

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54611; File No. SR-NYSE-2006-86)

October 16, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 13 (“Definitions of Orders”) to clarify that an Immediate or Cancel order must be designated “Regulation NMS-compliant Immediate or Cancel” in order to be so executed, and to modify the definition of an “At the Opening” or “At the Opening Only” order to ensure that it complies with the Securities and Exchange Commission’s Regulation NMS

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 October 16, 2006, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change 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

NYSE proposes to amend Exchange Rule 13 (“Definitions of Orders”) to clarify that an Immediate or Cancel order must be designated “Regulation NMS-compliant Immediate or Cancel” in order to be so executed, and to modify the definition of an “At the Opening” or “At the Opening Only” order to ensure that it complies with the Commission’s Regulation NMS

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

(“Reg. NMS”).⁵ The text of the proposed rule change is available on the Exchange’s Web site (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 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 self-regulatory organization 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 amend certain rules governing the NYSE HYBRID MARKETSM (“Hybrid Market”) in order to clarify the definition of a Regulation NMS-compliant Immediate or Cancel order.

In the Hybrid Market, the Exchange created two types of Immediate or Cancel (“IOC”) orders which are defined in Exchange Rule 13. The first type is an IOC order that complies with Reg. NMS.⁶ A Reg. NMS IOC order will not be routed during an Exchange sweep, if any, to satisfy better priced protected bids or offers⁷ displayed by other market centers; rather, a Reg. NMS IOC order will be cancelled and the Exchange sweep will end.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). See also 17 CFR 242.600(b)(3).

⁶ See *id.*

⁷ A protected bid and offer is one that meets the definition set forth in Section 242.600(b)(57) of Regulation NMS.

The second type of IOC order is a “NYSE IOC” order. Unlike a Reg. NMS IOC order, a NYSE IOC order permits portions to be routed during a sweep, if any, to other markets to satisfy better priced protected bids or offers and cancels only when once it is no longer able to receive an execution.

In this filing, the Exchange proposes to amend the definition of a Reg. NMS IOC order to clarify that all Reg. NMS IOC orders submitted to the Exchange for execution must be appropriately designated. Therefore, if an IOC order is submitted to the Exchange without the appropriate designation for a Reg. NMS IOC order, said order will be handled as a NYSE IOC order.

In addition, in order to comply with Reg. NMS,⁸ the Exchange proposes to amend the definition of an “At the Opening” or “At the Opening Only” order to provide that all or part of such order may be executed as part of the opening transaction on another market center if compliance with Reg. NMS requires that the order, or part thereof, be routed to another market center. If the possibility of a NYSE-only opening execution is sought, an “At the Opening” or “At the Opening Only” order must be designated as a “Reg. NMS-compliant immediate or cancel” order in the manner directed by the Exchange. As noted above, such orders will not be routed to other markets. Therefore, if such orders are unable to trade on the Exchange, they will be cancelled immediately and automatically. Accordingly, if the Exchange opens on a quote, such orders will be immediately and automatically cancelled.

⁸ See note 5, *supra*.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is 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 Exchange believes that the proposed rule change is also designed to support the principles of Section 11A(a)(1) of the Act¹¹ in that it seeks to assure economically efficient execution of securities transactions, the practicability of brokers executing investors' orders in the best market, and 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.

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

Because the foregoing 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) by its terms, become operative for 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1).

the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to 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 and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to meet the Reg. NMS compliance dates.¹⁵

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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2006-86 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2006-86. 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. 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-2006-86 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Nancy M. Morris
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).