

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50021; File No. SR-NYSE-2004-38)

July 14, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Exempting Bonds from the Order Tracking System Requirements (NYSE Rule 132B)

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 July 7, 2004, the New York Stock Exchange, Inc. (“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 Exchange. On July 13, 2004, the NYSE amended the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change, as amended.

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

This proposal is to amend NYSE Rule 132B to eliminate the requirement to capture order information for listed bonds. The text of the proposed rule change is below. Proposed new language is italicized.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Commission, dated July 13, 2004 (“Amendment No. 1”). Amendment No. 1 revised the proposed rule text. Amendment No. 1 is incorporated into this notice.

Rule 132B Order Tracking Requirements

1. With respect to any security listed on the New York Stock Exchange except bonds, each member and member organization shall:

* * * * *

(Remainder of rule unchanged.)

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 NYSE 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

Background. NYSE Rules 132A, B and C⁴ (“OTS rules”) require that members and member organizations record details of every customer and proprietary order in any security listed on the Exchange from the time of receipt or origination through the time of execution or cancellation. The purpose of these requirements is to provide a complete audit trail for orders in Exchange-listed securities. Thereby, the Exchange is able to provide an accurate, time-sequenced record of orders, quotations and transactions beginning with the receipt of an order by

any NYSE member firm and further documenting the life of the order through the process of execution or cancellation of that order.

Rule 132A. NYSE Rule 132A requires members and member organizations to synchronize the business clocks used to record the date and time of any event that the Exchange requires to be recorded. The Exchange requires the date and time of orders in Exchange-listed securities to be recorded. The Rule also requires members and member organizations to maintain the synchronization of this equipment in conformity with procedures prescribed by the Exchange.

Rule 132B. NYSE Rule 132B prescribes requirements and procedures with respect to orders in any security listed on the Exchange received or originated by a member or member organization. It requires a member or member organization to immediately record data elements as detailed in the Rule. If an order is transmitted to another member or member organization, is transmitted to another department of the same member, or is modified or cancelled, information detailed in the Rule must be recorded. Additionally, the recipient of the order must record the order details as provided in the Rule.

Orders submitted to the Floor via an exchange or proprietary system that comply with existing NYSE Rule 123(e)⁵ (requiring the electronic capture of orders on the floor via NYSE's Front End Systemic Capture Program) are exempt from recording the order details from the

⁴ See Securities Exchange Act Release No. 47689 (April 17, 2003), 68 FR 20200 (April 24, 2003) (SR-NYSE-99-51) and NYSE Information Memo 03-26 (June 10, 2003) for further information on NYSE Rules 132A, B, and C.

point at which the order arrives on the Floor. The transmitting and receiving floor members, however, are required to record the unique Order ID, the transmitting firm, and the recipient firm.

Rule 132C. Members and member organizations must record and retain the order details as required by the Rule, and upon Exchange request, submit such details to the Exchange. The Exchange makes requests for order tracking information on an as-needed basis in order for the Exchange to carry out its surveillance and regulatory functions. Members and member organizations are required to submit the data in an automated format.

Proposed Exemption for Listed Bonds. The Exchange proposes to exempt listed bonds from the requirements of the OTS rules. As adopted, the OTS rules apply to any security⁶ listed on the Exchange, which includes bonds. However, at the time the OTS rules proposal was promulgated, the Exchange was focusing its attention on the application of the OTS rules to equity securities. The Exchange believes there are several reasons why the exclusion of bonds from the OTS rules would not be against the public interest and would not diminish the protection of investors. These are explained below.

Cost and Effectiveness. The Exchange represents that its member organizations would have to make extensive changes to their existing systems to capture order details for listed bonds

⁵ NYSE Rule 123, Record of Orders, requires that all orders in any security traded on the Exchange be entered into a database before they can be represented in the Exchange's auction market.

⁶ NYSE Rule 3 defines the terms "security" and "securities" as having the meaning given those terms in the Act and the General Rules and Regulations thereunder. Section 3(a)(10) of the Act, in turn, defines "security" as any "note, stock, treasury stock, security future, bond, debenture," etc. (emphasis added).

in an electronic system as required by the OTS rules. At this time, the Exchange understands that member organizations have not established automated order tracking mechanisms and protocols for debt securities trading. The Exchange represents that such changes would be expensive, especially since they would have to be accomplished in a short time frame.

In addition, the Exchange believes that the information that would be captured through such systems would not seem to provide a commensurate benefit in terms of increased compliance efforts. Trades on the Exchange in listed bonds are conducted through the Automated Bond System[®], which electronically captures order and execution details of each bond trade, providing an audit trail for these trades independent of the requirements of the OTS rules. Thus, for bond transactions conducted on the Exchange, the Exchange believes that existing procedures provide adequate regulatory information substantially comparable to the requirements of the OTS rules.

In view of the fact that there are a significant number of bonds that are not listed and that the vast majority of transactions in bonds are conducted away from the Exchange, the Exchange believes that requiring member organizations to establish different systems and procedures for listed bonds and non-listed bonds would be costly and would not provide a significant improvement in regulatory capability.⁷

Given the reasons set forth above, the Exchange believes that exempting listed bonds from the OTS rules should not present any significant regulatory issues.

⁷ The Exchange understands that the rules of the National Association of Securities Dealers (“NASD”) regarding Nasdaq’s Order Audit Trail System apply only to equity securities. See NASD Rule 6951(j) (defining “order”).

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular in that it is 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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

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:

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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-2004-38 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-38. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2004-38 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 Proposed Rule Change

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.¹⁰ The Commission finds that the proposed rule change is consistent with Section 6(b) of the Act¹¹ in general and furthers the objectives of Section 6(b)(5) of the Act¹² in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market. Specifically, in light of the Exchange's representations that: (1) existing procedures provide regulatory information that is adequate and comparable to the information required by the OTS rules, and (2) Nasdaq's Order Audit Trail System rules, which serve a similar purpose to the OTS rules, do not apply to debt securities,¹³ the Commission finds that the proposed rule change is consistent with the Act.¹⁴

¹⁰ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See note 7 supra.

¹⁴ The Commission notes, however, that should the trading environment for bonds listed on the NYSE change such that the Automated Bond System no longer captures information sufficient to create adequate audit trails for bond trades, or such that any of the Exchange's representations above under the subheading "Cost and Effectiveness" are no longer valid, then the Commission's analysis and conclusion may change.

The Exchange has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act¹⁵ for approving the proposed rule change, as amended, on an accelerated basis prior to the thirtieth day after its publication in the Federal Register. The provisions of Rule 132B are scheduled to be effective July 16, 2004. The Commission's grant of accelerated approval would help ensure that Exchange members are able to comply with the provisions of Rule 132B when it becomes effective. Further, Exchange members would not have to expend valuable resources to establish procedures that comply with the OTS rules for mandatory electronic capture of order information in listed bonds. As discussed above, the Exchange asserts that instituting OTS rules for listed bonds would not provide a significant improvement in regulatory capability, would be largely duplicative, and would be costly to Exchange members. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis prior to the thirtieth day after publication of notice in the Federal Register.

¹⁵ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change, as amended (SR-NYSE-2004-38), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland
Deputy Secretary

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).