

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61646; File No. SR-NYSE-2010-03)

March 4, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending the Rule Governing the Issuance of Trading Licenses

I. Introduction

On January 13, 2010, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ a proposal to amend its Rule 300 (Trading Licenses) and Rule 309 (Failure to Pay Exchange Fees). The proposed rule change was published for comment in the Federal Register on February 2, 2010.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NYSE Rule 300 provides that member organizations may buy trading licenses in the annual offering and may buy licenses at any other time in the year, provided that the maximum number of 1,366 licenses has not been issued and subject to limitations on the number of licenses a single member organization may hold. Member organizations must pay for their trading licenses in 12 monthly installments, with the first installment due prior to the commencement of the applicable year. The Exchange represents that it relies in part on the revenues from trading license fees to pay for the maintenance of the trading floor and to fund its trading floor

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 61424 (January 26, 2010), 75 FR 5367.

regulatory activities. According to the Exchange, if some member organizations consistently fail to pay their trading license fee bills, the Exchange would be forced to impose higher fees on those member organizations which do pay their bills.

The Exchange therefore proposes to amend Rule 300 to provide that a member organization shall be ineligible to purchase a trading license, either in the annual offering or subsequently, if, at the time of such proposed purchase, such member organization remains three months in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license.⁵ Any trading license purchased by a member organization in the annual auction for the calendar year commencing January 1, 2010, will be subject to automatic revocation at the close of business on March 31, 2010, if the member organization that holds such license remains three months in arrears in making such payments at that time.

The Exchange also proposes to adopt appeal procedures for the denial or revocation of a member organization's trading license. One calendar month prior to the effective date of any potential denial of renewal or revocation of a trading license (the "Expiration Date") pursuant to Rule 300(h), the Exchange would notify each applicable member organization that is currently two months or more in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license of the amount of then overdue trading license installment payments and the possibility of denial of renewal or revocation of the trading license on the Expiration Date. The notice must include a description of the appeal process. If the member organization believes the Exchange's records are incorrect, the member organization must submit a written appeal within five business days of receipt of the Exchange's notice to the

⁵ The Exchange also proposes to amend Rule 309 to explicitly provide that failure to pay trading license fee installments will be governed by proposed Rule 300(h).

officer of the Exchange identified for that purpose in such notice, providing an explanation as to why it believes the Exchange's records are incorrect, and providing copies of any relevant documentation. The Exchange would be required to provide a final determination in writing in response to any such appeal no later than 15 calendar days prior to the effective date of the potential denial of renewal or revocation of the applicable trading license.⁶ If the Exchange denies the appeal, its written final determination must specifically address the arguments made by the member organization in its submission. The Exchange's written determination would be final and conclusive action by the Exchange.

A written record would be required to be kept of any proceedings under Rule 300(h). As the appeal procedures under proposed Rule 300(h) would not include any provision for an oral hearing, the Exchange expects that the written record would generally consist of (i) the written appeal and supporting documents (if any) submitted by the member organization and (ii) the Exchange's written determination. Finally, the Exchange states that any member organization which forfeits its trading licenses as of March 31, 2010 would only owe the pro rata license fee for 2010 through that date. Any member organization which forfeits its trading licenses in 2010 or is ineligible to purchase trading licenses thereafter may purchase trading licenses (to the extent there are available unsold licenses) at such time as it is no longer three months in arrears in its payments.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements

⁶ The Exchange represents that, if it denies a member organization's appeal under Rule 300(h), the Exchange will notify the Commission in the manner required by Exchange Act Rule 19d-1.

of the Act and the rules and regulations thereunder applicable to a national securities exchange⁷ and, in particular, the requirements of Sections 6(b)(4), 6(b)(5) and 6(b)(7) of the Act.⁸ Section 6(b)(4) of the Act⁹ requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Section 6(b)(5) of the Act¹⁰ requires, among other things, that the rules of a national securities exchange are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Section 6(b)(7) of the Act¹¹ requires, among other things, that the exchange's rules provide fair procedures for prohibiting or limiting any person with respect to access to services offered by the exchange or member thereof.

The Commission believes that the proposal is consistent with Section 6(b)(4) of the Act¹² in that it provides for an equitable allocation of fees among member organizations. The Exchange represents that it relies in part on the revenues from trading license fees to pay for the maintenance of the trading floor and to fund its trading floor regulatory activities. The trading license fees and rules limiting the number of trading licenses that may be initially applied for are the same for all member organizations, and member organizations would be denied trading floor privileges only if they have not paid the trading license fee for several months. The Commission notes that the proposal may encourage member organizations to pay their bills more promptly and thereby enable the Exchange to avoid imposing the cost of the nonpayment by a small

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(4); 15 U.S.C. 78f(b)(5); 15 U.S.C. 78f(b)(7).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(7).

¹² 15 U.S.C. 78f(b)(4).

number of member organizations on the majority of other member organizations that routinely pay on time.

The Commission also believes that the proposal is consistent with Sections 6(b)(5) and 6(b)(7) of the Act. The Commission notes that the new procedures specify procedures to provide notice to member organizations of a pending denial or revocation. In addition, member organizations receive monthly trading license bills that reflect unpaid balances from previous periods. The Exchange has also represented that it would distribute an Information Memorandum to its member organizations to inform them of the proposed rule change.¹³ Thereafter, the procedures provide that, one calendar month prior to the Expiration Date, the Exchange will notify each applicable member organization that is currently two months or more in arrears in paying monthly installments of the trading license fee payable in respect of any previously purchased trading license of the amount of then overdue trading license installment payments and the possibility of denial of renewal or revocation of the trading license on the Expiration Date. The notice must include a description of the appeal process.

The Commission also notes that the proposal clarifies the scope of the Exchange's review on appeal and sets forth specific time frames for scheduling and conducting an appeal of a pending denial or revocation. If the member organization believes the Exchange's records are incorrect, the member organization must submit a written appeal within five business days of receipt of the Exchange's notice, providing an explanation as to why it believes the Exchange's records are incorrect, and providing copies of any relevant documentation. In addition, the

¹³ The first such notice will be sent to member organizations that are two months or more in arrears as of the end of February 2010. See email from John Carey, Chief Counsel – U.S. Equities, NYSE Euronext LLC, to David Liu, Assistant Director, and Leigh W. Duffy, Attorney-Adviser, Division of Trading and Markets, Commission, dated January 25, 2010.

Exchange must provide a final determination in writing in response to any such appeal no later than 15 calendar days prior to the effective date of the potential denial of renewal or revocation of the applicable trading license. If the Exchange denies the appeal, its written final determination must specifically address the arguments made by the member organization in its submission. The written determination shall be final and conclusive action by the Exchange. In addition, the Exchange has required a written record of any proceedings.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act.¹⁴

¹⁴ 15 U.S.C. 78f.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSE-2010-03) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).