SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52842; File No. SR-NYSE-2005-50)

November 28, 2005

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)

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

---

1 15 U.S.C. 78s(b)(1).

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

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 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 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.

Amendments[3]

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

---

[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.

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 to better coordinate the rules with industry practice.

---

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).

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.

---

[5] 15 U.S.C. 78f(b)(5).

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

[6] 17 CFR 200.30-3(a)(12).