

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54843; File No. SR-NYSE-2006-73)

November 30, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1, 2, and 3 Relating to Block Positioning

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 September 13, 2006, 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 and II below, which Items have been prepared by the NYSE. The NYSE filed Amendment Nos. 1, 2, and 3 to the proposal on October 12, 2006, October 13, 2006, and November 28, 2006, respectively.³ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons, and to approve the proposed rule change, as amended, on an accelerated basis.

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

The NYSE proposes to amend NYSE Rule 127, “Block Positioning,” to revise the procedures governing executions of block cross transactions at a price outside the prevailing NYSE quotation. The text of the proposed rule change is available on the NYSE’s Web site

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 3 replaced the original filing and Amendment Nos. 1 and 2 in their entirety. Amendment No. 3 revises the original proposal to: (1) clarify the execution of block cross transactions in which all or part of one side of the block is for a member organization’s own account; (2) clarify that the requirements of NYSE Rule 76, “Crossing’ Orders,” will not apply to executions made in accordance with NYSE Rule 127; and (3) correct errors in the text of NYSE Rule 127.

(<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

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 III 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

The Exchange is proposing amendments to NYSE Rule 127, which governs block cross transactions at a price outside the prevailing NYSE quotation. Currently, NYSE Rule 127 provides alternative procedures that may be followed by a member organization intending to cross a block of stock at a specific clean-up price outside the prevailing NYSE quotation. Under the rule, a member organization must inform the specialist of its intent to cross block orders at a specific clean-up price. The member organization then announces the clean-up price to the trading Crowd. If the cross involves only agency orders on each side, the member organization fills all orders limited to or better than such price, and crosses the remaining shares at the clean-up price. However, if the member organization determines that the amount of stock needed to trade with such limit orders excessively interferes with the proposed block cross, the member organization may inform the trading Crowd that it will not be given stock at the clean-up price. After such announcement, the member organization bids and offers the full amount of the block

cross pursuant to NYSE Rule 76.⁴ This provides the Crowd with an opportunity to trade with or “break up” the crossed orders. In this situation, the block is entitled to priority at the clean-up price. Additionally, if all or part of one side of the block cross transaction will establish or increase the member organization’s position, the member organization representing the block orders must fill at the clean-up price public orders limited to the clean-up price or better before any amount may be retained for the member organization’s account. This is not required when the member organization is liquidating a position. NYSE Rule 127 also provides for the member organization executing the cross to take into account the needs of the specialist in maintaining a market in the stock after the block cross transaction.

The Exchange proposes to simplify the procedures in NYSE Rule 127 by adopting a single process for all block cross transactions outside the Exchange quotation and to make them more similar to the way automatic executions and “sweeps” occur on the Exchange. In addition, the NYSE proposes some minor wording changes to conform references throughout the rule to “member organization” instead of variously “member” or “member organization.”

The proposed new procedure for the execution of block crosses at a price outside the prevailing NYSE quotation is as follows, except where the member organization is establishing or increasing a position for its own account: the member organization representing the block orders will first trade with the displayed bid or offer (whichever is relevant to the proposed cross), then with all limit orders in the Display Book[®] (“Display Book”) system priced better than the block clean-up price, and then execute the cross at the clean-up price. This will result in executions at a maximum of three prices: the displayed bid (offer) price; a price one cent better

⁴ Under NYSE Rule 76, the member makes an offer higher than the clean-up price by the minimum variation permitted in such security.

than the clean-up price, and the block clean-up price. Percentage orders elected at each price will be entitled to trade at those prices. The block cross will have execution priority at the clean-up price. Pursuant to NYSE Rule 127(e), none of these executions will be subject to the requirements of NYSE Rule 76.

Example:

The NYSE quote in XYZ is \$20.05 bid for 10,000 shares, with 5,000 shares offered at \$20.10. There is no reserve interest at the best bid and offer. There are bids for \$20.04, \$20.03, and \$20.01, each for 5,000 shares, in the Display Book system. A member organization intends to cross orders totaling 50,000 shares to buy and sell at \$20.02. The following executions occur: 10,000 shares trade at \$20.05, 10,000 shares trade at \$20.03, and 30,000 shares are crossed at the clean-up price of \$20.02.

In addition, pursuant to the proposed new rule, when a member organization is establishing or increasing a position for its own account and the member organization is all or a part of one side of the block, then the member organization representing the block orders will first trade with the displayed bid or offer (whichever is relevant to the proposed cross). The member organization will not trade with all limit orders in the Display Book system priced better than the block clean-up price; rather, the member organization will cross the block orders at the specified clean-up price and fill at the clean-up price orders limited to the clean-up price or better before any amount may be retained for the member organization's account.

Example:

The NYSE quote in XYZ is \$20.05 bid for 10,000 shares, with 5,000 shares offered at \$20.10. There is no reserve interest at the best bid and offer. There are bids for \$20.04, \$20.03, and \$20.01, each for 5,000 shares, in the Display Book system. A member organization intends

to cross orders totaling 50,000 shares to buy and sell at \$20.02. The member organization is buying 40,000 shares for its own account. The following executions occur: 10,000 shares trade at \$20.05, 30,000 shares are crossed at the clean-up price of \$20.02, and 10,000 shares trade at \$20.02.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. Solicitation of Comments

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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 form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2006-73 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-2006-73. 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. 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 publicly available. All submissions should refer to File Number SR-NYSE-2006-73 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change, as Amended

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 proposal revises the procedures under NYSE Rule 127 for crossing block-sized orders outside the prevailing NYSE quotation.⁹ Under the proposal, NYSE Rule 127(b) will govern block cross transactions where the member organization represents as agent orders on both sides of the block. NYSE Rule 127(c)(2) will govern block transactions where all or part of one side of the block is for a member organization's own account and the member organization

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

⁸ 15 U.S.C. 78f(b)(5).

⁹ For purposes of NYSE Rule 127, a block is at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less, that a member organization acquires on its own behalf and/or for others from one or more buyers or sellers in a single transaction. See NYSE Rule 127, Supplementary Material .01.

is covering a short position or liquidating a long position. Before crossing block orders at a specified clean-up price outside the current quotation, NYSE Rules 127(b) and 127(c)(2) will require a member organization to trade with: (1) the NYSE best bid (offer), including all reserve interest at that price and any percentage orders elected by the execution at that price; and (2) all orders in the Display Book system limited to prices better than the block clean-up price, including Floor Brokers' e-Quotes and any percentage orders elected by the execution, at a price that is the minimum variation better than the block clean-up price. Under NYSE Rule 127(b)(ii), the block will be entitled to priority at the clean-up price, and under NYSE Rule 127(c)(2), the member organization will not be required to fill at the clean-up price orders limited to the clean-up price.

In a block transaction where all or any portion of a block is for a member organization's own account and all or any portion of the block will establish or increase the member organization's position, NYSE Rule 127(c)(1) will require the member organization to trade with the NYSE best bid (offer), including all reserve interest at that price and any percentage orders elected by that execution at the bid (offer) price, before crossing the block orders at the specified clean-up price. The member organization must fill at the clean-up price orders limited to the clean-up price or better before the member organization may retain any amount for its own account. The requirements of NYSE Rule 76 will not apply to executions made in accordance with NYSE Rule 127.¹⁰

The Commission finds that the proposal is consistent with Section 6(b)(5) because it is designed to permit the execution of block crosses outside the prevailing NYSE quotation while

¹⁰ See NYSE Rule 127(e).

protecting certain existing interest on the NYSE. In this regard, NYSE Rule 127(b) will require a member organization, before effecting an agency-only block cross outside the current NYSE quotation, to trade with the NYSE best bid (offer), including reserve size and percentage orders elected by the execution, at the bid (offer) price, and to trade with all orders in the Display Book system limited to prices better than the block clean-up price, including Floor Brokers' e-Quotes and percentage orders elected by the execution, at a price that is the minimum variation better than the block clean-up price. NYSE Rule 127(c)(2) provides the same requirements for a block transaction where all or part of one side of a block transaction is for a member organization's own account and the member organization is covering a short position or liquidating a long position. Similarly, NYSE Rule 127(c)(1) requires a member organization that engages in a block transaction that will establish or increase the member organization's position to trade with the NYSE best bid (offer), including all reserve interest and percentage orders elected by the execution, at that price before crossing the orders, and to fill at the clean-up price orders limited to the clean-up price or better before retaining any amount for its own account.

The Commission finds that the proposal to replace references to "member" with references to "member organization" throughout NYSE Rule 127 is consistent with Section 6(b)(5) of the Act because it will provide consistency in the text of the rule.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. As described more fully above, the proposal revises the NYSE's procedures for executing block crosses outside the prevailing NYSE quotation while protecting certain existing interest on the NYSE. In addition, the changes to NYSE Rule 127 proposed in the NYSE's

initial filing have been in effect on a pilot basis since October 6, 2006.¹¹ The Commission did not receive any comments regarding the proposed changes to NYSE Rule 127 during the operation of the pilot. The NYSE received no comments regarding the substantive operation of the proposed block crossing procedures during the pilot period, although some members urged the NYSE to explore ways to enhance the efficiency of the process.¹² Accordingly, the Commission finds good cause, consistent with Section 6(b)(5) and 19(b)(2) of the Act, to approve the proposal, as amended, on an accelerated basis.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2006-73), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹¹ See Securities Exchange Act Release Nos. 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006), (File No. SR-NYSE-2006-82) (order granting accelerated approval to put certain changes into operation on a pilot basis until October 31, 2006); and 54675 (October 31, 2006), 71 FR 65019 (November 6, 2006) (File No. SR-NYSE-2006-96) (extending the pilot program through November 30, 2006). Amendment No. 3 revised the initial proposal to: (1) clarify the execution of block cross transactions in which all or part of one side of the block is for a member organization's own account; (2) clarify that the requirements of NYSE Rule 76 will not apply to executions made in accordance with NYSE Rule 127; and (3) correct errors in the text of NYSE Rule 127.

¹² Telephone conversation between Deanna Logan, Director, Office of the General Counsel, NYSE, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, on November 28, 2006.

¹³ 17 CFR 200.30-3(a)(12).

