

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56183; File No. SR-NYSE-2007-42)

August 2, 2007

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

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 April 20, 2007, the New York Stock Exchange LLC (“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 substantially prepared by NYSE. NYSE filed Amendment No. 1 to the proposed rule change on July 20, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is filing with the Commission an amendment to Rule 103B (“Specialist Stock Allocation”) to permit specialist member organizations to trade Exchange-Traded Funds (“ETFs”) in a specialist capacity while at the same time registered as a specialist in securities which are a component thereof, subject to Exchange approval of policies and procedures demonstrably isolating information regarding the respective issues. The text of the proposed rule change is available on the Exchange’s Web site (www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

When approved by the Commission on May 7, 2001,³ Section VIII of Rule 103B prohibited member organizations from applying for allocation of an ETF where such member organization was already registered as a specialist in any component security of such ETF, and conversely that where a member organization is already registered as a specialist in an ETF and a security in which it is also registered as a specialist becomes a component security of such ETF, the member organization must withdraw one or the other of such registrations or establish a separate member organization for the ETF. The Exchange explained the reason for this separation:

This restriction is necessary to avoid the possibility of “wash sales” in a situation where the specialist in the ETF needs to hedge by buying or selling component stock of the ETF, and could inadvertently be trading with a proprietary bid or offer made by a specialist in the same member organization who is making a

³ See Securities Exchange Act Release No. 44272 (May 7, 2001), 66 FR 26898 (May 15, 2001) (SR-NYSE-2001-07).

market in the component security.⁴

The rule amendment proposed a solution to the problem by providing that member organizations could conduct the ETF activities in a separate member organization. The Exchange states that, while concerns regarding wash sales in the context of ETF and component security trading remain real, the costs and expenses of maintaining two separate member organizations, both to the member organization⁵ and to the Exchange,⁶ are seen to strongly recommend a second resolution of this problem.

Accordingly, the Exchange is proposing to permit member organizations, subject to Exchange approval, to establish policies and procedures to isolate⁷ the activities of such member organization in the trading of ETFs and any component securities in which it may be registered, thus eliminating the required redundancies and attendant expense inherent in the current rule requirement for separate firms. Such policies and procedures must, at a minimum, include information barriers that prevent the flow of non-public information between a member organization's ETF specialist on the one hand and the member organization's specialist in an associated component security on the other hand.

⁴ Id. at 26900.

⁵ Because of the requirement for two separate organizations, firms are required to have two broker-dealer registrations, file separate monthly financial reports, support two accounting and compliance departments, and maintain separate management and reporting structures.

⁶ In 2005, the Exchange estimated that approximately 2,100 examiner hours were devoted to the examination of ETF specialists. Such numbers would be sharply reduced if member organizations were allowed, as proposed, to include such functions within the same organization, as the combination of activities in one entity instead of two would, by its nature, reduce the member organizations examined and eliminate review of duplicative functions.

⁷ 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.

The Exchange states that its Division of Member Firm Regulation has a Chinese Wall examination program to evaluate the integrity of information barriers to ensure confidentiality of trading information among the various trading departments at its member firms and their approved persons and will adapt it to the review of specialist firms also trading ETFs along with component securities. These information barriers are, and will continue to be, tested and reviewed on site for breaches and weaknesses by Exchange examination staff on an annual basis and for cause, when warranted. To determine whether the firm has developed and implemented adequate information barriers between its Specialist Equity and ETF Trading Operations, examiners will review, on-site, the combined specialist firm's written policies and procedures and physical layout for adequacy. In addition, appropriate individuals both within the affected departments as well as other areas of the specialist firm will be interviewed to determine whether firm policies have been appropriately disseminated and implemented. Also, the examiners will test member organization controls and will determine, based upon their review, whether the firm's relevant information barriers and related policies and procedures are adequate to preclude the improper sharing of trading information (both equity and ETF) and whether there have been any apparent breaches of those barriers. In addition, the Exchange will periodically assess its surveillance and examination procedures to determine whether they are adequate to assure that member organizations and market participants do not engage in manipulative or improper trading. The Exchange believes that these measures will assure the adequate and appropriate surveillance of the single member organization permitted by the proposed amendments.

The isolation of trading activities acts to address the issue of "wash sales" in the context of ETF and component securities. The rule does not, however, prohibit usual and customary sharing of information regarding trades after the fact, and so allows appropriate risk and hedging

activity, treasury management and other such similar activities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act⁸ because 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.

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

The Exchange has neither solicited nor received written comments on 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 such proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

⁸ 15 U.S.C. 78f(b)(5).

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-2007-42 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-42. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will 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-2007-42 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).