

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56370; File No. SR-NYSE-2007-81)

September 6, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 104 (Dealings by Specialists)

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 September 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 Exchange. The Exchange filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 proposes to amend Exchange Rule 104(e) to modify the conditions that govern the ability of the specialists to provide price improvement pursuant to NYSE Rule 104(b)(i)(H).<sup>5</sup> 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).

---

<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).

<sup>5</sup> The Exchange notes that on March 22, 2006, the Commission approved a proposed rule change to permit the Exchange to establish the NYSE HYBRID MARKET<sup>SM</sup> (“Hybrid Market”). See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR

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. NYSE has substantially 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

In the proposed rule change, the Exchange seeks to amend Exchange Rule 104(e) to modify the conditions that govern the ability of the specialists to provide price improvement pursuant to NYSE Rule 104(b)(i)(H). The Exchange seeks to amend Rule 104(e) to allow the specialist to provide price improvement to an order when the specialist is represented in a meaningful amount in the bid with respect to price improvement provided to an incoming sell order and in the offer with respect to price improvement provided to an incoming buy order without minimum trade price parameters based on the quotation spread.

Current Price Improvement Conditions

Pursuant to Exchange Rule 104(b)(i)(H), a specialist trading message to provide price improvement to an order is subject to the conditions set forth in paragraph (e) of Exchange Rule 104. Currently, Exchange Rule 104(e) sets forth the requirements for specialist algorithmic price improvement, which include minimum trade price parameters based on the quotation spread, as

---

16353 (March 31, 2006) (SR-NYSE-2004-05). Included in the proposed rule change were Exchange rules governing specialist algorithmic systems, including Rules 104(b)(i)(H) and 104(e).

long as the specialist is represented in the Exchange quotation in a meaningful amount as defined in the rule.<sup>6</sup>

Pursuant to Rule 104(e), specialists may price improve all or part of an incoming order, as follows:

- (i) the specialist is represented in the bid if buying and the offer if selling; and
- (ii) where the quotation spread is three – five cents, algorithms must provide price improvement of at least two cents; or
- (iii) where the quotation spread is more than five cents, algorithms must provide price improvement of at least three cents; or
- (iv) where the quotation spread is two cents, algorithms must provide price improvement of one cent.

Examples:

- (1) If the Exchange quotation is 20.10-20.15, and the specialist is represented in both the bid and offer, the algorithm can provide price improvement by buying at 20.12, and selling at 20.13.
- (2) If the Exchange quotation is 20.10-20.16, and the specialist is represented in both the bid and the offer, the algorithm can buy at 20.13 and sell at 20.13.
- (3) If the Exchange quotation is 20.10-20.12, and the specialist is represented in both the bid and the offer, the algorithm can buy at 20.11 and sell at 20.11.

---

<sup>6</sup> Exchange Rule 104(e)(ii) defines meaningful amount as at least 1,000 shares for the 100 most active securities on the Exchange (as the Exchange from time to time shall determine), based on average daily volume, and at least 500 shares for all other securities on the Exchange.

## Proposal to Amend Price Improvement Parameters

The Hybrid Market rules, including those identified above, were implemented in a series of phases beginning with a pilot on December 14, 2005 through February 27, 2007. During the implementation process, the Exchange continually reviewed the operation of the Hybrid Market and changes in the behavior of market participants resulting from the new rules in order to assess whether the rules resulted in operations as envisioned by the Hybrid Market initiative. As a result of this continual review, NYSE amended certain rules to better accomplish the goals intended with the creation of the Hybrid Market.<sup>7</sup>

The Exchange states that it proposed the price improvement parameters in an attempt to balance the goals of preserving incentives for the limit orders on the Display Book to establish the best price and of encouraging price improvement for incoming orders. The Exchange believed that the benefit of providing meaningful price improvement to incoming orders under such circumstances would outweigh the potential disincentives to post aggressive limit orders.

---

<sup>7</sup> See, Securities Exchange Act Release Nos. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR-NYSE-2006-65) (amendment to clarify certain definitions and systematic processing of certain orders in the Hybrid Market); 55316 (February 20, 2007), 72 FR 8825 (February 27, 2007) (SR-NYSE-2007-14) (amendment of Exchange Rule 70.30 in order to remove the concept of a Crowd being “specific areas on the Floor where Floor brokers are generally able to see and hear the business” conducted at each post/panel to “specific identifiable areas where Floor brokers are able to conduct business at each post/panel within the Crowd”); 54427 (September 12, 2006), 71 FR 54862 (September 19, 2006) (SR-NYSE-2006-58) (amendment of Exchange Rule 70.30 to remove the concept of a Crowd as “any five contiguous panels” to “specific identifiable areas on the Floor where Floor brokers are generally able to see and hear the business conducted at each post/panel within the Crowd”); and 54086 (June 30, 2006), 71 FR 38953 (July 10, 2006) (SR-NYSE-2006-24) (amendment to Exchange Rule 104(d)(i) to conform the minimum display requirements for reserve interest for specialists and Floor brokers such that specialists, like Floor brokers, only be required to provide at least 1,000 shares displayed interest at the bid and offer in order to have reserve interest on that side of the quote).

At the time these parameters were included in Exchange Rule 104, the Exchange believed that the stated parameters would discourage the specialist from posting a quote that would improve the best bid or offer by one cent, thus effectively stepping ahead of other liquidity providers to get price priority for execution (i.e., “Penny-ing”).

According to NYSE, a review of its Hybrid Market has demonstrated that specialists’ provision of price improvement has diminished. At the same time, other market participants who may have historically competed with the specialist to provide price improvement are doing so less frequently than before.<sup>8</sup> As a result, the Exchange’s level of price improvement is at a historic low.

It is the view of the Exchange that if the frequency of price improvement for customers is meaningfully increased and the deployment of additional provisional liquidity is sufficiently encouraged, enhanced market quality will result. It is also the Exchange’s view that encouraging specialist firms and their on- and off-Floor counterparts to compete at and inside the national best bid or offer should result in lower intra-day volatility, further enhancing market quality and depth.

Moreover, according to NYSE, the Exchange’s review of its Hybrid Market also has demonstrated that, since the inception of the Hybrid Market, the NYSE quote spread has narrowed.<sup>9</sup> As a result, it is the Exchange’s view that the price improvement parameters by

---

<sup>8</sup> The Exchange reviewed statistics related to price improvement by specialists and other market participants for July 2006 and July 2007. It showed that the rate of specialist price improvement in July 2006 was 1.47% as compared to 0.03% in July 2007. In addition, the price improvement offered by other market participants was 10.66% in July 2006 and 1.39% in July 2007.

<sup>9</sup> See NYSE Completes Hybrid Market Phase III Activation (January 24, 2007) at [www.nyse.com/press/1169637018870.html](http://www.nyse.com/press/1169637018870.html); see also, Hybrid Market Performance and Execution Quality Very Positive, NYSE Says (November 2, 2006) at [www.nyse.com/press/1162466220165.html](http://www.nyse.com/press/1162466220165.html).

which the specialists must abide are no longer warranted, and are in fact unnecessarily burdensome and counter-productive.

The Exchange further believes that the concerns over Penny-ing are outdated. Specifically, the average quoted spread of 96% of the daily volume in NYSE-listed securities is five cents or less. Price improvement in the amount of a penny in these securities is the equivalent of 20% price improvement where the spread is five cents to as much as 100% price improvement where the spread is one cent. Today, several other market centers already provide price improvement in sub-penny increments to their customers.<sup>10</sup> Given the current low overall price improvement being generated in NYSE-listed securities, the Exchange firmly believes that amending Rule 104(e) will lead directly to enhanced market quality.

Accordingly, the Exchange proposes to amend Exchange Rule 104 to modify the conditions that govern the operation of the specialist's algorithmic trading message to allow the specialist to provide price improvement, without minimum trade price parameters based on the quotation spread, to an order as set forth in paragraph (e) when the specialist is represented in a meaningful amount in the bid with respect to price improvement provided to an incoming sell order and in the offer with respect to price improvement provided to an incoming buy order. As such the Exchange seeks to delete subsections (e)(i)(A)-(e)(i)(D) of the current rule. Pursuant to the proposed rule, the price improvement to be supplied by the specialist must be at least one cent.

---

<sup>10</sup> The Exchange states that, included in the market centers that currently provide price improvement in sub-penny increments are the Boston Stock Exchange, National Stock Exchange, Chicago Stock Exchange, NASDAQ, and NYSE Arca.

The Exchange expects that this proposed rule change will prove beneficial for customers sending orders to the Exchange through added liquidity, increased price improvement in frequency, and even further decreased effective spreads.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</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 would 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 Exchange has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and

---

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing.<sup>15</sup> However, Rule 19b-4(f)(6)(iii) 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 operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to encourage price improvement while still requiring specialists to be represented in a meaningful amount in the bid or offer. The Commission also notes that the proposed elimination of the minimum price improvement parameters based on the quotation spread is consistent with the rules of other exchanges.<sup>16</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>17</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 the furtherance of the purposes of the Act.

---

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b-4(f)(6)(iii).

<sup>16</sup> See, e.g., Amex Rule 131-AEMI(q) and NYSE Arca Rule 7.31(h)(4) .

<sup>17</sup> For purposes only of waiving the 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).



#### 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-2007-81 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-2007-81. 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 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-2007-81 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.<sup>18</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>18</sup> 17 CFR 200.30-3(a)(12).