

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52274; File No. SR-NYSE-2005-21)

August 16, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Temporary Reallocation of Securities Among Specialists

On March 11, 2005, 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 103.11 to introduce new procedures regarding the temporary reallocation of securities traded on the Exchange from one specialist organization to another specialist organization. On June 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the Federal Register on July 14, 2005.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the NYSE provided information concerning the designee of the Chief Regulatory Officer and corrected technical errors in the rule text.

⁴ See Securities Exchange Act Release No. 51985 (July 7, 2005), 70 FR 40768.

⁵ 15 U.S.C. 78f.

applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of an exchange be 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 notes that the Exchange has determined that the temporary reallocation of a security is most likely to be required for regulatory reasons and has therefore proposed to transfer the responsibility for such decisions from the Chief Executive Officer to the Chief Regulatory Officer (“CRO”) or his or her designee.⁸ The Commission also notes that the Exchange has proposed to specify that only non-specialist Board of Executive (“BoE”) Floor Representatives may join the CRO (or his or her designee) in making reallocation decisions in order to avoid any potential conflicts of interest that may exist with specialist BoE Floor Representatives participating in such decisions. The Commission also notes that the Exchange has provided an alternative that, if there are not two non-specialist BoE Floor Representatives available to participate with the CRO (or his or her designee) in the reallocation decision, the most senior non-specialist Floor Governor or Governors, based on his or her current length of service as a Floor Governor, would be authorized to act in place of the non-specialist BoE Floor

⁶ In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ The Commission notes that the Exchange has represented that it expects that the designee would be an officer in the Exchange’s regulatory group, with the Executive Vice President of the Market Surveillance Division being the primary designee. See Amendment No. 1.

Representative or Representatives. The Commission believes that the proposed changes to the Exchange's procedure for the temporary reallocation of securities are designed to appropriately assign the responsibility for making reallocation decisions to the Exchange's regulatory group and disinterested members of the BoE (or disinterested Floor Governors), and thereby to minimize the potential for conflicts of interest and strengthen regulatory independence.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2005-21) as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).