SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57184; File No. SR-NYSE-2008-02)

January 22, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to NYSE Rule 103A (Specialist Stock Reallocation and Member Education and Performance) and NYSE Rule 103B (Specialist Stock Allocation)

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 January 7, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to extend, to March 31, 2008, the moratorium on the administration of the Specialist Performance Evaluation Questionnaire ("SPEQ") pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Exchange Rule 103B ("Moratorium") that was implemented on June 8, 2007 and terminated on December 31, 2007. In addition, the Exchange proposes to continue to suspend the use of SuperDot turnaround for orders received and the use of responses to administrative messages as objective measures in the assessment of specialist performance during the Moratorium. The Exchange further proposes that the SPEQ and Order Reports/Administrative Responses continue to be removed from the criteria used to

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

2 17 CFR 240.19b-4.

commence a specialist performance improvement action during the Moratorium. The Exchange requests that the effective date of such extension be retroactive to December 31, 2007.

The text of the proposed rule changes is available on the Exchange's Web site (http://www.nyse.com), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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. The text of these statements may be examined at the places specified in Item III 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

The Exchange proposes to extend, to March 31, 2008, the Moratorium on the administration of the SPEQ pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Exchange Rule 103B, which was implemented on June 8, 2007 and terminated on December 31, 2007.[3] The Exchange requests that the effective date of such extension be retroactive to December 31, 2007.

In addition, the Exchange proposes that the use of SuperDot turnaround for orders received and responses to administrative messages continue to be removed from the objective measures used in the assessment of specialist performance pursuant to Exchange Rule 103B or as criteria used to commence specialist performance improvement action pursuant to Exchange

[3] See Securities Exchange Act Release No. 55852 (June 4, 2007), 72 FR 31868 (June 8, 2007) (SR-NYSE-2007-47) ("Original Request").

Rule 103A during the Moratorium.

SPEQ

Prior to June 2007, pursuant to Exchange Rule 103A, on a quarterly basis, the Exchange distributed a twenty question survey known as the SPEQ to eligible Floor brokers[4] to evaluate specialist performance during the quarter immediately prior to the distribution of the SPEQ. Initially, this subjective feedback provided critical information to assist the Exchange in maintaining the quality of the NYSE market.

However, the Exchange believed that the SPEQ no longer adequately allowed a Floor broker to assess the electronic interaction between the specialist and the Floor broker. The Hybrid Market provided Floor brokers and specialists with electronic trading tools that have resulted in less personal and verbal contact between Floor brokers and specialists. Currently, the majority of transactions executed on the Exchange are done through electronic executions.

In addition, the dramatic increase in transparency with respect to the Display Book through, among other things, Exchange initiatives like Exchange OPENBOOK™[5] ("OPENBOOK") has decreased the need for the Floor broker to obtain market information verbally from the specialist. This increased transparency gives all market participants, both on and off the Floor, a greater ability to see and react to market changes.

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4 The Exchange believed that conscientious participation in the SPEQ process was a critical element in the Exchange's program for evaluating the overall performance of its specialists. All eligible Floor brokers are required to participate in the process and evaluate from one to three specialist units each quarter. Floor brokers were selected to participate in the SPEQ process based on broker badge data submitted in accordance with audit trail requirements. Brokers who intentionally failed or refused to participate in the SPEQ process were potentially subject to disciplinary action, including the imposition of a summary fine pursuant to Exchange Rule 476A.

5 OPENBOOK Online Database is an Exchange online service that allows subscribers to view the contents of the specialist book for any stock at any given point in the day, or over a period of time. Results are returned in an Excel spreadsheet. OPENBOOK Online Database is a historical database with data stored online for a 12-month period.

The questions on the SPEQ did not take into account the operation of the electronic tools available in the Hybrid Market. The SPEQ did not provide Floor brokers with a means to evaluate specialist performance under the current market model. As a result of the more electronic interaction between Floor brokers and specialists, Floor brokers were unable to assess specialist performance using the SPEQ.

The questions posed to the Floor brokers on the SPEQ required Floor brokers to opine on the specialists' ability to offer single price executions and specialists' ability to provide notification to Floor brokers of market changes in particular stocks. In the current Hybrid Market, specialists are unable to offer single price executions and the relative speed of executions makes it virtually impossible for specialists to notify brokers of changes in a particular security.

Given the above, the SPEQ no longer served as a meaningful measure of specialist performance.

Objective Measures

The Exchange further requests that during the extension of the Moratorium, allocations of newly listed securities on the Exchange continue to be based on the objective measures identified in Exchange Rule 103B[6] with the exception of SuperDot turnaround for orders received and response to administrative messages.

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6 Pursuant to Exchange Rule 103B, specialist dealer performance is measured in terms of participation (TTV); stabilization; capital utilization, which is the degree to which the specialist unit uses its own capital in relation to the total dollar value of trading in the unit's stocks; and near neighbor analysis, which is a measure of specialist performance and market quality comparing performance in a stock to performance of stocks that have similar market characteristics. Additional objective measures pursuant to Exchange Rule 103B are those measures included in Exchange Rule 103A which are: (a) timeliness of regular openings; (b) promptness in seeking Floor official approval of a non-regulatory delayed opening; (c) timeliness of DOT turnaround; and (d) response to administrative messages.

As explained in the Original Request, SuperDot turnaround for orders received and response to administrative messages no longer provide meaningful objective standards to evaluate specialist performance in the Hybrid Market. Specifically, in the more electronic Hybrid Market, orders received by Exchange systems that are marketable upon entry are eligible to be immediately and automatically executed by Exchange systems. As such, SuperDot turnaround no longer provided a meaningful objective measure of a specialist's performance.

Furthermore, in the Hybrid Market the Exchange systems automatically respond to the majority of the administrative messages. Today, there are two administrative messages that require a manual response from specialists. These are messages that require the specialist to provide status information on market orders and stop orders. With regard to requests for the status of stop orders, the specialists are no longer capable of providing this information. In December 2006, following Commission approval,[7] the Exchange changed its stop order handling process. Stop orders are no longer visible to the part of the NYSE Display Book® that the specialist "sees." When a transaction on the Exchange results in the election of a stop order that had been received prior to such transaction, the elected stop order is sent as a market order[8] to the Display Book and the specialist's system employing algorithms where it is handled in the same way as any other market order. The specialist therefore is unable to provide any information regarding the status of stop orders.

Market orders are eligible to receive immediate and automatic execution on the Exchange. The immediate and automatic execution of market orders eliminates the need for the specialists to respond to the administrative request for the status of market orders. In practice, a

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7 See Securities Exchange Act Release No. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR-NYSE-2006-65).

8 As used herein, the term "market order" refers to market orders that are not designated as "auction market orders."

customer that submits a market order will likely receive a report of execution before the administrative message requesting the status of the market order has been printed and read by the specialist.

This change has had a minimal impact on Exchange customers. In the past few years, the average number of administrative messages received on a daily basis has steadily declined. The Exchange believes that immediate and automatic execution of orders will virtually eliminate administrative messages that require a manual response from a specialist. As a result, a specialist’s ability to respond to administrative messages no longer provides a meaningful measure of specialists’ performance during the Moratorium.

Given the above, the Exchange seeks to continue suspension of the use of both measures as criteria used to assess specialists’ performance during the extension of the Moratorium.

Performance Improvement Actions

Similarly, during the extension of the Moratorium, the Exchange seeks to continue suspending the use of the SPEQ and Order Reports/Administrative Reports as criteria for the implementation of a performance improvement action pursuant to Exchange Rule 103A. Exchange Rule 103A(b) provides that:

> The Market Performance Committee shall initiate a Performance Improvement Action (except in highly unusual or extenuating circumstances, involving factors beyond the control of a particular specialist unit, as determined by formal vote of the Committee) in any case where a specialist unit’s performance falls below such standards as are specified in the Supplementary Material to this rule. The objective of a Performance Improvement Action shall be to improve a specialist unit’s

performance where the unit has exhibited one or more significant weaknesses, or has exhibited an overall pattern of weak performance that indicates the need for general improvement.

Prior to June 2007, the SPEQ and Order Reports/Administrative Reports were two criteria included in the standards specified in Exchange Rule 103A Supplementary Material. Given that SPEQ and Order Reports/Administrative Reports no longer provided significant objective measures of specialists' performance in the Hybrid Market, the Exchange sought to suspend the use of both measures as criteria for the implementation of a performance improvement action during the Moratorium. Through this filing, the Exchange seeks to continue this suspension for the duration of the Moratorium.

Creation of a New Process

Currently, the Exchange has completed its assessment of the specialists' function in its current market and identified objective standards it currently believes will provide a means to accurately assess and measure the specialists' performance of its market-making function. Using newly identified objective measures, the Exchange will formally submit a proposal to the Commission no later than February 1, 2008 to amend Exchange rules that govern the allocation of securities to specialist firms and other related rules.

The Exchange believes that the use of objective performance measures will provide for a more significant comparison of specialist performance. It is anticipated that the use of more objective and detailed measures will promote healthy competition between specialist firms and ultimately result in better market-making for Exchange customers.

Conclusion

The Exchange therefore requests to extend the Moratorium on the administration of the

SPEQ pursuant to Exchange Rule 103A and the use of the SPEQ pursuant to Exchange Rule 103B until March 31, 2008. In addition the Exchange proposes to continue to suspend the use of SuperDot turnaround for orders received and the use of responses to administrative messages as objective measures in the assessment of specialist performance during the Moratorium. The Exchange further proposes that the SPEQ and Order Reports/Administrative Responses continue to be removed from the criteria used to commence a specialist performance improvement action during the Moratorium. The Exchange requests that the effective date of the requested extension be retroactive to December 31, 2007.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] 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 a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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.

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9 15 U.S.C. 78f(b)(5).

10 15 U.S.C. 78k-1(a)(1).

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. 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. Please include File Number SR-NYSE-2008-02 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2008-02. 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 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 Exchange. 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-2008-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Changes

After careful review, 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.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that an exchange have rules designed, among other things, 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. The Commission believes that by extending the Moratorium the Exchange can discontinue relying on factors that no longer provide meaningful objective measures of a specialist's performance in the Hybrid Market environment.

Furthermore, the Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing. By extending the Moratorium from December 31, 2007 until March 31, 2008, the Exchange should have sufficient time to allow it to propose changes to its allocation policy that reflects its current market structure. The Commission notes that the Exchange advised that it expects to submit a proposal

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[11] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

to amend its rules governing the allocation of securities to specialist firms and related rules by February 1, 2008. In addition, the Commission believes that allowing the extension of the Moratorium to take effect retroactively as of December 31, 2007 will allow the Moratorium to occur uninterrupted until March 31, 2008.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR-NYSE-2008-02) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon
Deputy Secretary

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12 15 U.S.C. 78s(b)(2).

13 17 CFR 200.30-3(a)(12).