

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51973; File No. SR-NYSE-2004-62)

July 5, 2005

Self-Regulatory Organizations; New York Stock Exchange Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto to Eliminate Rule 496 and to Amend the Listed Company Manual Relating to Transfer Agents

I. Introduction

On October 29, 2004, the New York Stock Exchange Inc. (“NYSE”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ filed a proposed rule change with the Securities and Exchange Commission (“Commission”) and on December 3, 2004 and February 9, 2005, amended the proposed rule change File No. SR-NYSE-2004-62. Notice of the proposed rule change, as modified by Amendment Nos. 1 and 2, was published in the Federal Register on March 23, 2005.² Seven comment letters were received.³ On May 12, 2005, the NYSE submitted Amendment No. 3 to the proposed rule change.⁴ This order approves the proposed

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 51372 (March 15, 2005), 70 FR 14742 (March 23, 2005).

³ Letters from Bert Johnson, Supervisor Shareholder Services (April 1, 2005); Donald E. Donahue, Chief Operating Officer, The Depository Trust and Clearing Corporation (April 4, 2005); Thomas L. Montrone, President and Chief Executive Officer, Registrar and Transfer Company (April 25, 2005); Charlie Rossi, President, The Securities Transfer Association, Inc. (April 28, 2005); Robert Shier, Senior Vice President and Chief Operations Officer, CIBC Mellon (April 29, 2005); Stephen J. Dolmatch, Executive Vice President and General Counsel, Mellon Investor Services LLC (April 29, 2005); and Robert Mackenzie, Computershare Trust Company of Canada (April 29, 2005).

⁴ In Amendment No. 3, the NYSE modified the requirements of the rules with respect to the record date protection of the rights of transferees of securities sent to the transfer agent by DTC to provide such protection will only be available for securities sent on the record date itself and not on the next succeeding business day as would have been provided pursuant to Amendment No. 2.

rule change, as amended. The Commission is granting accelerated approval of Amendment No. 3, and is soliciting comments from interested persons on that amendment.

II. Description

The NYSE is eliminating Rule 496 and is amending its Listed Company Manual (“LCM”). Pursuant to the rule change certain current significant requirements of Rule 496 with respect to entities acting as transfer agents for listed companies will now be imposed by the LCM. Because the NYSE’s rules are generally applicable to members rather than listed companies, the NYSE believes it is appropriate that the transfer agent requirements be set forth solely in the LCM. In addition, the current requirements of Rule 496 are referred to, and also to some extent, repeated in various sections of the LCM. Accordingly, the NYSE believes that all transfer agent requirements would be more properly contained in the LCM.

Rule 496 required, among other things, that transfer agents for listed companies maintain an office or obtain an agent located south of Chambers Street in the Borough of Manhattan, City of New York, where securities can be delivered in person for registration of transfer and can be picked up after completion of such registration (often referred to in the industry as a “drop”). This requirement was implemented when most securities traded on the NYSE were held in certificated form and were settled with physical delivery. The transfer agents’ presence in lower Manhattan, where broker-dealers are concentrated, facilitated the speedy processing and settlement of securities transfers. However, because most securities are now held in “street name” at The Depository Trust Company (“DTC”)⁵ and transfers of such securities occur

⁵ DTC is a securities depository registered as a clearing agency under Section 17A of the Exchange Act. 15 U.S.C. 78q-1(b).

through automated book-entry systems at DTC without the need for transfer of physical certificates, very few transfers are now facilitated by the drop in lower Manhattan. Therefore, the NYSE believes that marketplace participants, including securityholders, will not be harmed by the elimination of the drop requirement in Rule 496.

Prior to the rule change, Rule 496 also required transfer agents to record the transfer of securities received at the transfer agent's drop before the close of business on a record date as being transferred on the record date in order to establish the transferee's rights on the record date. As revised, the LCM will provide the same protection for securities sent by the close of business on a record date by a registered clearing agency (i.e., DTC). Because the vast majority of securities are now held in "street name," the NYSE believes that securityholders will not be disadvantaged by providing this record date protection only to registered clearing agencies.⁶

Rule 496 also required transfer agents to meet certain capital and insurance standards. The revisions to the LCM will retain the capital and insurance requirements of current Rule 496. New language of the LCM will also codify several long-standing policies and practices of the NYSE by providing for the qualification of certain transfer agents that do not otherwise meet the capital and insurance requirements of Rule 496. Accordingly, transfer agents will continue to be required to (i) have capital, surplus (both capital and earned), undivided profits, and capital reserves aggregating at least \$10,000,000 and (ii) maintain blanket bond insurance coverage of at least \$25,000,000 to protect securities while in transit or being processed. Also the LCM will specify that a bank, trust company, or other qualified organization acting as transfer agent may:

⁶ This record date protection was the subject of Amendment No. 3.

1. Act in a dual capacity as transfer agent/co-transfer agent and registrar if (i) a majority of its equity is owned by an entity that meets the standard capital requirements, (ii) its parent guarantees the subsidiary's performance, and (iii) the subsidiary maintains the \$25,000,000 blanket bond insurance coverage or the parent maintains the coverage for the benefit of the subsidiary;
2. Act in dual capacity as transfer agent/co-transfer agent and registrar if it (i) has capital of at least \$2,000,000 and errors and omissions insurance which, taken together with its capital, equals at least \$10,000,000 and (ii) maintains the standard \$25,000,000 blanket bond insurance coverage; or
3. Act as co-transfer agent or co-registrar (but not in a dual capacity) for securities listed on the NYSE if it has capital equal to at least \$2,000,000 without maintaining the \$25,000,000 blanket bond insurance coverage.

A listed company may continue to act as its own transfer agent provided that it complies with all the requirements applicable to transfer agents not affiliated with a listed company apart from the capital and insurance requirements. However, a listed company may not act as sole registrar for its listed securities unless it also acts as transfer agent.

The NYSE states that the foregoing exceptions to the capital and insurance requirements are policies that have been applied by the NYSE for many years. The NYSE believes that these policies are consistent with the protections provided to securityholders by the general standards applicable to transfer agent.

III. Comment Letters

The Commission received seven comment letters.⁷ Two of the seven commenters fully supported the proposed rule change as proposed stating that the requirement for transfer agents to maintain a drop facility below Chambers Street in the Borough of Manhattan, New York City, was obsolete in light of the immobilization of securities and the use of overnight couriers to mail securities.⁸ Two other commenters supported the elimination of the drop facility requirement but opposed the extension of record date protection to two days as proposed in the initial proposed rule change.⁹

Five commenters stated that requiring transfer agents to provide record date protection for items received on record date and deposited into the mail or other commercial delivery service for delivery on record date or the day after record date, which could extend record date protection for up to days past record date, would jeopardize the timely and accurate processing and reconciliation of record date services.¹⁰ These commenters contended this timing would (1) interrupt streamlined processing by creating a separate class of processing for items received by registered clearing agencies for NYSE-listed companies only and (2) result in delay of payments. Further, these commenters noted that the proposed rule change would not have required timely

⁷ Supra note 3.

⁸ Letters from Supervisor Shareholder Services and The Depository Trust and Clearing Corporation.

⁹ Letters from The Securities Transfer Association, Inc. and Mellon Investor Services LLC.

¹⁰ Letters from Mellon Investor Services LLC, Computershare Trust Company of Canada, Securities Transfer Association, Inc., CIBC Mellon, and Registrar and Transfer Company.

delivery by registered clearing agencies but only “mailing” of the item, which could result in record date protection being extended beyond two days.

While two of these five commenters opposed any extension of record date protection,¹¹ the other three commenters indicated that if eliminating any extended record date protection is not feasible, then the proposed rule change should be amended to require items be sent for next day delivery no later than on the record date rather than on the business day following record date.¹²

IV. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, 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 association.¹³ 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 that requires rules of an exchange are 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 regulating, clearing, settling, processing information with respect, and facilitating transactions in securities, to remove impediments to and to perfect the

¹¹ Letters from Mellon Investor Services LLC and Computershare Trust Company of Canada.

¹² Letters from the Securities Transfer Association, Inc., CIBC Mellon, and Registrar and Transfer Company.

¹³ 15 U.S.C. 78o-3(b). In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.¹⁴

The Commission believes that in light of a majority of exchange-traded securities being immobilized at DTC, the proposed rule change allows transfer agents acting for listed companies to provide for transfers of securities in a more efficient and cost effective manner by eliminating the drop requirement, which is now obsolete. Furthermore the proposed rule is consistent with the Act because it retains the capital and insurance requirements, which were in Rule 496, in the LCM.

With regards to the issue of extending record date protection by two or more days for securities sent to transfer agent by a registered clearing agency, the Commission believes that the NYSE adequately addressed commenters' concerns by submitting Amendment No. 3.

Amendment No. 3 extends record date protection only to those securities that are sent by a registered clearing agency on record date (instead of no later than one business day after the record date as originally proposed) and that are sent by mail or commercial delivery service for same or next day delivery. The Commission understands that the rule may require transfer agents to accommodate a one-day delay in processing corporate actions, which the Commission understands is less than some transfer agents are accommodating in the current environment, but this delay does not seem material. As securities become increasingly dematerialized, the need to send certificates by any mail service will continue to decrease, which will further minimize the impact of the possible one day delay in processing. The Commission urges the NYSE, DTC, and the transfer agents to continue their efforts to build a facility or system that will electronically

¹⁴ 15 U.S.C. 78f(b)(5).

communicate transfer and corporate action information and will eliminate the need to mail certificates altogether.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the publication of notice in the Federal Register.

Accelerating approval of Amendment No. 3 to the proposal will enable many transfer agents to immediately reduce their operating expenses by eliminating the drop facility south of Chambers Street in the Borough of Manhattan, City of New York. Furthermore, the Commission believes that after seven months of discussions between DTC, the transfer agents, and Commission staff the NYSE's Amendment No. 3 provides an acceptable and reasonable compromise to the record date protection issue and a compromise which a majority of the commenters opposing the initial proposal seemed amenable. Accordingly, the Commission finds that it is appropriate to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 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/sr.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2004-62 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2004-62. 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 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-2004-62 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-2004-62) be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jill M. Peterson
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).