SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 55398; File No. SR-NYSE-2007-25)

March 5, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 123D (Openings and Halts In Trading)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 2, 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 prepared substantially by the Exchange. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] 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 is proposing to amend Exchange Rule 123D to add new section (3) to enable the Exchange to halt trading in a security whose price may be about to fall below $1.00 per share, without delisting the security, so that the security may continue to trade on other markets that deal in bids, offers, orders, or indications of interest in sub-penny prices, until the price of the security has recovered sufficiently to permit the Exchange to resume trading in minimum increments of no less than one penny or the issuer is delisted for failing to correct the price condition within the time provided under NYSE rules. The text of the proposed rule

[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).

change is available at http://www.nyse.com, NYSE 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. The text of these 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Regulation NMS, adopted by the Commission in April 2005,[5] provides that each trading center intending to qualify for trade-through protection under Regulation NMS Rule 611 ("Rule 611")[6] is required to have a Regulation NMS-compliant trading system fully operational by March 5, 2007 (the "Trading Phase Date").[7]

Regulation NMS Rule 612 ("Rule 612"),[8] permits markets to accept bids, offers, orders, and indications of interest in increments smaller than a $0.01 per share, but not less than $0.0001 per share, for stocks priced below $1.00 per share and to quote and trade such stocks in sub-pennies. Markets may choose not to accept such bids, offers, orders or indications of interest and

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5 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

6 17 CFR 242.611.

7 See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

8 17 CFR 242.612.

the NYSE has done so, maintaining a minimum trading and quoting variation of $0.01 per share for all securities trading below $100,000 per share.[9]

However, the Commission has said that Rule 611's proscription against trade-throughs extends to quotes which include a sub-penny component in stocks priced below $1.00 per share, provided they are better priced by a minimum of $0.01 per share.[10] Rule 612 requires a market that routes an order to another market in compliance with Rule 611 and receives a sub-penny execution to accept the sub-penny execution, report that execution to the customer, and compare, clear and settle that trade.

The Exchange states that, currently, there are no markets quoting or trading NYSE-listed securities that are priced under $1.00 per share in sub-penny increments. The Exchange's trading system does not currently accommodate sub-penny trading, nor can it recognize a quote disseminated by another market center if such quote has a sub-penny component. The Exchange had previously determined that it would not be cost effective to make the changes that would allow its trading system to fully accommodate sub-penny trading. In making this determination, the Exchange weighed the resource allocation choices that would be necessary against the fact that only a very small number of securities listed on the Exchange have fallen below $1.00 in the last three years.

The Exchange has been investigating whether there are systemic or other approaches that would allow it to deal with sub-penny executions made on markets to which we have routed an order, while not necessitating all the changes that would be required to fully trade in sub-pennies. No acceptable approach has yet been discovered.

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9 See NYSE Rule 62.

10 Order Exempting Certain Sub-Penny Trade-Throughs From Rule 611 of Regulation NMS Under the Securities Exchange Act of 1934. See Securities and Exchange Commission Release No. 54678 (October 31, 2006), 71 FR 65018 (November 6, 2006).

The Exchange is proposing an approach which will allow it to avoid trading a security on NYSE when its price falls below $1.00 per share, while permitting it to remain listed on the Exchange so that it could continue to be traded by other markets on an unlisted trading privileges ("UTP") basis, including NYSE Arca. This would involve "halting" trading on NYSE, not for a "regulatory" reason (as that would require other markets to stop reporting trades as well), but rather for an "operational" (i.e., non-regulatory) reason. NYSE Rule 123D(2) contemplates such a non-regulatory halt for systems, equipment or communication facility problems or for other technical reasons and, in the Exchange's view, this is a related situation, since it relates to the Exchange's systemic inability to properly accommodate these sub-penny prices. Existing Rule 123D(2) contemplates halts which are relatively brief in duration, whereas a halt for the purposes described herein could potentially endure for a number of months.[11] More significantly, Rule 123D currently requires Floor Official approval to implement a trading halt of any kind, whether regulatory or operational. However, the proposed halt will have to occur automatically, so it must be specified to occur without Floor Official approval. For this reason the Exchange is proposing to codify this new non-regulatory halt in a new subsection (3) or Rule 123D. The

11 Section 802.01C of the NYSE Listed Company Manual sets out a minimum price criteria for capital or common stock. Currently, that section provides that a company will be considered to be below compliance standards if the average closing price of a security is less than $1.00 over a consecutive 30 trading-day period. Once notified, the company must bring its share price and average share price back above $1.00 within six months. Alternatively, if a company determines that it will cure the price condition by taking an action that will require approval of its shareholders, it must obtain the necessary shareholder approval by a date no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds $1.00 per share, and the price remains above the level for at least the following 30 trading days.

Exchange is seeking to expand the use of the operational halt in order to prevent a problem that the Exchange knows would occur if the price of the stock fell below a $1.00 per share.[12]

Because the Exchange must halt trading before a security in fact trades below $1.00 per share, the new rule will trigger the halt whenever a security trading on the Exchange is reported on the consolidated tape during normal trading hours as having traded at a price of $1.05 per share or less, or if a security would open on the Exchange at a price of $1.05 per share or less. In any such event, trading in the security on the Exchange shall be immediately halted. Once halted for such reason, trading shall not be resumed on the Exchange until the security has traded on another automated trading center as defined in Rule 600(b)(4) under the Act[13] for at least one entire trading day at a price or prices that are at all times at or above $1.10 per share. Any such resumption of trading shall occur at the beginning of a trading day, so that normal opening procedures can apply. As noted above, in contrast to other trading halts, a sub-penny trading halt is automatic as it does not require the approval of any Floor Officials.[14] However, if a determination is made by a Floor Official that a trade that triggered a halt because of a "Sub-penny trading" condition was made in error or otherwise was an anomaly, trading of the security on the Exchange will resume immediately.

When a halt is called under NYSE Rule 123D, a condition indication is disseminated over the consolidated tape. The condition under new Rule 123D(3) will be denominated as a

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12 The Exchange will notify its members that the description of "Equipment Changeover" will now include a halt for this new non-regulatory halt.

13 See 17 CFR 242.600(b)(4).

14 Specifically, designated Exchange staff will actively monitor the conditions of the securities and immediately implement the trading halt when the conditions of the securities require such halt without any Floor Official approval. The Exchange will investigate the possibility of creating a systemic modification to automate this process. Telephone conversation on March 5, 2007 between Deanna Logan, Director, NYSE and David Liu, Senior Special Counsel, Division of Market Regulation, Commission.

"Sub-penny trading" condition. However, steps will be taken to undertake the system development necessary to enable the dissemination of such a condition description but the changes will not be completed by March 5, 2007, the date when this change must be in place. Accordingly, through September 7, 2007, or the date the systems are able to disseminate such condition, if earlier, should a Sub-penny trading halt be required prior to the system being ready to disseminate such condition notification, the Exchange will in lieu thereof disseminate the "Equipment Changeover" condition (used when a halt is called pursuant to NYSE Rule 123D(2)), and will clarify as soon as practicable that the halt is due to a "Sub-penny trading" condition on the NYSE's website.[15]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[16] of the Act, in general, and furthers the objectives of Section 6(b)(5)[17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

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15 See also supra note 12.

16 15 U.S.C. 78f(b).

17 15 U.S.C. 78f(b)(5).

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) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b-4(f)(6) thereunder.[19]

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.

NYSE has asked that the Commission waive the 30-day operative delay and five-day pre-filing requirement contained in Rule 19b-4(f)(6)(iii) under the Act.[20] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it expands the Exchange's current use of trading halts for operational reasons to preemptively prevent operational problems on the Exchange and enable the Exchange

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18 15 U.S.C. 78s(b)(3)(A).

19 17 CFR 240.19b-4(f)(6).

20 17 CFR 240.19b-4(f)(6)(iii). Rule 19b-4(f)(6) also requires the self-regulatory organization to give the Commission 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. NYSE gave the Commission written notice of its intention to file the proposed rule change on February 26, 2007, four business days prior to filing. The Commission is granting the Exchange's request for a waiver of the five-day pre-filing requirement.

to comply with Rule 612. The proposal is also consistent with the public interest and the protection of investors because it will permit Exchange-listed securities whose price falls below $1.05 per share to continue to quote and trade on an UTP basis, including in sub-penny increments, while recognizing the current limitations of the Exchange's systemic capacities in that regard. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[21]

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-2007-25 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-2007-25. 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

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

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 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-2007-25 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon
Deputy Secretary

[22] 17 CFR 200.30-3(a)(12).