

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55908; File No. SR-NYSE-2007-51)

June 14, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rules 54 (“Dealings on Floor—Persons”) and 70 (“Bids and Offers”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 8, 2007, the New York Stock Exchange LLC (“NYSE” or the “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 Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<sup>4</sup> 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 Rules 54 (“Dealings on Floor-Persons”) and 70 (“Bids and Offers”) to allow a member organization to operate its booth premise on the Exchange Floor in a manner similar to a member organization’s “upstairs” office, provided that the member organization has been approved to operate its booth in this manner by NYSE Regulation, Inc. (“NYSER”). The Exchange further proposes to make conforming amendments

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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).

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

to Exchange Rules 6 (“Floor”), 112 (“Orders initiated Off the Floor”), 123 (“Records of Orders”), 132B (“Order Tracking Requirements”), and 134 (“Differences and Omissions-Cleared Transactions”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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 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

NYSE is proposing to amend Exchange Rules 54 (“Dealings on Floor-Persons”) and 70 (“Bids and Offers”) to allow a member organization to operate its booth premise on the Exchange Floor in a manner similar to a member organization’s “upstairs” office, provided that the member organization has been approved to operate its booth in this manner by NYSER.

In this filing, the Exchange further proposes to make conforming amendments to Exchange Rules 6 (“Floor”), 112 (“Orders initiated Off the Floor”), 123 (“Records of Orders”), 132B (“Order Tracking Requirements”), and 134 (“Differences and Omissions-Cleared Transactions”).

Operation of an “Upstairs” Office from a Floor Member’s Booth Premise

As a result of the changes in the way in which trading occurs on the Exchange (and in the

securities markets in general) due to, among other things, Regulation National Market System (“Regulation NMS”) and the Exchange’s operation of its Hybrid Market, the Exchange seeks to modify the Exchange rules that impede Floor broker member organizations from operating within its booth premises similar to a member organizations’ “upstairs” office.

Although there is no Exchange rule that specifically prohibits a Floor broker member organization from operating within its booth premise in a manner similar to its “upstairs” office,<sup>5</sup> the ability of a Floor broker member organization to operate its booth premises in this manner has been restricted by certain Exchange rules. For example, member organization staff operating out of such booth premises, who are not Exchange “members” are constrained in the way in which they are allowed to process orders sent to the booth, as Exchange Rule 54 limits the right to conduct business “on the Floor” to members.

The Exchange states that the impetus for the proposed amendment is the result of several factors. Competition from other market centers and the growth of alternative trading systems, coupled with increased internalization by broker-dealers, has challenged the dominance of the trading post as the centralized locus of the representation and execution of orders in a particular security. Recent statistics provide potent proof of this – there has been a 49% decrease in Floor broker share of total NYSE trading volume on the NYSE between the first quarter of 2006 and the first quarter of 2007. At the same time, the rapid dissemination of consolidated quote and trade information and real-time updates of the Exchange limit order book has increased exponentially the amount and accuracy of available information and the speed with which it is disseminated. These changes have not only impacted the way in which information is collected

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<sup>5</sup> For example, a member organization’s upstairs office can, among other things, route orders in NYSE listed securities directly to another market.

and processed, they have also increased competition for member organizations, which are continually searching for ways to provide more efficient and less costly service to their customers.

Therefore, the Exchange seeks to provide its Floor broker member organizations with the ability to access other markets<sup>6</sup> and trade a wider range of products from the Floor broker member organizations' booth premises located around the perimeters of the current Exchange Floor and lining the passageways connecting the rooms that comprise the Exchange Floor. The NYSE believes that this will provide Floor brokers with the ability to remain competitive in view of changes in the markets and the manner in which customer orders are handled and executed. Pursuant to the proposal, a Floor broker or appropriately registered and supervised booth staff would be able to transmit orders in NYSE-listed securities that they have received on the Exchange Floor to away markets for execution directly from its booth premises without having to send the order to an upstairs trading desk. The instant proposal will further allow member organizations to centralize these operations within their booth premises.

To remove the impediments to Floor broker member organization ability to efficiently operate its business from the Exchange Floor, the NYSE seeks to amend Exchange Rule 70

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<sup>6</sup> The Exchange previously expanded the ability of Floor broker member organizations, on a pilot basis, to transmit agency orders in Nasdaq Stock Market LLC ("Nasdaq") and NYSE ARCA<sup>SM</sup> listed securities, from the Exchange Floor, including booth premises, provided the member organization complies with certain requirements. These requirements include, among others, membership in the NASD (for Nasdaq-listed securities) or having NYSE ARCA equities trading permit (for NYSE ARCA-listed securities); receipt of the order on the NYSE Floor through a permissible communication device, and transmission of the order to the appropriate market through a non-NYSE order management system. See NYSE Information Memo 05-88 (November 10, 2005); NYSE Member Education Bulletin 2006-7 (March 22, 2006); NYSE Information Memos 06-37 (May 19, 2006) and 06-43 (June 15, 2006); and NYSE Member Education Bulletin 2006-12 (July 21, 2006).

(“Bids and Offers”) to add Supplemental section .40. Proposed Exchange Rule 70.40 will allow member organizations approved to operate a booth premise to handle orders in all securities, including those listed on other markets from their approved booth premises. The proposed rule will also allow the member organizations’ appropriately registered and supervised booth staff to handle orders in a similar manner as sales traders are permitted to operate in “upstairs” offices, subject to restrictions described below. As such, the Exchange seeks to make a corresponding amendment to Exchange Rule 54 in order to permit appropriately registered and supervised booth staff of member organizations operating out of an approved booth premise who are not “members” to process orders sent to the booth in the same manner that a sales trader in an “upstairs office” is allowed to process orders.

Since the booth premise will operate as an “upstairs office,” a member organization, consistent with the type of business activities it seeks to operate in its approved booth premise, will be required to comply with all applicable rules<sup>7</sup> governing the operation of a public business. The specific rules that will apply to the operation of an approved booth premise will depend on the type of business that NYSE has approved the member organization to operate. For example, a member organization that is approved to operate its business solely from a booth premise and only provide Exchange Floor executions for other member organizations would no longer be required to carry Fidelity Bonds pursuant to Exchange Rule 319. Moreover, pursuant to the proposed rule, a member organization is required to obtain approval from NYSE prior to implementing any changes in the operation of its approved booth premise.

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<sup>7</sup> Exchange rules applicable to the operation of a public business include, but are not limited to, Admission of Members (Exchange Rules 300-324) and Operation of Member Organizations (Exchange Rules 325-465).

Unlike the “upstairs” offices, member organizations approved to operate booth premises pursuant to proposed Exchange Rule 70.40 shall be prohibited from effecting any transaction for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion from such approved booth premises.

In addition, proposed Exchange Rule 70.40 will require that member organizations operating approved booth premises in this manner must adopt and implement comprehensive written procedures and guidelines governing the conduct and supervision of business and staff at the booth, as well as a process for regular review of these procedures and guidelines and compliance therewith. These written procedures and guidelines and any changes thereto must be approved by NYSER prior to their implementation.

Exchange rules that govern trading on the Exchange Floor will continue to apply to member organizations on the Exchange Floor, including those member organizations operating within an approved booth premise. Member organizations that operate within an approved booth premises pursuant to the proposal will also be required to comply with all rules that govern upstairs activity. Through this filing, the Exchange seeks to amend Exchange Rule 123(e) to make clear that member organizations operating a booth premise that choose to route an order to the Exchange Floor for execution must, immediately upon receipt of the order and prior to representation and execution on the Exchange Floor or placement in an agency interest file within the Display Book system or routing the order to a Floor broker for execution at the post, enter such order into an electronic system on the Exchange Floor.<sup>8</sup>

The Exchange further seeks to amend Exchange Rule 123(b) and 132B(a)(1) to make clear that orders in NYSE-listed securities sent to or generated at a member organization’s

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<sup>8</sup> See Exchange Rule 123(e) (“FESC”).

approved booth premise and routed to another market for execution must continue to comply with the requirements of NYSE Rule 132B (Order Tracking Requirements). For such orders, the provisions of Exchange Rule 123(b) shall not apply; rather, the provisions of the Exchange Rule 132B will apply to such orders.

Moreover, as it relates to any order initiated and/or routed from a member organization's booth premise operating pursuant to proposed Exchange Rule 70.40 for execution on another market center, the Exchange seeks to amend Exchange Rule 134(d) to make clear that member organizations are prohibited from processing errors related to transactions on another market center in its Exchange required error account. Member organizations continue to be required to maintain "...an error account at a registered broker or dealer in his or her name, or in the name of his or her member organization; or (b) such member participates in an error account established for a group of members..."<sup>9</sup> Nevertheless error transactions processed in said error account must be limited solely to transactions executed on the Exchange Floor. Of course, member organizations must follow the applicable rules of the away market center related to error transactions.

#### Regulation of Approved Booth Premises

The proposed amendment envisions robust regulation of the staff and business conducted from booth premises by both the member organization and NYSE. For example, prior to operating booth premises in the manner permitted by the amended rule, a member organization must receive the approval of NYSE. In determining whether to grant such approval, member organizations will be required to provide NYSE with, among other things, detailed information regarding the proposed systems and order handling process, proof that all personnel are

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<sup>9</sup> See Exchange Rule 134(d).

appropriately registered, proof of independent compliance personnel and proof of adequate supervisory controls.

Further, the member organization must adopt and implement comprehensive written procedures, which also must be approved by NYSER, in governing the conduct of its business and staff and must review compliance with these procedures on a regular basis. In addition, the same registration and supervisory requirements that apply to upstairs offices must be followed in the booth premises.

The Exchange expects member organizations to vigorously supervise compliance with these procedures. NYSER will also appropriately review compliance with these obligations and has the authority to enforce them through the disciplinary process as warranted.

NYSER will periodically examine the member organization's business conducted at its approved booth premise. Further, NYSER has the ability to examine the member organization's business conducted at such approved booth premise in the same manner as it has with respect to a firm's "upstairs" office. The review would include an examination to confirm that the member organization has in place adequate policies and procedures to reasonably prevent and detect, among other things, effecting proprietary transactions from its approved booth premises and ensure compliance by the member organization with the other related provisions of proposed Exchange Rule 70.40. NYSER further represents that its procedures are adequate to appropriately review compliance with all obligations delineated in proposed Exchange Rule 70.40, including the prohibition against proprietary trading, during its examination of the member organization's approved booth premise.



### Conforming Amendments

Through this proposal, the Exchange further seeks to make certain conforming changes to Exchange rules. The Exchange proposes to amend Exchange Rule 6 (“Floor”) and Exchange Rules 112(b). Specifically, the Exchange proposes to amend the definition of “Floor” in Rule 6 and the corresponding definition of Floor contained in Exchange Rule 112(b) to properly reflect the physical locations that comprise the Exchange Floor. Thus, the Exchange proposes to amend these rules so that each will state that the Exchange Floor consists of the Exchange trading Floor and the premises immediately adjacent thereto, such as the various entrances and lobbies of the 11 Wall Street, 18 New Street, 8 Broad Street, 12 Broad Street and 18 Broad Street Buildings. The Exchange Floor will also include the telephone facilities available in the aforementioned locations.

In addition, the Exchange proposes to amend Exchange Rule 123.10 to clarify that, when giving out orders originating on the Exchange Floor, or transmitted by any person other than a member or member organization to members on the Exchange Floor, or when changing or cancelling orders previously given, members are required to do so electronically, or in writing.

The Exchange also seeks to amend Exchange Rule 123.23 to accurately reflect that currently member organizations employ vendor systems or proprietary systems to record the details of an order or report for purposes of Exchange Rule 123. Furthermore, the proposed conforming amendment to Exchange Rule 123.23 clarifies that whether a member organization employs a vendor system or uses its proprietary systems to record the details of an order or report, the system must be synchronized with reference to a time source as designated by the Exchange.

## Conclusion

The Exchange believes that the above proposal provides Floor broker member organizations with the ability to remain competitive in view of changes in the markets and the manner in which customer orders are handled and executed by allowing Floor broker member organizations to represent customer orders from its approved booth premises similar to that of an “upstairs” office on the Exchange Floor in a robust regulatory environment that serves to foster just and equitable principles of trade and benefit Exchange customers.

### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>11</sup> 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4<sup>13</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) 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 the public interest.<sup>14</sup>

Under Rule 19b-4(f)(6) of the Act,<sup>15</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. NYSE has requested that the Commission waive the 30-day operative delay so that it may immediately implement this proposal which it believes will result in a more efficient and less costly service to the customers of Floor broker member organizations as a result of the Floor broker member organizations' ability to centralize operations in their booth premises. The Commission notes that the Exchange has already implemented two pilot programs that presently allow Floor brokers to access away liquidity in NASDAQ-listed securities and NYSE Arca-listed securities from the Exchange Floor. The Commission also notes that the member organizations must obtain approval from NYSE prior to operating pursuant to proposed Rule 70.40 and must continue to meet all their

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written 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. The Exchange has satisfied the five-day pre-filing notice requirement.

<sup>15</sup> Id.

obligations pertaining to executions on the Exchange Floor. In addition, the Commission notes that any proprietary trading would be prohibited in approved booth premises, and requires significant obligations on the part of member organizations and NYSE with regard to such trading. The Commission believes that the proposed rule change should allow for greater efficiencies for the Exchange as well as member organizations which make use of approved booth premises. Therefore, the Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date so that the proposal may take effect upon filing.<sup>16</sup>

At any time within 60 days of the filing of such 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-51 on the subject line.

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<sup>16</sup> 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. 15 U.S.C. 78c(f).

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-2007-51. 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 will also 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-

2007-51 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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