMM unit to trade its security, an Exchange Selection Panel (the “ESP” or the “Panel”) is convened to select the DMM unit based on a review of all

(b)” as new text. In addition, the Exchange marked as new text one letter in a sentence being deleted from paragraph (III)(B)(1) of Rule 103B.

⁵ See SR-NYSEAmex-2009-49.

information that would be available to the issuer. The Panel is comprised of three members of the Exchange's Senior Management, as designated by the Chief Executive Officer ("CEO") of the Exchange or his or her designee, one non-DMM Executive Floor Governor ("EFG") and two non-DMM Floor Governors ("FGs"). The non-DMM EFG and non-DMM FGs are designated on a rotating basis. The Panel's decision is made by majority vote. In the event of a tie, the CEO of the Exchange or his/her designee makes the final decision. The Exchange then informs the issuer of the DMM unit selected by the Panel.

Proposed Amendments

The Exchange proposes to amend NYSE Rule 103B to modify the composition of the Panel in order to ensure consistent Floor participation in the selection process and minimize delays due to scheduling conflicts.

The current composition of the Panel has proven difficult when scheduling the required participants within five days of the issuer's request. The Exchange therefore seeks to amend NYSE Rule 103B to modify the representation on the Panel to include: 1) at least one member of the Exchange's Senior Management; 2) any combination of two Exchange Senior Management or Exchange Floor Operations Staff, to be designated by the Executive Vice-President of Exchange Floor Operations or his/her designee; and 3) any combination of three non-DMM EFGs or non-DMM FGs for a total of six members.

Finally, to reinforce the integrity and objectivity of the ESP selection process, the Exchange proposes to amend NYSE Rule 103B to explicitly prohibit any communications regarding the selection process between the Panelists and the DMM units. The Exchange proposes to have communication regarding the selection process cease from the time the issuer

delegates the selection responsibility to the Exchange until the Panel selects the DMM unit to trade the issuer's security.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),⁶ which requires that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Exchange believes that the proposed amendments are consistent with these objectives. The amendments sought herein seek to streamline and facilitate the process of assigning securities to DMM units by allowing for more flexibility in composing the Panel which ultimately facilitates and expedites the allocation and ultimately the trading of securities on the Exchange. Furthermore, the proposed amendment to prohibit communications between the Panel and the DMM units preserves the integrity and impartiality of the allocation process and therefore protects the public interest.

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

The Exchange does not believe that the proposed rule change will impose 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

No written comments were solicited or received with respect to the proposed rule change.

⁶ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)⁷ of the Act and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),¹¹ which would make the rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately streamline the process of allocating securities to DMM units. In addition, by prohibiting communications regarding the selection process between members of the Panel and DMM units, the Exchange will be able to immediately reinforce impartiality and

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

⁹ Id.

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ Id.

fairness during the selection process.¹² Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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 File Number SR-NYSE-2009-74 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-74. 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>).

¹² For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-74 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).