

in order to clarify the Rule's application to all "member[s]" and "member organization[s]."

The proposed rule change was published for comment in the **Federal Register** on September 25, 2001.³ The Commission received no comments on the proposal.

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 exchange⁴ and, in particular, the requirements of section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act⁶ because, in clarifying the application of Exchange Rule 387 to both "member[s]" and "member organization[s]," it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-NYSE-2001-31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45004; File No. SR-NYSE-2001-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 72

October 31, 2001.

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 July 3, 2001, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Rule 72(b) to (i) permit clean crosses of 100,000 shares or more when a member organization is facilitating a customer order; and (ii) provide that a specialist may not effect a proprietary transaction to break up a cross being effected under the Rule. The text of the proposed rule change is below. Proposed new language is in italics.

Priority and Precedence of Bids and Offers

Rule 72I. Bids.—Where bids are made at the same price, the priority and precedence shall be determined as follows:

Priority of First Bid

(a) Except as provided in paragraph (b) below, when a bid is clearly established as the first made at a particular price, the maker shall be entitled to priority and shall have precedence on the next sale at that price, up to the number of shares of stock or principal amount of bonds specified in the bid, irrespective of the number of shares of stock or principal amount of bonds specified in such bid.

Priority of Agency Cross Transactions

(b) When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are of 25,000 shares or more and are for the accounts of persons who are not members or member organizations, *or both orders are of 100,000 shares or more, and one side of the proposed transaction is, in whole or any part thereof, for the account of a member or member organization that is facilitating a customer*, the member may "cross" those orders at a price at or within the prevailing quotation. The member's bid or offer shall be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The member shall follow the crossing procedures of Rule 76, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of

such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction. No member may break up the proposed cross transaction, in whole or in part, at the cross price. *No specialist may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant to this paragraph.* A transaction effected at the cross price is reliance on this paragraph shall be printed as "stopped stock".

When a member effects a transaction under the provisions of this paragraph, the member shall, as soon as practicable after the trade is completed, complete such documentation of the trade as the Exchange may from time to time require.

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

A member who has an order to buy and an order to sell an equivalent amount of the same security generally executes the orders against each other in what is commonly referred to as a "cross" transaction. In executing the cross, the member must make a public bid and offer on behalf of both sides of the cross in accordance with the provisions of Exchange Rule 76. A member who tries to execute a cross transaction in this manner may run the risk that other members may "break up" the proposed cross by trading with either the bid or offer side of the transaction as permitted under auction market procedures as codified in Exchange Rule 72.

In 1992, the Commission approved an amendment to Exchange Rule 72 to permit a member to execute certain types of cross transactions that are not

³ See Securities Exchange Act Release No. 44811 (September 18, 2001), 66 FR 49054 (September 25, 2001).

⁴ In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

subject to "break up" at the cross price.³ Rule (b) currently provides priority to agency crosses of 25,000 shares or more, at or within the prevailing quotation, where neither side of the cross is an order for the account of a member or member organization. Such crosses may, however, be broken up at a price that is better than the proposal cross price for one side or the other.

In certain circumstances where a customer of a member organization has a large size order, a member organization may look to facilitate the execution of the transaction at a single price by participating in whole or in part on the other side of the trade. To address these situations, the Exchange believes it is appropriate to amend Rule 72(b) to provide that a cross of 100,000 shares or more may be executed "clean" at the cross price if the member or member organization is facilitating a customer order in whole or in part. This will make it easier for member organizations and their customers to execute large size trades at a single price on the Exchange, where it is the desire of the trading parties to have these executions "clean" at the cross price. Such trades would not be subject to being broken up at the cross price, but would still be eligible for price improvement as currently provided for under Rule 72(b). The Exchange believes that this proposal addresses perceptions that because of decimal trading large cross transactions are at risk of being broken up at the cross price with the result that such transactions may not be brought to the Exchange in the first instance and exposed for possible price improvement. The Exchange believes that the 100,000-share minimum size requirement addresses the need for member organizations and their customers to execute large cross transactions promptly and efficiently, while ensuring that pre-existing market interest at the cross price would be displaced only where the transaction is of a very significant size. The Exchange proposes to operate this amendment as a pilot to run six months after approval by the Commission in order to ascertain what impact it may have on the Exchange's market.

The Exchange also believes it is appropriate, particularly in a decimal environment, to amend Rule 72(b) to provide that a specialist may not effect a proprietary transaction to provide price improvement to one side of a clean cross or the other. The Exchange

understands that there may be a perception that specialists can break up a proposed cross transaction by trading for their own account at a minimally improved price, and, thereby, step ahead of a public customer on the other side of the cross. The proposed amendment will preserve the auction market principle of price improvement since non-proprietary interest of specialists and particular Floor brokers in the market may offer price improvement at any minimum variation. This amendment would not be a pilot but is filed for permanent effectiveness.

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirement under Section 6(b)(5)⁴ of the Act 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, in general, to protect investors and the public interest. The Exchange believes the proposed rule change strikes a reasonable balance between the ability of members and member organizations to execute cross transactions and the ability of other public market participants to offer price improvement.

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 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 such 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR-NYSE-2001-18 and should be submitted by November 27, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America: Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, November 29, 2001. The meeting begins at 2 p.m. The letter designations that follow each item mean the following: (I) Is an information item; (A) is an action item; (D) is a discussion item. The session includes the following items: (1) Welcome & Introductions (I); (2) Antitrust Statements (I); (3) Approval of 10-year National ITS Program Plan as

³ See Securities Exchange Act Release No. 31343 (October 21, 1992) 57 FR 48645 (October 27, 1992)(SR-NYSE-90-39).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30.-3(a)(12).