

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51985; File No. SR-NYSE-2005-21)

July 7, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Temporary Reallocation of Securities Among Specialists

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 March 11, 2005, 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, II and III below, which Items have been prepared by the Exchange. On June 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 is proposing to amend NYSE Rule 103.11 regarding the temporary reallocation of securities traded on the Exchange from one specialist organization to another specialist organization. The text of the proposed rule change is set forth below. Italics indicate additions; [brackets] indicate deletions.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the NYSE added a paragraph to the purpose section concerning the designee of the Chief Regulatory Officer and corrected technical errors in the rule text.

Rule 103. Registration of Specialists

No member shall act as a specialist on the Floor in any security unless such member is registered as a specialist in such security with the Exchange and unless the Exchange has approved of his so acting as a specialist and has not withdrawn such approval.

As a condition of a member's registration as a specialist in one or more securities the Board of Directors may at any time require such member to register with the Exchange and act as an odd-lot dealer in such securities under Rule 101.

Supplementary Material:

.10 Registration of specialists.-Four classes of specialists have been established, namely (1) regular specialists, (2) relief specialists, (3) associate specialists, and (4) temporary specialists. No member is permitted to act as regular specialist, relief specialist or associated specialist unless he is registered with the Exchange. No registration is required for temporary specialists, but no member is permitted to act as such unless authorized by a Floor Official.

Registration applies only to individual members, and not to member organizations. Consequently each Floor member of a specialist organization who expects to act as regular specialist, relief specialist or associate specialist at any time must register individually.

All members of the Exchange registered as regular specialists, or odd-lot dealers or odd-lot brokers will be required to pay a monthly registration fee of \$37.50 and all

members registered as relief or associate specialists will be required to pay a monthly registration fee of \$1.67.

Notice of all new applications for registration as regular or relief specialist will be posted on the bulletin board. Approval will not be given on any such application until one week from the date of receipt thereof, except that, if circumstances require immediate action, temporary approval may be given. Members wishing to make representations with respect to any application should file their comments with the Market Surveillance and Evaluation Department during the period when notice is posted.

Notice of applications for registration as associate specialists will not be posted.

Before registration as a specialist, a member is required to pass a Specialist's Examination prescribed by the Exchange. Applications for this examination should be submitted to the Market Surveillance Department.

.11 Temporary Reallocation of [Stocks] Securities.-The Chief [Executive] Regulatory Officer or his or her designee and two [most senior] non-specialist BoE Floor Representatives or [in the absence from the Floor of either of them, the next senior] if only one or no non-specialist BoE Floor Representatives is present on the Floor, the most senior non-specialist Floor Governor or Governors based on length of

consecutive service as a Floor Governor at the time of any action covered by this rule,
 acting by a majority shall have the power to reallocate temporarily any [stock] security
 on an emergency basis to another location on the Floor whenever in their opinion such
 reallocation would be in the public interest.

The member to whom a [stock] security has been temporarily reallocated under the
 provisions of this Rule will be registered as the regular specialist therein until the
 [Board of Directors] Chief Regulatory Officer or his or her designee and two non-
specialist BoE Floor Representatives determine[s] that the security may be returned to
the original specialist organization or has been reallocated pursuant to Exchange rules
 [the ultimate location of the security].

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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. 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

NYSE Rule 103.11 provides a procedure to temporarily reallocate securities listed on the

NYSE from one specialist organization to another specialist organization on an expedited basis. Current NYSE Rule 103.11 requires the Chief Executive Officer and two Board of Executive (“BoE”) Floor Representatives to make the decision on such reallocation by majority agreement. The participation of the BoE Floor Representatives is on a seniority basis.

The Exchange represents that recent changes to short sale regulations promulgated by the Commission in Regulation SHO⁴ may result in the need to temporarily reallocate securities from one specialist organization to another specialist organization on an expedited basis. These regulations, which are intended to address aged fails to deliver resulting from short sale transactions, may preclude the specialist organization responsible for making a market in a particular security from effecting short sales in such security. As a result, Exchange specialist organizations would be subject to the prohibitions of Regulation SHO and could be prohibited from effecting sell-short transactions in a specialty security if it became a threshold security without first borrowing or arranging to borrow the security, which would be difficult to do in a manner consistent with the fulfillment of the specialist’s Exchange-mandated market making obligations. In these circumstances, the Exchange would look to transfer the effected security to another specialist organization until such time as the first specialist organization is no longer precluded from selling short without first borrowing or arranging to borrow the security by Regulation SHO.

The Exchange believes that the temporary reallocation of a security is most likely to be required for regulatory reasons and thus is more properly the responsibility of the Chief

⁴ See Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

Regulatory Officer or his or her designee. Therefore, the Exchange proposes to amend NYSE Rule 103.11 in this regard.

Under the proposed rule, the Chief Regulatory Officer may designate someone to meet his or her responsibility. The Exchange expects that the designee will be an officer in the Exchange's Regulatory Group, with the Executive Vice President of the Market Surveillance Division being the primary designee.⁵

The NYSE's BoE advises the Chief Executive Officer in his or her management of the operations of the Exchange. The BoE consists of representatives of listed companies, investors, members and member organizations. Included on the BoE are specialist and Floor broker members.⁶ These Floor member BoE representatives are also Floor Officials under NYSE Rule 46 and have certain powers and responsibilities under NYSE rules. Among these responsibilities is the power, along with the Chief Executive Officer, to temporarily reallocate securities on the Floor.

The Exchange believes that, for potential conflict of interest reasons, only non-specialist BoE Floor Representatives should be involved in a decision to reallocate a security from one specialist organization to another specialist organization. In addition, the Exchange proposes to remove as unnecessary the provision in NYSE Rule 103.11 that BoE Floor Representatives be chosen to act on a temporary reallocation in order of seniority.

Finally, the Exchange proposes to provide as an alternative that, if there are not two non-specialist BoE Floor Representatives available to participate in the reallocation decision, the

⁵ See Amendment No. 1.

⁶ There are currently five BoE Floor Representatives – two specialist and three non-specialist Floor brokers.

most senior non-specialist Floor Governor or Governors, based on his or her current length of service as a Floor Governor, would be authorized to act in place of the non-specialist BoE Floor Representative. The Exchange believes that seniority of the Floor Governors is relevant, because the experience of the ten non-specialist Floor Governors may vary widely, and the more senior non-specialist Floor Governors would have experience similar to that of a BoE Floor Representative.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) of the Act⁷ that an Exchange have rules that are 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 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within

⁷ 15 U.S.C. 78f(b)(5).

such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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-2005-21 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-2005-21. 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 the 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 available publicly. All submissions should refer to File Number SR-NYSE-2005-21 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.⁸

J. Lynn Taylor
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).