

**MEMO# 23237**

February 5, 2009

## **SEC Approves NYSE Proposal for Block-Order Facility**

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 3-09    RE: SEC APPROVES NYSE  
PROPOSAL FOR BLOCK-ORDER FACILITY

A proposed rule change by the New York Stock Exchange ("NYSE") to establish the New York Block Exchange ("NYBX") – a new electronic trading facility to support trading in block-sized orders – has been approved by the Securities and Exchange Commission. [\[1\]](#) Specifically, the NYBX is designed to provide for electronic matching and execution of non-displayed orders with the aggregate of all displayed and non-displayed orders residing within the NYBX and the NYSE Display Book. [\[2\]](#) A summary regarding the new facility is provided below.

### **Corporate Structure of NYBX**

NYSE and BIDS [\[3\]](#) will each own a 50% economic interest in NYBX. In connection with the creation of NYBX, BIDS will become a member of the NYSE. The approval order explains that the agreement establishing the NYBX adequately addresses the concern previously expressed by the SEC regarding the potential for unfair competition and conflicts of interest where a member of an exchange owns more than 20% of that exchange or a facility of that exchange. Specifically, the concern is that an exchange's business interests could undermine its ability to vigorously regulate that member. To control this risk, the SEC's order notes that the agreement between NYSE and BIDS provides for: (1) an independent self-regulatory organization to conduct market surveillance of BIDS if NYBX accounts for a material percentage of the NYSE's volume; or (2) a reduction of the business conflict faced by NYSE by requiring BIDS to lower its interest in NYBX to below 20%.

## **Operation of NYBX**

Only securities listed on NYSE will be eligible to trade on NYBX. Orders entered into NYBX will not be displayed to the public or NYSE members, although all NYSE members and member organizations are eligible to access NYBX after completing a connectivity authorization process. A non-member who wishes to access the facility may do so as a “sponsored participant.” NYSE Designated Market Makers (“DMM”) or Registered Competitive Market Makers (“RCMM”) on the floor of the Exchange will not be able to submit orders into NYBX. The off-floor unit of a DMM or RCMM may submit orders to the facility if it has policies and procedures that are designed to prohibit inappropriate sharing of information between the floor personnel and the off-floor personnel.

Orders submitted into NYBX will not participate in any openings, re-openings, or closings on the Exchange, or in any trades resulting from a liquidity refreshment point or a gap quote situation. Orders that may be submitted into the facility will include limit, midpoint, and pegging orders. Market orders will not be accepted. Unless otherwise specified, NYBX will treat all incoming orders as day orders. Orders submitted to the facility may include a “minimum trading volume” (“MTV”) parameter, which is designed to prevent an execution unless the resulting fill will be of at least the designated size. Regardless of an order’s MTV designation, the NYBX will always route to away markets as necessary to comply with the trade-through provision of Regulation NMS.

Orders entered into NYBX are prioritized in order of price, then time. Orders in the NYSE Display Book, whether displayed or undisplayed, have priority over orders in the NYBX at the same price. The Display Book will not monitor the undisplayed orders resting in the new facility, but the new facility will monitor orders resting in the Display Book and route orders to the Display Book as appropriate. Where an order entered into the NYBX executes in part, the unfilled portion of the order (“residual order”) will be held in the NYBX facility where it will attempt to execute against later-submitted eligible contra-side liquidity until the residual order is exhausted, expired, or canceled. A residual order will maintain its original time stamp unless it is modified. If a user of NYBX modifies the price, size, side, MTV, or time-in-force condition of a residual order, it will be considered a newly submitted order and receive a new time stamp.

NYBX transaction reports will not reveal contraparty and clearing firm identities, except under the following circumstances: (1) for regulatory purposes or to comply with an order of a court or arbitrator; and (2) if the National Securities Clearing Corporation (“NSCC”) will not act on behalf of a member or its clearing firm. The trade reports received by NSCC from the facility will contain the identities of the parties to the trade but also will contain an indicator noting that the trade is anonymous.

## **Fees on NYBX**

The NYSE will charge an equity transaction fee of \$.0025 per executed share to both the buyer and the seller of the executed shares. The fee will be charged for all executions of NYBX orders, including those NYBX executions that take place in the Display Book or in away markets. Only NYSE members, member organizations, and sponsoring member organization will be charged the transaction fee; fees for executions of orders entered by sponsored participants will be charged to the sponsoring member organization.

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**endnotes**

[\[1\]](#) See SEC Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009), SEC Release No. 59282 (January 22, 2009), 74 FR 5009 (January 28, 2009), and SEC Release No. 59327 (January 30, 2009).

[\[2\]](#) The NYSE Display Book is the NYSE's primary facility for the trading of equity securities.

[\[3\]](#) BIDS Trading, L.P. is a registered broker-dealer and the operator of the BIDS Alternative Trading System, which was designed to bring counterparties together to anonymously trade large blocks of shares. BIDS Trading is a joint venture of several financial services firms.

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