

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55244; File No. SR-NYSE-2007-11)

February 5, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 122 (Orders with More than One Broker) until the Availability of Full d-Quote Functions in a Particular Security or March 5, 2007, Whichever Comes First

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 February 5, 2007, 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 substantially prepared by the self-regulatory organization. NYSE filed the proposed rule change pursuant to Section 19(b)(3) 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

The Exchange proposes to continue the Floor brokers’ ability to maintain discretionary e-Quotes (“d-Quotes”)⁵ and CAP-DI orders⁶ in a security on the same side of the market for the

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).

⁵ See Securities Exchange Act Release No. 54577 (October 5, 2006), 71 FR 60208 (October 12, 2006) (SR-NYSE-2006-36).

⁶ See Exchange Rules 13 and 123A.30(a). Exchange Rule 123A.30(a) describes a CAP-DI order as: “The elected or converted portion of a ‘percentage order that is convertible on a destabilizing tick and designated immediate execution or cancel election’ (“CAP-DI order”) may be automatically executed and may participate in a sweep.”

same order that are capable of trading at the same price until the completion of Phase IV implementation of the HYBRID MARKETSM (“Hybrid Market”) in the relevant security or until March 5, 2007, whichever comes first. 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 self-regulatory organization 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 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

On October 25, 2006, the Exchange filed with the Commission an amendment to Rule 122 to permit Floor brokers to enter d-Quotes and CAP-DI orders in a security on the same side of the market for the same underlying order that are capable of trading at the same price until the implementation of full d-Quoting functionality in the relevant security or until February 5, 2007, whichever came first.⁷

On January 25, 2007, the Exchange commenced the implementation of Phase IV of the Hybrid Market, which includes the remaining d-Quote functions: (i) the ability to trade against

⁷ See Securities Exchange Act Release No. 54653 (October 26, 2006), 71 FR 64594 (November 2, 2006) (SR-NYSE-2006-94).

non-marketable interest within a Floor broker's discretionary range and (ii) routing control for Floor brokers with respect to d-Quotes.⁸

The Exchange anticipates that the implementation of Phase IV will not be completed as originally anticipated by February 5, 2007. Through this filing the Exchange therefore requests to extend Floor brokers' ability to enter d-Quotes and CAP-DI orders in a security on the same side of the market for the same orders that are capable of trading at the same price until the implementation of full d-Quoting functionality in the relevant security or until March 5, 2007 whichever comes first.

The Exchange believes that extending the time period in which Floor brokers have this capability is necessary in order to ensure that Floor brokers remain competitive. Currently, the specialist can send electronically a "hit bid" or "take offer" message based on an incoming order that would create a new best bid or best offer; thus allowing the specialist to trade electronically with the newly published bid or offer. Without complete d-Quote functionality, a Floor broker only has the ability to interact manually with such new bid or offer. As a result, the speed disparity between a manual action and an electronic one places the Floor broker at a competitive disadvantage.

While a Floor broker can seek to trade at the bid or offer price by manually "hitting the bid" or "taking the offer" the Floor broker can also send a CAP-DI order to the specialist for conversion or election at that price. Marketable CAP-DI orders are automatically converted and trade along with specialist proprietary executions. Accordingly, by allowing Floor brokers to have CAP-DI orders and d-Quotes, they retain the ability to compete with specialist algorithmic trading for executions involving marketable incoming orders via discretionary pricing

⁸ Other d-Quote functions were implemented in Phase III.

instructions, but do not miss participating in executions when specialists algorithmically hit a bid or take an offer.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act⁹ 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) of the Act¹⁰ 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.

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

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78k-1(a)(1).

shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

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)¹³ 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. Specifically, the Commission believes that the proposal would enable floor brokers to continue to compete with specialists in certain trades on behalf of their customers, while the Exchange is in the process of implementing the d-Quote functions. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission until the availability of full d-Quote functions in a particular security or March 5, 2007, whichever comes first.¹⁴

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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 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).

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. Please include File Number SR-NYSE-2007-11 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-2007-11. 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-2007-11 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30–3(a)(12).