

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49625; File No. SR-NYSE-2004-11)

April 28, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the New York Stock Exchange, Inc. to Amend its Rule 122 Concerning Orders With More Than One Broker

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 20, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 5, 2004, the NYSE filed an amendment to the proposed rule change.³ On April 20, 2004, the NYSE filed another amendment to the proposed rule change.⁴ The Commission is publishing this notice, as amended, 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 is proposing to amend NYSE Rule 122 to provide that a Floor broker may send a portion of an order to a specialist either manually or via a hand-held

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”). Amendment No. 1 replaced and superseded the Exchange’s original filing in its entirety.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, NYSE clarified and expanded its rule text.

terminal while retaining a portion of the same order. The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

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Orders with More than One Broker

Rule 122 Except as provided herein, [N]no member, member organization or any allied member therein, or subsidiary of such organization within the meaning of Rule 321, shall maintain with more than one broker, for execution on the Exchange, market orders or orders at the same price for the purchase or sale of the same security with knowledge that such orders are for the account of the same principal, unless specific permission has been obtained from a Floor Official. However, a Floor broker may transmit an order manually or from a hand-held terminal to the specialist's display book, for representation by the specialist, a portion of an order, while retaining the balance of the order. In any instance where a Floor broker has given the specialist a portion of an order for execution and retained the balance of such order, the Floor broker may not make a bid (offer) on behalf of the retained order, or execute any part of the retained order, at a price at which the portion of the order with the specialist may also be represented in a bid (offer) or executed until the portion of the order sent to the specialist has been executed or cancelled.

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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 Exchange 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 these 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 aspects of such statements.

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

1. Purpose

NYSE Rule 122 (Orders with More than One Broker) prohibits a member from having orders on the Exchange with more than one broker executable at the same price in the same stock on the same side of the market for the account of the same principal.

According to the Exchange, NYSE Rule 122 is intended to negate the possibility that the same customer could have an unequal representation in the auction in parity situations.

The Exchange also believes that NYSE Rule 122 provides a deterrent to any attempt to create the appearance that there is greater trading interest in a stock than may be actually present by limiting the representation of agency orders in the market for the same customer to a single agent.

Currently, Floor brokers are able to manually give a portion of an order to the specialist for execution, while retaining the remainder of such order. Pending technological advances will enable Floor brokers to have the ability to send orders from their hand-held devices directly to the specialist's limit order book. According to the Exchange, this ability will improve a broker's efficiency by allowing greater order management capabilities. As is the case today, brokers may desire to send part of a large order for representation by the specialist while retaining the balance of the order for execution by the broker. For example, a broker with a 100,000 share market "not held" order may determine to electronically "book" (e.g., send to the specialist) 20,000 shares

of that order at a limit price of \$20.20, while retaining the 80,000 share balance of the order.

The Exchange proposes to amend NYSE Rule 122 to provide that a Floor broker may send a portion of an order to a specialist either manually or via a hand-held terminal while retaining a portion 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 represents that this proposal does not impose any new requirements or obligations and is consistent with current practice.

Thus, in the above example, the broker could bid on behalf of the retained portion of the order, or take offers, at prices of \$20.21 or above, but could not, on behalf of the retained portion of the order, purchase stock at \$20.20 or lower, unless the “booked” portion of the order had been executed or canceled.

2. Statutory Basis

The Exchange believes that the proposal to amend NYSE Rule 122 to provide that a Floor broker may send a portion of an order to a specialist manually or via a hand-held terminal while retaining the remainder of the order is consistent with Section 6(b) of the Act,⁵ in general, and Section 6(b)(5) of the Act,⁶ in particular, in that it is 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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change, as amended, 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

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, as amended, 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, as amended, 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

- 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 Section, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of such 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-NSYE-2004-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

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17 CFR 200.30-3(a)(12).