

comments on the proposal. This order grants accelerated approval to the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to add an exemption to NYSE Rule 460, which generally restricts business transactions between a specialist or his affiliates and any company in whose stock the specialist is registered. The exemption, in new NYSE rule 460.25, would apply to business transactions between a specialist or his affiliates and the sponsor of any Exchange Traded Funds ("ETFs") in which the specialist is registered. For purposes of the proposed rule, ETFs are Investment Company Units (defined in paragraph 703.16 of the Exchange's Listed Company Manual), Trust Issued Receipts, such as HOLDRs (defined in NYSE Rule 1200), and derivative instruments based on one or more securities, currencies or commodities.

Since ETFs are based on derivatives or indices representing multiple securities, or a single commodity or currency, and the specialist registered to that ETF is not a market maker in any of the underlying component securities, commodities or currencies, the Exchange believes that any potential for conflicts which might have an undue influence or impact on the ETF trading price is removed. Furthermore, while the ETF sponsor generally oversees the performance of the trustee of the ETF and the trust's principal service providers, the trustee is responsible for the day-to-day administration of the trust.

The rule would provide that any fee or other compensation paid in connection with the business transaction to a specialist or his affiliates not have any relationship to the trading price or daily trading volume of the ETF. The rule also would provide that a specialist or his affiliates must notify and provide a full description to the Exchange of any business transaction or relationship it may have with any sponsor of an ETF in which the specialist is registered, except those of a routine and generally available nature.

The Exchange requested accelerated approval of the proposed rule change on November 25, 2005, prior to the thirtieth day after the date of publication of the notice in the **Federal Register**.⁴

⁴ Telephone conference between Donald Siemer, Director, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on November 21, 2005.

III. Discussion

After careful consideration, 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.⁵ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁶ in that it is designed to promote just and equitable principles of trade, 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 Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁷ for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice in the **Federal Register**. The Commission notes that the proposal was noticed for the full 21-day comment period, and no comments were received. Accelerated approval will also accommodate the Exchange's trading of certain derivative products.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSE-2005-66), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,

Secretary.

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⁵ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52842; File No. SR-NYSE-2005-50]

Self-Regulatory Organizations; New York Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Proposed Amendments to Rules 282 (Mandatory Buy-In), 284 (Procedure for Closing Defaulted Contract), 289 (Must Receive Delivery), and 290 (Defaulting Party May Deliver After Notice of Intention to Close)

November 28, 2005.

I. Introduction

On July 15, 2005, the New York Stock Exchange Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NYSE-2005-50 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on September 28, 2005.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The NYSE is amending NYSE Rules 282, 284, 289, and 290 to permit members and member organizations (collectively referred to as "member") to initiate buy-ins, reduce the waiting period to initiate a buy-in from thirty days to three days, and to otherwise provide more standardized and consistent industry buy-in rules and procedures.

Current Requirements

NYSE Rule 282 sets forth the "mandatory buy-in" process by which a member acting as a buyer ("initiating member") is required to close-out a contract that has not been completed by the member acting as the seller ("defaulting member") for a period of thirty calendar days. A mandatory buy-in requires that a buy-in notice be delivered in triplicate by the initiating member (buyer) to the defaulting member (seller). The defaulting member receiving the buy-in notice must indicate on the buy-in notice its position with respect to the resolution of the failed trade (e.g., doesn't know the trade, knows the trade but cannot deliver, will deliver) and return the buy-in notice to the initiating member. If the buy-in notice is not returned when due

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 52475 (September 20, 2005), 70 FR 56757.

or is returned with the indication that the contract is known but that delivery cannot be made, a "buy-in order" in duplicate is sent to the defaulting member for execution.

NYSE Rule 284 sets forth a procedure by which an initiating member may close-out a contract that has not been completed by the defaulting member but that is not required to be closed-out. The initiating member must deliver a buy-in notice to the defaulting member prior to forty-five minutes after delivery time. Then the initiating member (buyer) must deliver a buy-in order to the defaulting member between 2:15 p.m. and 2:30 p.m. for execution after 2:35 p.m.

NYSE Rule 289 requires an initiating member to accept physical delivery of some or all of the securities that are the subject of a buy-in, thereby halting the mandatory buy-in execution for those securities if the defaulting member tenders the securities prior to the mandatory buy-in deadlines. NYSE Rule 290 permits a defaulting member to deliver securities subject to a notice of buy-in until 2:30 p.m. on the day of the execution of the buy-in.

The NYSE buy-in rules apply to transactions that are not subject to the rules of a qualified clearing agency such as The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC"). In the event that a buy-in is sent to the NYSE floor for execution, then NYSE buy-in rules apply.

However, under the current NYSE rules, there are inherent conflicts of interest by permitting the defaulting member to execute the buy-in. For example, the defaulting member could manipulate the extent to which it has market exposure by timing its purchase of the necessary securities to benefit itself. The initiating member may receive negative customer reaction if the customer learns that its trade has not settled and their securities are unavailable because a buy-in has not been executed by the defaulting member or has not been executed in a timely manner.

Other self-regulatory organizations ("SROs") have recognized this potential conflict and have adopted buy-in rules that assign responsibility to the initiating member to execute the buy-in. By allowing initiating members to execute their own buy-ins, any potential conflict of interest involving the defaulting member is avoided and the process is expedited.

In the course of reviewing the operation of its buy-in rules, the NYSE and other regulators met with the Securities Industry Association's

Securities Operations Division Buy-In Committee ("Committee"), which is comprised of regulators, broker-dealers, and industry groups, to identify and standardize various buy-in rules and procedures regarding the close-out process related to street-side contracts. The Committee requested that the NYSE amend the buy-in rules to eliminate the "Notice" procedures described above and to allow the initiating member (buyer) to execute buy-ins to close out a contract.

Amendments³

The NYSE is effecting five amendments to its buy-in rules. First, the NYSE is amending Rule 282 to allow the initiating member to execute a mandatory buy-in and to reduce the waiting period to initiate a mandatory buy-in from thirty days to three days after delivery on the contract was due. The NYSE believes once the responsibility is shifted to the initiating member, the buy-in process will work more efficiently.

Second, the NYSE is eliminating the requirement for duplicate and triplicate paper notices and is permitting electronic notices, including notices from a computerized network facility or from the electronic functionality of a qualified clearing agency, such as DTC and NSCC. The NYSE is also amending existing time deadlines for delivering notices, securities, and executions and is using those used by other self-regulatory organizations (*i.e.*, DTC and NSCC).

Third, the NYSE is adding a section to Rule 282's Supplementary Material to ensure that members comply with the closeout requirements of Regulation SHO.⁴ Members are obligated to comply with the marking, locate, and delivery requirements of Regulation SHO for short sales of equity securities. As a result, members should have policies and procedures in place to comply with these rules, including closeout procedures.

Fourth, the NYSE is rescinding Rule 284 and incorporating those "buy-in" procedures into Rule 282. The NYSE is also amending Rules 289 and 290 to clarify the requirements and timeframes upon which a defaulting member may deliver against a "buy-in" notice. Fifth, the NYSE is making certain technical amendments to Rules 282, 289, and 290

³ The specific changes to NYSE rules are attached as an exhibit to its rule filing which can be found on the Commission's Web site and on NYSE's Web site.

⁴ Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004), [File No. S7-23-03] (adoption of Regulation SHO).

to better coordinate the rules with industry practice.

III. Discussion

Section 6(b)(5) of the Act requires that rules of an exchange be 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.⁵ The Commission finds that the NYSE's proposed amendments to its buy-in rules should aid members in the clearance and settlement of their transactions by improving and making consistent with other self-regulatory organizations' rules its buy-in procedures.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-2005-50) be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,

Secretary.

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DEPARTMENT OF STATE

[Public Notice 5216]

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (the Act) there will be a meeting of the Cultural Property Advisory Committee on Thursday, December 15, 2005, from approximately 9 a.m. to 3:30 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. At this meeting the Committee will conduct its ongoing

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).