

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60755; File No. SR-NYSE-2009-99)

September 30, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 103B to: 1) Codify the Exchange's Existing Practice that Renders Designated Market Maker Units Ineligible to Interview for Securities that are Directly Related to the Performance or Credit of Any of the DMM's Affiliated Entities; 2) Define "Related Security" for Purposes of NYSE Rule 103B; 3) Provide that all Related Securities Listed under Section 703.19 of the Exchange's Listed Company Manual will be Automatically Assigned to the Designated Market Maker Unit; 4) Define Repackaged Security for Purposes of NYSE Rule 103B, and Provide that Repackaged Securities are Allocated Through the Allocation Process pursuant to NYSE Rule 103B

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 25, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Rule 103B ("Security Allocation and Reallocation") to: 1) codify the Exchange's existing practice that renders Designated Market Marker ("DMM") units ineligible to interview for securities that are directly related to the performance or credit of any of the DMM's affiliated entities; 2) define "related security" ("Related Security") for purposes of NYSE Rule 103B; 3) provide that all Related Securities listed under Section 703.19 of the Exchange's Listed Company Manual will be automatically

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

assigned to the Designated Market Maker unit (“DMM unit”) that is assigned the related equity security unless the issuer affirmatively requests the Related Security be allocated pursuant to NYSE Rule 103B, Section III; 4) define repackaged security (“Repackaged Security”), for purposes of NYSE Rule 103B, and provide that Repackaged Securities are allocated through the allocation process pursuant to NYSE Rule 103B, Section III; and 5) include inadvertently omitted rule text as well as make conforming changes to the rule text. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange LLC (“NYSE” or “Exchange”) proposes to amend NYSE Rule 103B (“Security Allocation and Reallocation”) to: 1) codify the Exchange’s existing practice that renders Designated Market Maker (“DMM”) units ineligible to interview for securities that are directly related to the performance or credit of any of its affiliated entities; 2) define “Related Security” for purposes of NYSE Rule 103B; 3) provide that all Related Securities listed under Section 703.19 of the Exchange’s Listed Company Manual (“Manual”) will be automatically assigned to the DMM unit that is assigned the related equity security unless

the issuer affirmatively requests the Related Security be allocated pursuant to NYSE Rule 103B, Section III; 4) define “Repackaged Security,” for purposes of NYSE Rule 103B, and provide that Repackaged Securities are allocated through the allocation process pursuant to NYSE Rule 103B, Section III; and 5) include inadvertently omitted rule text as well as make conforming changes to the rule text.

I. Background

A. Listing of “Other Securities”

Section 703.19 of the Manual (“Other Securities”) is the listing standard pursuant to which the NYSE lists any securities that do not qualify for listing under any of the standards specific to securities of a particular class. The general categories of securities that are currently listed under Section 703.19 are: 1) capital securities; 2) retail debt securities; 3) mandatory convertible securities; and 4) Repackaged Securities. These securities may be issued by listed companies and their affiliated entities as well as qualified non-listed companies and their affiliated entities.

Capital securities are hybrid securities with characteristics of both debt and preferred stock. Generally, these securities pay regular dividend or interest payments and have very long maturities or are perpetual in nature. Capital securities may be issued directly by the listed company or a subsidiary thereof, or by a trust which holds debt of the company or its subsidiary, such as trust preferred securities.

Mandatory convertible securities are hybrid securities that entitle the holder to periodic payments on the amount invested until a specified conversion date, at which time the security converts into shares of the listed company according to a disclosed formula. Mandatory convertibles typically mature in 3-5 years.

Retail debt securities are corporate debt securities that are assigned to a DMM unit for trading (as opposed to trading on NYSE Bonds), typically with face amounts of \$50, \$25 or \$10. Retail debt securities pay a fixed rate of interest and typically have long maturity dates of 30+ years.

Repackaged Securities are issued by a special purpose entity which is established for the purpose of issuing such securities and using the proceeds to purchase debt or preferred equity securities. Repackaged Securities represent an undivided beneficial interest in the debt or preferred equity securities held by the special purpose entity. These securities also pay interest (either fixed or floating) and typically have long maturity dates of 30+ years.

B. Assignment of “Other Securities” to DMM Units

NYSE Rule 103B governs the allocation of securities to a qualified DMM unit when: (1) a security is to be initially listed on the Exchange; and (2) a security previously assigned to a DMM member organization must be re-assigned.⁴

The allocation of securities that are related to initially listed securities is governed by NYSE Rule 103B, Section VI, entitled “Policy Notes.” Pursuant to the provisions of the rule, the issuer may choose whether to have its related security⁵ assigned to the DMM unit responsible for trading its listed equity security or referred for allocation through the formal allocation process and then must advise the Exchange of that decision.

⁴ See NYSE Rule 103B, Section III.

⁵ NYSE Rule 103B, Section VI, currently does not provide a definition of the term “related security.”

In contrast, warrants on the Exchange are automatically assigned to the DMM unit trading the underlying security unless the listed company specifically requests the warrant be referred for allocation through the formal allocation process.⁶

Regardless of the method of allocation, current NYSE practice restricts DMM units from interviewing to be the assigned DMM unit or being allocated a security that is directly related to the performance or credit of any of its affiliated entities. DMMs units are not, however, restricted from interviewing to be the assigned DMM unit or being allocated a Repackaged Security issued by an affiliated entity because such products have no direct relation to the performance or credit of the issuing entity. However, if that Repackaged Security is based on an underlying debt security of an affiliated entity of the DMM unit, the DMM unit will be precluded from interviewing to be the assigned DMM unit or being allocated the Repackaged Security based on the underlying debt security of the affiliated entity of such DMM unit. Neither practice is currently codified in NYSE Rules.

II. Proposed Amendments

The Exchange proposes to clarify and streamline the allocation process for securities listed under Section 703.19 of the Manual. Specifically, the Exchange seeks to include a definition of “Related Security” in proposed NYSE Rule 103B, Section VI(A)(2) and to set forth allocation procedures for Related Securities. For purposes of this rule, the term “Related Security” shall be defined as: (i) any security listed on the Exchange issued by a company whose common equity securities are listed on the Exchange, other than such common equity securities; and (ii) any security listed on the Exchange by any issuer affiliated with a company whose common equity securities are listed on the Exchange. Related Securities of either a listed

⁶ See NYSE Rule 103B, Section VI(A)(2).

company whose common equity securities are listed on the Exchange or of an affiliated entity of such listed company include, but are not limited to, securities listed under NYSE Listed Company Manual Section 703.19 (except for Repackaged Securities).

The Exchange further proposes to amend Section VI of NYSE Rule 103B to have Related Securities allocated in the same manner as warrants listed on the Exchange. Pursuant to proposed Section VI(A)(6) of NYSE Rule 103B, the Exchange will automatically assign the Related Security to the DMM unit that trades the related equity security unless the issuer or affiliated entity affirmatively requests to have the Related Security assigned to a DMM unit through the formal allocation process as set forth in NYSE Rule 103B, Section III. The current rule which requires issuers to make a determination in this regard, places an unnecessary burden on issuers of Related Securities because an issuer may create and list multiple Related Securities throughout the year. The need for the issuer to advise the Exchange of its determination creates potential time delay in the allocation and trading of Related Securities on the Exchange. The Exchange believes that the proposed process will alleviate this burden and time delay.

Further, pursuant to proposed Section VI(A)(7) of NYSE Rule 103B, if an issuer or any affiliated entity does not have an equity security listed on the Exchange, but does have a security listed on the Exchange that was approved for original listing under Section 703.19 of the Manual (except for a Repackaged Security), the Exchange will automatically assign any security subsequently listed under Section 703.19 (except for a Repackaged Security) of that issuer or affiliated entity to the DMM unit trading the previously listed security, unless the issuer or affiliated entity affirmatively requests to have any such subsequently listed security assigned to a DMM unit through the formal allocation process as set forth in NYSE Rule 103B, Section III.

To further alleviate burdens on the issuer related to the allocation of Related Securities, the Exchange proposes to amend Section VI(A)(4) of NYSE Rule 103B to provide that DMM units that are ineligible to receive a new allocation due to their failure to meet the requirements of Rule 103B, Section II(D) and (E) will remain eligible to receive the securities of a spin-off company and of Related Securities and Repackaged Securities where the DMM unit trades the related common equity security. The Exchange believes that this is appropriate because re-assigning the Related Securities of an equity security currently being traded by the DMM unit is disadvantageous and burdensome to the issuer that has already established a relationship with the DMM unit. The Exchange believes that most issuers prefer to have one point of contact to obtain information about the trading activity in the issuer's securities. Assignment of a Related Security to another DMM unit increases the administrative burdens on the issuer in obtaining trading information related to its securities. If the issuer chooses, it still may request to have the Related Security assigned to a DMM unit through the formal allocation process as set forth in NYSE Rule 103B, Section III.

Additionally, the Exchange proposes to codify in Section II ("Eligibility for Allocation") of NYSE Rule 103B, subparagraph (K), its existing practice of prohibiting a DMM unit from interviewing to be the assigned DMM unit or being allocated a security that is directly related to the performance or credit of any of its affiliated entities. The Exchange will not, however, prohibit a DMM unit from acting as the DMM unit for Repackaged Securities issued by an affiliated entity that bear no direct relation to the performance or credit of the issuing entity or any other affiliate of the DMM unit.

Example #1:

Bank A is the parent company of DMM unit Y.

Bank A creates a Repackaged Security representing interests in an underlying debt security of XYZ Company that is not related to Bank A or DMM unit Y. DMM unit Y will not be precluded from interviewing to be the assigned DMM unit or being allocated the Repackaged Security based on the underlying debt security of XYZ Company.

Example #2:

However, assuming the same scenario above, Bank N, which is not affiliated with Bank A or DMM unit Y, creates a Repackaged Security based on an underlying debt security of Bank A. DMM unit Y will be precluded from interviewing to be the assigned DMM unit or being allocated the Repackaged Security created by Bank N based on the underlying debt security of Bank A.

In Example #1, DMM unit Y will not be precluded from interviewing to be the assigned DMM unit or being allocated the Repackaged Security based on the underlying debt security of XYZ Company because that Repackaged Security bears no direct relation to the performance or credit of Bank A. The Exchange notes that the Repackaged Security will be fully funded at the time of creation and the issuer of the Repackaged Security is not reliant on the continued solvency of Bank A to be able to comply with all of its obligations to the holders of the Repackaged Securities.

In Example #2, DMM unit Y will be precluded from interviewing to be the assigned DMM unit or being allocated to trade the Repackaged Security because that Repackaged Security was created based on an underlying debt security of Bank A and therefore has a direct relation to the credit and performance of Bank A.

The Exchange also seeks to amend NYSE Rule 103B to include inadvertently omitted rule text. Specifically, Section VI(A) governs spin-offs, listing of related companies and listing

of related securities. However, the words “related security” are inadvertently omitted from the actual text of the rule. Through this filing, the Exchange seeks to correct this oversight and include the words “related security” in the body of NYSE Rule 103B, Section VI(A).

Finally, the Exchange seeks to amend NYSE Rule 103B, Section VI(2) regarding allocation of warrants. In order to keep the language consistent through this section, the Exchange proposes to replace the word “traded” with the word “listed.”

III. Conclusion

The Exchange submits that the amendments proposed herein are reasonable and necessary to clarify the operation of NYSE Rule 103B and streamline the allocation process.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),⁷ which requires that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Exchange believes that the proposed amendments are consistent with these objectives because the changes will alleviate impediments in the administrative process of assigning Related Securities to DMM units which ultimately facilitates the fair and orderly trading in those securities.

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.

⁷ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to 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 prior to 30 days from the date on which it was filed, 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)⁸ of the Act and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed under Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6),¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay¹² is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19-b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ Id.

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

avoid any continuing confusion regarding the application of NYSE Rule 103B, as well as immediately allow a Related Security to be assigned to the DMM unit that is assigned the related equity security, unless the issuer affirmatively requests the Related Security to be allocated pursuant to NYSE Rule 103B.

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

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-2009-99 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2009-99. 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 Section, 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at www.nyse.com. 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-2009-99 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).