

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58013; File No. SR-NYSE-2008-48)

June 24, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 103A to Exempt Executive Floor Governors from Floor Member Continuing Education

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 June 19, 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 substantially prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which rendered 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 is proposing to amend NYSE Rule 103A(a)(3) (Specialist Stock Reallocation and Member Education and Performance) to exempt Executive Floor Governors (“EFGs”) of the Exchange from Floor Member Continuing Education (“FMCE”) requirements. The Exchange further proposes, in connection with specific FMCE modules, to deem members

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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).

who substantially assisted NYSE Regulation, Inc. (“NYSE Regulation”) staff in the development of such modules as having fulfilled their obligation to complete required training on that module. The text of the proposed rule change is available at [www.nyse.com](http://www.nyse.com), the Exchange, and 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 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 submitting this proposed amendment to NYSE Rule 103A(a)(3) to permit the Exchange to exempt EFGs from the Exchange’s mandatory FMCE program and to deem certain other members who have substantially assisted NYSE Regulation in developing a training module to have fulfilled their obligation to complete training on that module.

NYSE Rule 103A(a)(3) requires that the Exchange, via NYSE Regulation, provide mandatory continuing education for all Floor members and permits the Exchange to deny non-complying members access to the Trading Floor until they complete their required education.

On March 18, 2008, NYSE Regulation, which supervises the creation and delivery of content for the Exchange’s FMCE program, launched the Learning Management System (“LMS”), which automates the delivery of program content to members via a web-based interactive program

that participants can access from an internet-capable computer. The Exchange filed certain amendments to Rule 103A to update the Rule in light of the new system requirements.<sup>5</sup>

This proposed rule change seeks limited relief from the technical program requirements for two groups of members: (i) EFGs; and (ii) members who provide substantial assistance to NYSE Regulation staff in the development of specific training modules.

EFGs are experienced and knowledgeable Exchange members who volunteer substantial amounts of time providing consultative and interpretive advice with respect to many NYSE rules.

Among other things, EFGs:

- take an active role in supervising unusual trading situations pursuant to NYSE Rules 46 and 47, which requires them to know and keep abreast of changes to NYSE rules and policies;
- are frequently called on by NYSE rule development staff to provide feedback from the perspective of a knowledgeable practitioner with respect to proposed rules changes;
- are regularly consulted with respect to trading situations on the Floor and provide trading dispute rulings in conjunction with NYSE Market, Inc. and NYSE Regulation staff; and
- participate in regular meetings with NYSE Regulation senior staff to discuss various issues regarding trading on the Exchange and other Floor-related issues.

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<sup>5</sup> See Securities Exchange Act Release No. 56851 (November 28, 2007), 72 FR 68932 (December 6, 2007) (SR-NYSE-2007-106).

In addition to the foregoing, NYSE Regulation also consults with the EFGs on FMCE content, including previewing LMS modules to some or all of the EFGs during the development phase.

In view of their participation in the development of policies that are then taught to all members through the FMCE program, and in view of their contact with the FMCE program during its development, the Exchange believes it is appropriate to exempt EFGs from sitting through the completed FMCE program modules; the EFGs clearly have provided valuable assistance by the time the modules are rolled out to the general membership. Accordingly, NYSE Regulation seeks a limited exemption for EFGs from FMCE requirements.

Additionally, in conjunction with creating educational materials for the FMCE program, NYSE Regulation staff from time to time may consult at length with experienced Floor members, including but not limited to Floor Officials (who act in such capacity by volunteering their time), in the development of content (e.g., slide shows and scripts). The purpose of such consultations is to ensure that the educational materials are both practical and effective as educational tools. Floor member contributions include, but are not limited to, ensuring that market examples used to drive home teaching points are realistic, that descriptions of how members interact with trading systems are feasible, that trading examples used to demonstrate applicable rules are useful, and that descriptions of trading activities are phrased in language that is familiar to qualified Floor members. Such member participation may include attending applicable meetings, drafting and reviewing documents, providing input on visuals and narration used for the module, and conducting research. Where such members have made a substantial contribution to the development of an educational module, the Exchange seeks authority to deem such members as having fulfilled their obligation to complete only that particular module on

which they were consulted, in recognition of the fact that they have partnered with staff to create the final product and, in doing so, have become educated on the related regulatory aspects.

These members would still be obligated to complete modules on which they were not consulted, just like any other member.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments 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 Exchange believes this proposed rule change will serve all of these goals by providing for a more reasonable and robust program for developing educational materials for Floor members that are accurate in accordance with applicable rules and policies and couched in terms that are better understood by trading practitioners. Offering the exemptions proposed in this filing will encourage participation by experienced Floor members in the development of the program.

### 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

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<sup>6</sup> 15 U.S.C. 78f(b)(5).

the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> 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 prior to 30 days from the date on which it was filed, 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 and Rule 19b-4(f)(6)(iii) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

In support of its request, the Exchange has represented that certain EFGs are overdue or have pending due dates for completion of their FMCE requirements. The Exchange has stated that it would prefer to grant the waivers proposed in this filing to the EFGs, rather than continuing to apply a deadline extension for these individuals.<sup>12</sup>

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

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

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

<sup>12</sup> The Exchange further noted that the proposed rule change also seeks limited relief from technical program requirements for a very small number of members in recognition of

The Commission believes that the proposed exemptions should not unduly advantage the affected members or subvert the intent of the continuing education requirement in NYSE Rule 103A. Waiving the operative delay will allow the Exchange to grant waivers immediately to those floor members who are eligible under the proposed rule change, rather than continuing to extend to deadline for these floor members during the 30-day operative delay.

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 designates the proposed rule change to be operative upon filing with the Commission.<sup>13</sup>

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

#### 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-2008-48 on the subject line.

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important contributions to the development of educational materials that are then presented to the general membership.

<sup>13</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. 15 U.S.C. 78c(f).

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-2008-48. 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 am and 3:00 pm. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-2008-48 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>14</sup>

Florence E. Harmon  
Acting Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).