

expiring in May 2004.⁷ The Exchange extended the pilot program in May 2004 for an additional six month period, expiring in November 2004.⁸ The Exchange extended the pilot program for a one year period in November 2004⁹ and again in November 2005.¹⁰ The current pilot program is set to expire on November 30, 2006. The Exchange now proposes to further extend the pilot program until June 30, 2007.¹¹ The Exchange seeks to extend this pilot program for competitive reasons. This pilot program was initiated and extended in an attempt to increase the Exchange's market share in the QQQQ option product.

The structure of the reduction and waiver of the facilitation execution fee and the comparison fee is based on the structure of the reduction and waiver of the QQQQ execution fee and comparison fee noted above. That is, when a member's monthly A.D.V. in the Facilitation Mechanism reaches 15,000 contracts, the member's facilitation execution fee for the next 5,000 contracts transacted in the Facilitation Mechanism would be reduced by \$.10 per contract. Further, when a member's monthly A.D.V. in the Facilitation Mechanism reaches 20,000 contracts, the Exchange would waive the entire facilitation execution fee and the comparison fee for each contract transacted in the Facilitation Mechanism thereafter. As with the QQQQ incentives, the Exchange is proposing to extend this pilot program to encourage members to use the Facilitation Mechanism.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Sections 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In particular, the fee changes proposed hereby will enable the

⁷ See Securities Exchange Act Release No. 49147 (January 29, 2004), 69 FR 5629 (February 5, 2004).

⁸ See Securities Exchange Act Release No. 49853 (June 14, 2004), 69 FR 35087 (June 23, 2004).

⁹ See Securities Exchange Act Release No. 50900 (December 21, 2004), 69 FR 78075 (December 29, 2004).

¹⁰ See Securities Exchange Act Release No. 52934 (December 9, 2005), 70 FR 74859 (December 16, 2005).

¹¹ The Exchange intends to establish, through subsequent filings, June 30 as the date on which all of its fee programs expire. By aligning the expiration date as such, the Exchange seeks to manage its various fee programs more effectively.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

Exchange to continue offering competitively priced products and services.

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

The Exchange believes that the proposed rule change does not 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such 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-ISE-2006-69 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-ISE-2006-69. This file

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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 ISE. 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-ISE-2006-69 and should be submitted on or before December 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54843; File No. SR-NYSE-2006-73]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1, 2, and 3 Relating to Block Positioning

November 30, 2006.

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 September 13, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change as described in Items I and II below, which Items have been prepared by the NYSE. The NYSE filed Amendment Nos. 1, 2, and 3 to the proposal on October 12, 2006, October 13, 2006, and November 28, 2006, respectively.³ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons, and to approve the proposed rule change, as amended, on an accelerated basis.

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

The NYSE proposes to amend NYSE Rule 127, "Block Positioning," to revise the procedures governing executions of block cross transactions at a price outside the prevailing NYSE quotation. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

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 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

The Exchange is proposing amendments to NYSE Rule 127, which governs block cross transactions at a price outside the prevailing NYSE quotation. Currently, NYSE Rule 127 provides alternative procedures that may be followed by a member organization intending to cross a block of stock at a specific clean-up price

outside the prevailing NYSE quotation. Under the rule, a member organization must inform the specialist of its intent to cross block orders at a specific clean-up price. The member organization then announces the clean-up price to the trading Crowd. If the cross involves only agency orders on each side, the member organization fills all orders limited to or better than such price, and crosses the remaining shares at the clean-up price. However, if the member organization determines that the amount of stock needed to trade with such limit orders excessively interferes with the proposed block cross, the member organization may inform the trading Crowd that it will not be given stock at the clean-up price. After such announcement, the member organization bids and offers the full amount of the block cross pursuant to NYSE Rule 76.⁴ This provides the Crowd with an opportunity to trade with or "break up" the crossed orders. In this situation, the block is entitled to priority at the clean-up price. Additionally, if all or part of one side of the block cross transaction will establish or increase the member organization's position, the member organization representing the block orders must fill at the clean-up price public orders limited to the clean-up price or better before any amount may be retained for the member organization's account. This is not required when the member organization is liquidating a position. NYSE Rule 127 also provides for the member organization executing the cross to take into account the needs of the specialist in maintaining a market in the stock after the block cross transaction.

The Exchange proposes to simplify the procedures in NYSE Rule 127 by adopting a single process for all block cross transactions outside the Exchange quotation and to make them more similar to the way automatic executions and "sweeps" occur on the Exchange. In addition, the NYSE proposes some minor wording changes to conform references throughout the rule to "member organization" instead of variously "member" or "member organization."

The proposed new procedure for the execution of block crosses at a price outside the prevailing NYSE quotation is as follows, except where the member organization is establishing or increasing a position for its own account: The member organization representing the block orders will first trade with the displayed bid or offer (whichever is relevant to the proposed

cross), then with all limit orders in the Display Book® ("Display Book") system priced better than the block clean-up price, and then execute the cross at the clean-up price. This will result in executions at a maximum of three prices: The displayed bid (offer) price; a price one cent better than the clean-up price, and the block clean-up price. Percentage orders elected at each price will be entitled to trade at those prices. The block cross will have execution priority at the clean-up price. Pursuant to NYSE Rule 127(e), none of these executions will be subject to the requirements of NYSE Rule 76.

Example

The NYSE quote in XYZ is \$20.05 bid for 10,000 shares, with 5,000 shares offered at \$20.10. There is no reserve interest at the best bid and offer. There are bids for \$20.04, \$20.03, and \$20.01, each for 5,000 shares, in the Display Book system. A member organization intends to cross orders totaling 50,000 shares to buy and sell at \$20.02. The following executions occur: 10,000 shares trade at \$20.05, 10,000 shares trade at \$20.03, and 30,000 shares are crossed at the clean-up price of \$20.02.

In addition, pursuant to the proposed new rule, when a member organization is establishing or increasing a position for its own account and the member organization is all or a part of one side of the block, then the member organization representing the block orders will first trade with the displayed bid or offer (whichever is relevant to the proposed cross). The member organization will not trade with all limit orders in the Display Book system priced better than the block clean-up price; rather, the member organization will cross the block orders at the specified clean-up price and fill at the clean-up price orders limited to the clean-up price or better before any amount may be retained for the member organization's account.

Example

The NYSE quote in XYZ is \$20.05 bid for 10,000 shares, with 5,000 shares offered at \$20.10. There is no reserve interest at the best bid and offer. There are bids for \$20.04, \$20.03, and \$20.01, each for 5,000 shares, in the Display Book system. A member organization intends to cross orders totaling 50,000 shares to buy and sell at \$20.02. The member organization is buying 40,000 shares for its own account. The following executions occur: 10,000 shares trade at \$20.05, 30,000 shares are crossed at the clean-up price of \$20.02, and 10,000 shares trade at \$20.02.

³ Amendment No. 3 replaced the original filing and Amendment Nos. 1 and 2 in their entirety. Amendment No. 3 revises the original proposal to: (1) Clarify the execution of block cross transactions in which all or part of one side of the block is for a member organization's own account; (2) clarify that the requirements of NYSE Rule 76, "Crossing Orders," will not apply to executions made in accordance with NYSE Rule 127; and (3) correct errors in the text of NYSE Rule 127.

⁴ Under NYSE Rule 76, the member makes an offer higher than the clean-up price by the minimum variation permitted in such security.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. 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-2006-73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-73. 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 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 publicly available. All submissions should refer to File Number SR-NYSE-2006-73 and should be submitted on or before December 28, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change, as Amended

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.⁷ 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,⁸ which requires, among other things, that the rules of a national securities exchange be 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.

The proposal revises the procedures under NYSE Rule 127 for crossing block-sized orders outside the prevailing NYSE quotation.⁹ Under the proposal, NYSE Rule 127(b) will govern block cross transactions where the member organization represents as agent orders on both sides of the block. NYSE

Rule 127(c)(2) will govern block transactions where all or part of one side of the block is for a member organization's own account and the member organization is covering a short position or liquidating a long position. Before crossing block orders at a specified clean-up price outside the current quotation, NYSE Rules 127(b) and 127(c)(2) will require a member organization to trade with: (1) the NYSE best bid (offer), including all reserve interest at that price and any percentage orders elected by the execution at that price; and (2) all orders in the Display Book system limited to prices better than the block clean-up price, including Floor Brokers' e-Quotes and any percentage orders elected by the execution, at a price that is the minimum variation better than the block clean-up price. Under NYSE Rule 127(b)(ii), the block will be entitled to priority at the clean-up price, and under NYSE Rule 127(c)(2), the member organization will not be required to fill at the clean-up price orders limited to the clean-up price.

In a block transaction where all or any portion of a block is for a member organization's own account and all or any portion of the block will establish or increase the member organization's position, NYSE Rule 127(c)(1) will require the member organization to trade with the NYSE best bid (offer), including all reserve interest at that price and any percentage orders elected by that execution at the bid (offer) price, before crossing the block orders at the specified clean-up price. The member organization must fill at the clean-up price orders limited to the clean-up price or better before the member organization may retain any amount for its own account. The requirements of NYSE Rule 76 will not apply to executions made in accordance with NYSE Rule 127.¹⁰

The Commission finds that the proposal is consistent with Section 6(b)(5) because it is designed to permit the execution of block crosses outside the prevailing NYSE quotation while protecting certain existing interest on the NYSE. In this regard, NYSE Rule 127(b) will require a member organization, before effecting an agency-only block cross outside the current NYSE quotation, to trade with the NYSE best bid (offer), including reserve size and percentage orders elected by the execution, at the bid (offer) price, and to trade with all orders in the Display Book system limited to prices better than the block clean-up price, including Floor Brokers' e-Quotes and percentage orders

⁷ In approving this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ For purposes of NYSE Rule 127, a block is at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less, that a member organization acquires on its own behalf and/or for others from one or more buyers or sellers in a single transaction. See NYSE Rule 127, Supplementary Material .01.

¹⁰ See NYSE Rule 127(e).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

ected by the execution, at a price that is the minimum variation better than the block clean-up price. NYSE Rule 127(c)(2) provides the same requirements for a block transaction where all or part of one side of a block transaction is for a member organization's own account and the member organization is covering a short position or liquidating a long position. Similarly, NYSE Rule 127(c)(1) requires a member organization that engages in a block transaction that will establish or increase the member organization's position to trade with the NYSE best bid (offer), including all reserve interest and percentage orders elected by the execution, at that price before crossing the orders, and to fill at the clean-up price orders limited to the clean-up price or better before retaining any amount for its own account.

The Commission finds that the proposal to replace references to "member" with references to "member organization" throughout NYSE Rule 127 is consistent with Section 6(b)(5) of the Act because it will provide consistency in the text of the rule.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As described more fully above, the proposal revises the NYSE's procedures for executing block crosses outside the prevailing NYSE quotation while protecting certain existing interest on the NYSE. In addition, the changes to NYSE Rule 127 proposed in the NYSE's initial filing have been in effect on a pilot basis since October 6, 2006.¹¹ The Commission did not receive any comments regarding the proposed changes to NYSE Rule 127 during the operation of the pilot. The NYSE received no comments regarding the substantive operation of the proposed block crossing procedures during the pilot period, although some members urged the NYSE to explore ways to enhance the efficiency of the process.¹²

¹¹ See Securities Exchange Act Release Nos. 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006), (File No. SR-NYSE-2006-82) (order granting accelerated approval to put certain changes into operation on a pilot basis until October 31, 2006); and 54675 (October 31, 2006), 71 FR 65019 (November 6, 2006) (File No. SR-NYSE-2006-96) (extending the pilot program through November 30, 2006). Amendment No. 3 revised the initial proposal to: (1) clarify the execution of block cross transactions in which all or part of one side of the block is for a member organization's own account; (2) clarify that the requirements of NYSE Rule 76 will not apply to executions made in accordance with NYSE Rule 127; and (3) correct errors in the text of NYSE Rule 127.

¹² Telephone conversation between Deanna Logan, Director, Office of the General Counsel,

Accordingly, the Commission finds good cause, consistent with Section 6(b)(5) and 19(b)(2) of the Act, to approve the proposal, as amended, on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2006-73), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E6-20716 Filed 12-6-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54818; File No. SR-NYSE-2006-57]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rule 180 To Require Member Organizations To Use the Automated Liability Notification System of a Registered Clearing Agency

November 27, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 3, 2006, the New York Stock Exchange LLC ("NYSE") filed with the Securities and Exchange Commission ("Commission") and on November 15, 2006, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by the NYSE.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The NYSE proposes to amend Rule 180 to mandate that NYSE member organizations utilize the automated liability notification system of a clearing agency registered pursuant to Section 17A of the Exchange Act when issuing liability notifications in connection with certain securities transactions.

NYSE, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, on November 28, 2006.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The exact text of the NYSE's proposed rule change is set forth in its filing, which can be found at <http://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 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 IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.³

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

1. Purpose

Currently, NYSE's Rule 180 provides that if securities are not delivered within the required time frame, the party who fails to deliver is liable for any resulting damages. Rule 180 also requires that claims for damages must be made promptly. It is industry practice when one party is owed and has not received securities that are the subject of a voluntary corporate action for the owed party to send to the failing counterparty a notice of the liability that will be attendant with the failure to deliver the securities in time for the owed party to participate in the voluntary corporate action.

It is also customary in the industry for the failing counterparty that receives a liability notification either to reject the notice, to deliver the securities that are the subject of the liability notification, or to convert or exchange the securities to the corresponding corporate actions proceeds and deliver the proceeds. Liability notifications are usually sent by fax directly to the responsible failing counterparty or to its designees.

Failing counterparties are subjected to potential liability by their failure to respond to liability notifications. Failure to respond typically occurs because of processing errors, such as overlooking the faxed liability notification or not receiving it all, and because of the overall lack of centralized control over the process. There is currently no uniform method of notifying and confirming the transmission and receipt of liability notifications.

In response to a need for a reliable and uniform method of transmitting liability notifications, The Depository Trust Company ("DTC") developed the SMART/Track for Corporate Action

³ The Commission has modified portions of the text of the summaries prepared by the NYSE.