

Exchange will either cancel the order back to the participant that submitted it or will route the order to the destination of the participant's choice, all at the direction of the participant.<sup>6</sup>

The Exchange's current routing rules also provide that the Exchange will provide routing services pursuant to the terms of three separate agreements, to the extent that they are applicable to a specific routing decision: (1) An agreement between the Exchange and each participant on whose behalf orders will be routed; (2) an agreement between each participant and a specified third-party broker-dealer that will use its routing connectivity to other markets and serve as a "give-up" in those markets; and (3) an agreement between the Exchange and the specified third-party broker-dealer pursuant to which the third-party broker-dealer agrees to provide routing connectivity to other markets and serve as a "give-up" for the Exchange's participants in other markets.<sup>7</sup>

The Exchange proposes to make three changes to its routing rules. First, the Exchange proposes to provide that, if requested by a participant and its routing destination, the Exchange will flip any executions into the participant's account and report that second leg of the away-market transaction to clearing. The Exchange states that this service would provide the order-sending participant the option of consolidating its clearing reports in specific locations.

Second, the Exchange proposes to amend the requirement relating to the agreements that are necessary for the Exchange to provide routing services. For cross with satisfy and outbound ISOs, the Exchange will continue to provide routing services pursuant to the terms of three separate agreements to the extent that they are applicable to a specific routing decision.<sup>8</sup> For other orders, the Exchange proposes to allow the CHX and/or a third-party broker-dealer providing connectivity to other markets to determine which agreements are needed to implement the routing functionality. The Exchange states that

it believes that most routing destinations will require that order-senders sign additional agreements for any services that the destinations might provide, but the Exchange would like to provide flexibility for destinations to make choices appropriate to their business models.

Third, the Exchange proposes to provide that, with respect to a cross with satisfy or an outbound ISO, the agreement between a participant and the third-party broker-dealer routing its order by access agreement with the Exchange need not provide that the third-party broker-dealer will serve as a give-up if this is not necessary—*i.e.*, where the participant has a good give-up in the market to which the order is routed and prefers that its own give-up be used.<sup>9</sup>

### III. Discussion

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 exchange and, in particular, with Section 6(b)(5) of the Act,<sup>10</sup> 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.<sup>11</sup>

The Commission believes that the proposed changes to the Exchange's routing rules should provide the Exchange, its participants, and third-party routers with more flexibility in establishing routing arrangements. Accordingly, the Commission finds that the proposed rule change, as amended, is consistent with the Act.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CHX-2007-18), as modified by Amendment No. 1, be, and hereby is, approved.

<sup>9</sup> See Article 20, Rule 5, Proposed Interpretation and Policy .03(c).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5096 Filed 3-13-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57455; File No. SR-NYSE-2008-03]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Rescind NYSE Rule 97 (Limitation on Member's Trading Because of Block Positioning)

March 7, 2008

#### I. Introduction

On January 11, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to rescind NYSE Rule 97 (Limitation on Member's Trading Because of Block Positioning). The proposed rule change was published for comment in the **Federal Register** on February 6, 2008.<sup>3</sup> On February 20, 2008, NYSE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received one comment on the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as modified.

#### II. Description of the Proposed Rule Change

NYSE Rule 97 governs block facilitation transactions by NYSE member organizations on behalf of customers. The rule states that if, as a result of facilitating one or more customer sell orders in a stock during the trading day, a member organization ends up holding a long position in the stock in a proprietary account, then

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 57236 (January 30, 2008), 73 FR 7022.

<sup>4</sup> In Amendment No. 1, the Exchange made conforming amendments to NYSE Rules 123C and 800 to remove references to NYSE Rule 97, and corrected typographical errors in NYSE Rule 800. Because Amendment No. 1 is technical in nature, it is not subject to notice and comment.

<sup>5</sup> See letter from Ann L. Vlcek, Securities Industry and Financial Markets Association ("SIFMA"), dated February 27, 2008 ("SIFMA Letter").

<sup>6</sup> The participant is responsible for ensuring that it has a relationship with its chosen destination to permit the requested access. The Exchange is not involved in the execution of the order and states that any execution of the order is the responsibility of the destination to which the order was sent. The Exchange, however, reports any execution or cancellation of the order by the other destination to the participant that submitted the order and notifies the other venue of any cancellations or changes to the order submitted by the order-sending participant. See Article 20, Rule 5, Interpretation and Policy .03(b).

<sup>7</sup> See Article 20, Rule 5, Proposed Interpretation and Policy .03(c)(1).

<sup>8</sup> See Article 20, Rule 5, Proposed Interpretation and Policy .03(c).

during the last 20 minutes of trading, the member organization is prohibited from buying such stock as principal on a “plus tick” if the transaction would take place at a price above the lowest price at which it acquired the long position. The Exchange states that Rule 97 was originally adopted to address concerns that a member firm might engage in manipulative practices by attempting to “mark-up” the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired. The rule has been since amended to reduce its scope and provide certain exceptions.<sup>6</sup>

The Rule was last amended in July 2007 to resolve a conflict between Regulation NMS under the Act (“Regulation NMS”) <sup>7</sup> and NYSE Rule 97, to add an exemption to Rule 97 so that when facilitating a customer order that would otherwise require the firm to either violate Rule 97 or trade through protected quotations, member organizations can comply with their Regulation NMS obligations without also violating Rule 97.<sup>8</sup> The Exchange now proposes to rescind Rule 97 in its entirety.

### III. Summary of Comments

The Commission received one letter on the proposed rule change.<sup>9</sup> The commenter supports the proposed rule change, agreeing with the Exchange’s rationale for rescinding NYSE Rule 97. Specifically, the commentator agrees with the Exchange’s view that the rule “no longer serves a useful purpose and may in fact hinder legitimate trading activity.”<sup>10</sup> Furthermore, SIFMA believes that changes in the markets and new regulations, such as Regulation NMS, render the rule no longer viable.<sup>11</sup>

### IV. Discussion and Commission Findings

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 exchange.<sup>12</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission notes that other venues are available for market participants to effect block position transactions without the restrictions currently imposed by NYSE Rule 97. The Commission further notes that NYSE Regulation, Inc. will continue to surveil in NYSE-listed securities for possible manipulative activity, including marking the close, which could be in violation of federal securities laws or Exchange Rules.<sup>14</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NYSE-2008-03), as modified by Amendment No. 1 thereto, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57460; File No. SR-NYSEArca-2008-12]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Pricing Information for Components Underlying Currency-Linked Securities

March 10, 2008.

#### I. Introduction

On January 17, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule

<sup>12</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Notice, *supra* note 3, at 7023.

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

change relating to pricing information for components underlying Currency-Linked Securities.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on February 5, 2008.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(III)(1) to permit the listing of Currency-Linked Securities where the pricing information for some or all of the components of the Currency Reference Asset is the generally accepted forward price for the currency exchange rate in question. The ability for an issuer to use forward pricing information under proposed NYSE Arca Equities Rule 5.2(j)(6)(B)(III)(1)(b) for any component of a Currency Reference Asset would be restricted to the following currencies, based on high volumes of forward contract transactions in such currencies: U.S. Dollar, Euro, Japanese Yen, British Pound Sterling, Swiss Franc, Canadian Dollar, Australian Dollar, Brazilian Real, Chinese Renminbi, Czech Koruna, Danish Krone, Hong Kong Dollar, Hungarian Forint, Indian Rupee, Indonesian Rupiah, Korean Won, Mexican Peso, Norwegian Krone, New Zealand Dollar, Philippine Peso, Polish Zloty, Russian Ruble, Swedish Krona, South African Rand, Singapore Dollar, Taiwan Dollar, Thai Baht or New Turkish Lira (collectively, the “High Volume Global Currencies”).<sup>5</sup>

In addition, the forward price will be used for pricing purposes only to the extent that the Currency Reference Asset

<sup>3</sup> Currency-Linked Securities are securities that provide for payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202), or a basket or index of any of the foregoing (“Currency Reference Asset” See NYSE Arca Equities Rule 5.2(j)(6)).

<sup>4</sup> See Securities Exchange Act Release No. 57227 (January 29, 2008), 73 FR 6759 (“Notice”).

<sup>5</sup> See Bank for International Settlements (“BIS”), *Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2007*, Statistical Annex Tables—Foreign Exchange Markets (2007) (“2007 BIS Report”); BIS, *Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2004*, Statistical Annex Tables—Foreign Exchange Markets (2004); and BIS, *Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2001*, Statistical Annex Tables—Foreign Exchange Markets (2001). Additional information regarding the over-the-counter (“OTC”) foreign exchange market, global geographic foreign exchange trading centers, calculation of the generally accepted forward price, and regulation and oversight of the foreign exchange markets, among other, can be found in the Notice. See *id.*

<sup>6</sup> See, e.g., Securities Exchange Act Release No. 46566 (September 27, 2002), 67 FR 62278 (October 4, 2002) (SR-NYSE-2001-24) (narrowing the scope of the prohibitions to transactions executed within the last 20 minutes of the trading day, and providing exceptions to the rule for member organizations that establish information barriers and certain hedging transactions).

<sup>7</sup> 17 CFR 242.600 *et. seq.*

<sup>8</sup> See Securities Exchange Act Release No. 56024 (July 6, 2007), 72 FR 38643 (July 13, 2007) (SR-NYSE-2007-61).

<sup>9</sup> See SIFMA Letter, *supra* note 5.

<sup>10</sup> See SIFMA Letter, *supra* note 5, at 1.

<sup>11</sup> See *id.* at 2.