

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61043; File No. SR-NYSE-2009-116)

November 20, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Increase the Ceiling on Its Equity Ownership Interest in BIDS Holdings L.P. to Less Than 10%

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 18, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to increase the ceiling on the Exchange’s equity ownership interest in BIDS Holdings L.P. (“BIDS”), a member of the Exchange, to less than 10% from the current level of less than 9%, pursuant to the pilot program that provides an exception to NYSE Rule 2B by permitting such equity ownership as well as allowing BIDS’s affiliation with the New York Block Exchange LLC, an affiliate of the Exchange.

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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 22, 2009, the Commission approved the governance structure proposed by the Exchange with respect to the New York Block Exchange (“NYBX”), a new electronic trading facility of the Exchange for NYSE-listed securities that was established by means of a joint venture between the Exchange and BIDS.³ The governance structure that was approved is reflected in the Limited Liability Company Agreement of New York Block Exchange LLC (the “Company”), the entity that owns and operates NYBX. Under the governance structure approved by the Commission, the Exchange and BIDS each own a 50% economic interest in the Company. In addition, the Exchange, through its wholly-owned subsidiary NYSE Market, Inc. (“NYSE Market”), owns less than 9% of the aggregate limited partnership interest in BIDS, which became a member of the Exchange in connection with the establishment of NYBX.

The foregoing ownership arrangements would violate NYSE Rule 2B without an exception from the Commission.⁴ First, the Exchange’s indirect ownership interest in BIDS violates the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a

³ See Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (order approving SR-NYSE-2008-120) (“Approval Order”).

⁴ NYSE Rule 2B provides, in relevant part, that: “[w]ithout prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. . . . The term affiliate shall have the meaning specified in Rule 12b-2 under the Act.”

member organization. Second, BIDS is an affiliate of an affiliate of the Exchange,⁵ which violates the prohibition in Rule 2B against a member of the Exchange having such status. Consequently, in the Approval Order, the Commission permitted an exception to these two potential violations of NYSE Rule 2B, subject to a number of limitations and conditions. One of the conditions for Commission approval was that: “[t]he proposed exception from NYSE Rule 2B to permit NYSE’s ownership/interest in BIDS and BIDS’s affiliation with the Company (which is an affiliate of NYSE) would be for a pilot period of 12 months.”⁶ Noting that “NYSE Market currently owns less than a 9% equity interest in BIDS,” the Approval Order stated as another condition for Commission approval that: “NYSE, or any of its affiliates, may not directly or indirectly increase such equity interest without prior Commission approval.”⁷

The Exchange is proposing an increase in the ceiling on its equity ownership in BIDS from the current limit of less than 9% to a new limit of less than 10%. The purpose of the increase is to allow the Exchange to participate in a new round of capital raising by BIDS without inadvertently exceeding the current limit. BIDS is offering its members the opportunity to invest, on a pro rata basis, in a new class of preferred equity interests. The Exchange has determined that, based on its expectations regarding the participation of certain other BIDS members in the offering, full participation by the Exchange could result in a slight increase in its percentage of equity ownership to a number somewhere between 9% and 10%. The Exchange does not believe that this slight increase in its equity ownership of BIDS is material, but it is

⁵ Specifically, the Company is an affiliate of the Exchange, and BIDS is an affiliate of the Company. The affiliation in each case is the result of the 50% ownership interest in the Company by each of the Exchange and BIDS.

⁶ See Approval Order, 74 FR at 5018.

⁷ Id.

nonetheless required by the terms of the Approval Order to obtain Commission approval for such an increase. Other than this non-material increase in the ceiling for the Exchange's equity ownership of BIDS, all of the other limitations and conditions required by the terms of the Approval Order for the exception to NYSE Rule 2B will continue to be applicable during the pilot period.⁸

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁹ of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(1)¹¹ of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of Section 6(b)(5)¹² of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In the Approval Order, the Commission determined that: “the proposed exception from NYSE Rule 2B to permit NYSE's ownership interest in BIDS and BIDS's affiliation with the

⁸ Id.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78.

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78f(b)(5).

Company is consistent with the Act. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act”¹³ As the basis for its determination, the Commission cited the specific limitations and conditions listed in the Approval Order to which its approval of the exception to NYSE Rule 2B was subject,¹⁴ stating: “These conditions appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. . . . These conditions appear reasonably designed to promote robust and independent regulation of BIDS. . . . The Commission believes that, taken together, these conditions are reasonably designed to mitigate potential conflicts between the Exchange’s commercial interest in BIDS and its regulatory responsibilities with respect to BIDS.”¹⁵ Other than the small, non-material increase of one percentage point in the ceiling on its equity ownership of BIDS that the Exchange is proposing, all of the other limitations and conditions will continue to be applicable during the pilot period.¹⁶ Consequently, the Exchange believes that the exception from NYSE Rule 2B described above will continue to be consistent with the Act.

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.

¹³ See Approval Order, 74 FR at 5018-5019.

¹⁴ Id. at 5018.

¹⁵ Id. at 5019.

¹⁶ The Exchange has previously stated that it and its affiliates do not have any voting or other control arrangement with any of the other limited partners or general partner of BIDS, and this statement will continue to be valid. See Approval Order, 74 FR at 5018, n. 69.

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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2009-116 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-2009-116. 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 Section, 100 F Street, NE, Washington, DC 20549-1090, 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 Exchange. 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-2009-116 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.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).