

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55641; File No. SR-NYSE-2007-39)

April 17, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC, Inc.; Notice of Filing and Immediate Effectiveness of a 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 13, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On April 17, 2007, the NYSE submitted Amendment No. 1 to the proposed rule change.³ The Exchange has designated the proposed rule change as “non-controversial” under Section 19(b)(3)(A)(iii)⁴ of the Act and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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 proposes to amend Rule 103B (Specialist Stock Allocation) to permit a listing company transferring from NYSE Arca, Inc. (“NYSE ArcaSM” or “NYSE Arca”) to waive the allocation process set forth in Exchange Rule 103B when the listing company was assigned a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 makes clarifications to the purpose section of the proposed rule change and typographical corrections to the rule text.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

Lead Market Maker firm (“LMM firm”), which is also a registered specialist firm on the NYSE, and selects as its specialist firm on the NYSE that same NYSE Arca LMM firm. The proposed rule further provides for additional input from the listing company in the selection of its specialist firm should it choose to refer the matter to the Allocation Committee. Below is the text of the proposed rule change. Proposed new language is underlined.

Rule 103B Specialist Stock Allocation

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IX. PROVISIONS FOR ALLOCATION OF SECURITIES ISSUED BY NYSE EURONEXT OR ITS AFFILIATES

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X. Provisions For Allocation of Listing Companies Transferring from NYSE Arca, Inc. (“NYSE ArcaSM”) to the NYSE

(a) If a listing company transferring from NYSE ArcaSM to the NYSE was assigned a NYSE Arca Lead Market Maker firm (“LMM firm”), which is also a registered specialist firm on the NYSE, then the listing company may waive the allocation process described above and select as its registered specialist firm the same firm that was previously assigned as the NYSE ArcaSM LMM firm. Alternatively, the listing company can choose to follow the regular allocation process and refer the matter to the Allocation Committee. If the listing company refers the matter to the Allocation committee, all specialist firms are invited to apply for such assignment.

(b) If the listing company chooses to have its specialist firm selected by the Allocation Committee, and requests not to be allocated to the specialist firm that was its NYSE ArcaSM LMM firm the Allocation Committee shall honor this request.

(c) If the listing company chooses to select its specialist firm from among a group of firms selected by the Allocation Committee, the Allocation Committee shall honor the listing company's request to include or exclude from the group the specialist firm that was its NYSE ArcaSM LMM firm.

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. NYSE has substantially 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 proposes to amend Exchange Rule 103B to permit a listing company transferring from NYSE Arca to the NYSE to waive the allocation process ("Allocation Process") when the listing company was assigned a NYSE Arca LMM firm which is also a registered specialist firm on the NYSE. Additionally, the proposed rule further provides for additional input from said listing company in the selection of their specialist firm should they choose to refer the matter to the Allocation Committee.

Current Allocation Policy

In accordance with existing Rule 103B, a listing company may obtain assignment of a specialist firm in the following ways: (1) the listing company may choose to have its specialist firm selected by the Allocation Committee which must exercise its expert professional judgment when making such a selection; or (2) the listing company may request the Allocation Committee

to select a group of appropriate specialist firms to be interviewed by the listing company and the listing company then makes the final selection of the specialist firm from the group of specialist firms selected by the Allocation Committee pursuant to the provisions of Rule 103B.

Proposal to Waive the Allocation Process

NYSE Arca, an affiliate of the NYSE, provides its listed companies with the opportunity to have a NYSE Arca LMM firm⁶ assigned to its primary listed equities. The LMM firm is the “exclusive Designated Market Maker” in such equity on NYSE Arca. The NYSE Arca LMM firm may also be a registered specialist firm on the NYSE.

The Exchange seeks to amend Rule 103B to allow a listing company that transfers from NYSE Arca to the NYSE to waive the Allocation Process in instances where the listing company’s equity was assigned to a NYSE Arca LMM firm that is also a registered specialist firm on the NYSE and the listing company wishes to have as their registered specialist firm the same NYSE Arca LMM firm.⁷

⁶ A registered “LMM firm” is a firm that is registered with NYSE Arca and employs individuals that are registered LMMs pursuant to NYSE Arca Equities Rule 7.

⁷ A security may be listed on a national securities exchange upon effectiveness of a registration statement on Form 8-A of the listing company in relation to the listing and registration of the security on that exchange pursuant to Section 12(b) of the Act. The Act does not prohibit companies from having multiple effective Form 8-As in relation to contemporaneous listings of a class of securities on different exchanges. When a company chooses to delist from a national securities exchange and transfer its listing to another exchange, it must do so by filing a Form 25 as required by Rule 12d2-2(c) under the Act. Rule 12d2-2(c) requires a company to give at least 10 days notice to the exchange from which it is delisting of its intention to file a Form 25 and to give contemporaneous public notice of that intent. In the absence of Commission action, the Form 25 becomes effective 10 days after its filing. SEC rules do not require companies to wait until the effectiveness of the Form 25 before commencing trading on a new exchange. However, the Exchange states that while SEC rules do not expressly prohibit the commencement of trading on the new market prior to filing of the Form 25, the general practice is for companies transferring their listing to wait to commence trading on the new market until immediately after filing of the Form 25. Generally, the market from which the company is transferring will suspend trading in the security on the first trading

Alternatively, the proposed rule would permit the listing company that transfers from NYSE Arca to the NYSE to choose to follow the regular Allocation Process set forth in Exchange Rule 103B and refer the matter to the Allocation Committee. If the listing company chooses to refer the matter to the Allocation Committee, all specialist firms would be invited to apply for such assignment.

The proposed rule would also provide that if the listing company chooses to have its specialist firm selected by the Allocation Committee, and requests not to be allocated to the specialist firm that was its NYSE Arca LMM firm, the Allocation Committee shall honor this request.

Additionally, the proposed rule provides that if the listing company chooses to select its specialist firm from among a group of firms selected by the Allocation Committee, the Allocation Committee shall honor the listing company's request to include or exclude from the group the specialist firm that was its NYSE Arca LMM firm.

The Exchange notes that the proposed rule would apply to the registered LMM "firm" and specialist "firm" and not the individual employee acting on behalf of the LMM firm or specialist firm in such capacity.

day after filing of the Form 25, so that for practical purposes the company will only have one trading market as of that date, although there will be two effective Form 8-As for the 10-day period prior to the effectiveness of the Form 25. The NYSE and NYSE Arca intend to follow the practice described in this paragraph in connection with companies transferring their listing from NYSE Arca to the NYSE. Upon filing of the Form 25 in relation to the delisting from NYSE Arca and the effectiveness of the Form 8-A in relation to the NYSE listing, the NYSE will commence trading in the securities and NYSE Arca will suspend trading on the same day.

The proposed rule change would be similar to the procedure for spin-offs and related companies pursuant to Rule 103B.⁸ Specifically, pursuant to Rule 103B, if a listing company is a spin-off or company related to a listed company, the listing company may select the specialist firm registered in the related company as its specialist without going through the Allocation Process. Alternatively, it may opt to select another specialist by participating in the regular Allocation Process.

The Exchange believes that the proposed rule change is consistent with the goals of the Allocation Policy to provide an incentive for ongoing enhancement of the relationship between the listing company and the specialist firm, to encourage continued high performance of the specialist firms by allowing them to use their experience and knowledge of the listing company's securities in a new market center and to provide the best possible match between the specialist firm and the security.

The proposed rule change is limited to listing companies that are transferring from NYSE Arca to the NYSE. Since NYSE Arca and NYSE are affiliates of one another, NYSE Arca's listings program for the allocation of securities is designed to meet goals that are similar to those established for the NYSE Allocation Process.

The proposed waiver of the Allocation Process would occur in very limited situations. It would affect only four firms that are currently both registered specialists firms on NYSE and registered LMM firms on NYSE Arca. These four firms are currently assigned to trade equities on both NYSE and NYSE Arca.⁹

⁸ See Exchange Rule 103B.V; see also Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR-NYSE-2002-31).

⁹ The four firms that are presently registered LMM firms on NYSE Arca and registered specialist firms on NYSE are: (1) Banc of America; (2) Bear Wagner Specialists LLC; (3) Susquehanna, and (4) Van der Moolen Specialists USA. LaBranche and Company

Furthermore, market makers that conduct business on NYSE and NYSE Arca are both subject to the regulatory oversight of NYSE Regulation Inc. (“NYSER”). LMM firms in good standing on NYSE Arca must meet all of the market making obligations as enforced by NYSER. If an LMM firm fails to meet its market making obligations, it would no longer be eligible to serve as the LMM firm for the listed security. As such, the NYSE believes that allowing listed companies to maintain the LMM firm that trades its security on NYSE Arca when such LMM firm is also a registered specialist firm on the NYSE, comports with the overall goal of the Allocation Process to provide a specialist firm that is most qualified to transact business in the listed security.

Listing companies transferring from other market centers to the NYSE would not be eligible to waive the NYSE Allocation Process pursuant to the proposed rule change as the NYSE does not have control over other market center’s established market making obligations. Neither does the NYSE have an understanding of the regulatory oversight related to the enforcement of the market making obligations of other market centers.

Consequently, there is no assurance for the NYSE that a registered NYSE specialist firm operating as a market maker on another market center is transacting business in accordance with its market making obligations on such other market center and therefore the NYSE would require the listing company to participate fully in its Allocation Process as proscribed by Exchange Rule 103B.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

LLC (“LaBranche”) is presently a registered LMM firm on NYSE Arca and a registered specialist firm on NYSE but LaBranche is presently assigned to trade ETFs only on NYSE Arca and has no equities assigned to it. Consequently, LaBranche does not fit the criteria of the proposed rule at this time.

the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, 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 would 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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁴ However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has satisfied the five-day filing requirement. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing. The Exchange represented that the proposed rule change is merely administrative in nature as it seeks to allow a listing company to waive the Allocation Process set forth in Exchange Rule 103B in those limited instances where the equity of the listing company was listed on NYSE Arca and the company's equity was assigned a LMM firm that is also a registered specialist firm on the NYSE, and when the listing company transfers from NYSE Arca to the NYSE, the listing company may waive the Allocation Process and select as its registered specialist firm the same NYSE Arca LMM as its specialist firm on the NYSE. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to immediately implement this proposal and efficiently administer the allocation of equities that are currently eligible and scheduled to transfer listing from NYSE Arca to NYSE on April 18, 2007. Therefore, the Commission designates the proposal, as amended, to become effective and operative upon filing.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ Id.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.¹⁷

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-NYSEArca-2007-39 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2007-39. 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

¹⁷ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on April 17, 2007, the date on which the Exchange filed Amendment No. 1.

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 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-NYSE-2007-39 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).