

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58351; File No. SR-NYSE-2008-73)

August 13, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 104(b) to Provide for an Automated Opening Message that will be Effectuated through the Specialist Application Programmed Interface to Allow Specialists to Automatically Open a Security on a Trade

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 5, 2008, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 104(b) to provide for an automated opening message that will be effectuated through the Specialist Application Programmed Interface (“Specialist API<sup>SM</sup>” or “SAPI”) to allow specialists to automatically open a security on

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

a trade. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](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 self-regulatory organization 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 those 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 parts 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 to amend NYSE Rule 104(b) to provide for an automated opening message that will be effectuated through the SAPI to allow specialists to automatically open a security on a trade.

Background

Pursuant to NYSE Rule 104, Exchange specialists, in their capacity as dealers for their assigned securities, maintain systems that use proprietary algorithms, based on predetermined parameters, to electronically participate in the Exchange market ("Specialist Algorithm"). The Specialist Algorithm communicates with the NYSE Display Book<sup>®</sup> system<sup>5</sup> via the SAPI. The Specialist Algorithm is intended to replicate electronically some of the activities specialists are

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<sup>5</sup> The Display Book<sup>®</sup> system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

permitted to engage in on the Floor in the auction market and to facilitate the specialists' ability to fulfill their obligation to maintain a fair and orderly market.

Specialists on the Exchange are responsible for initiating trading (the "opening") in their assigned securities. Pursuant to NYSE Rule 123D, it "is the responsibility of each specialist to ensure that registered stocks open as close to the opening bell as possible, while at the same time not unduly hasty, particularly when at a price disparity from the prior close." Specialist Algorithms may generate quoting and trading messages as prescribed by NYSE Rule 104(b)(i). Specialists may either open trading in their assigned securities with a manual transaction or, pursuant to NYSE Rule 104(b), with an automated quote.<sup>6</sup>

#### Proposed Automated Open on a Trade

Through this filing, the Exchange seeks to amend NYSE Rule 104(b) to allow a specialist to automatically open his or her assigned security with an automated trade. Specifically, the Exchange seeks to amend NYSE Rule 104(b) to add an automated opening message provision which will allow the SAPI to generate a message to open the security with an automated transaction. In so doing the Exchange seeks merely to automate a currently approved specialist function.

Because opening securities in a timely, fair, and orderly manner is consistent with the specialist's obligations under NYSE Rules 104 and 123D, the Exchange believes it is important to provide the specialists with the ability to have the SAPI generate an automated message that will assist the specialists in opening their assigned securities with a transaction.

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<sup>6</sup> See Securities Exchange Release No. 56588 (October 1, 2007), 72 FR 57366 (October 9, 2007) (SR-NYSE-2007-92).

The Exchange estimates that the implementation of an automated message through the SAPI to open a security on a trade would allow for approximately 30% of the securities traded on the Exchange to be opened algorithmically on a trade or a quote.

The Exchange notes that specialists must still comply with all NYSE rules when utilizing the open on trade technology, including but not limited to, NYSE rules relating to depth and continuity, mandatory indications, Rule 79A regarding Floor Official Approval for 1 and 2 points price movements, and any other rule that might require Floor Official consultation in connection with an open. Specialists are not exempt from requirements regarding the open by using an automated means for effecting an opening.

The Exchange believes that providing the specialists with this ability will continue to promote the efficient operation of the NYSE market and provide customers with continued speed of execution at the opening. Relying solely on manual trade openings limits the efficiency of the specialists. By allowing specialists to automatically open securities with a transaction through the SAPI will promote timelier openings of securities on the Exchange. Moreover, by providing specialists with the ability to automatically open securities with an automated transaction will allow specialists to focus their attention on those securities that require the expertise of specialists to facilitate price discovery and cushion volatility in securities that may have news that may impact trading, ultimately benefiting Exchange customers.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)<sup>7</sup> of the Act, in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to support the principles of Section 11A(a)(1) of the Act<sup>8</sup> in that it seeks to assure economically efficient execution of securities transactions by making it easier for specialists to open securities in which they are registered on a quote in a timely fashion by providing an automated trading message that is effectuated through the SAPI. Automating this trading message will promote greater efficiency on the Floor and will also promote timelier openings of securities.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

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<sup>8</sup> 15 U.S.C. 78k-1(a)(1).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to the 30<sup>th</sup> day after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>13</sup> The Exchange has requested that the Commission waive the 30-day operative delay. Waiver of this period would allow the Exchange to immediately provide specialists with the ability to facilitate openings of securities through the Specialist Algorithm. This should allow a specialist to focus his or her attention on those securities that require the expertise of a specialist to facilitate price discovery and cushion volatility. The Commission also notes that specialists' responsibilities and obligations with respect to openings remain unchanged, whether a specialist utilizes its SAPI to open a security or not. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby designates the proposal as operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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<sup>11</sup> See 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> Id.

<sup>13</sup> In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-73 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSE-2008-73. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00

p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2008-73 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Acting Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).