

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56599; File No. SR-NYSE-2007-93)

October 2, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Rule 70 (Bids and Offers) and Rule 104 (Dealings by Specialists)

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 September 28, 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. On October 2, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 70 (Bids and Offers) and Exchange Rule 104 (Dealings by Specialists) to reduce the requirement that a Floor broker and a specialist, respectively, post 1,000 shares of displayed liquidity at the Exchange best bid or offer in order to use the reserve function. The text of the proposed rule change is available on the NYSE’s Web site (<http://www.nyse.com>), at the NYSE, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces and supersedes the original filing in its entirety.

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

The Exchange seeks to amend Exchange Rules 70.20 and 104(d) to reduce the requirement that a Floor broker and a specialist, respectively, post 1,000 shares of displayed liquidity at the Exchange best bid or offer in order to use the reserve function.

a. Current Ability to Use Reserve Function

Currently, Floor brokers' interest is represented electronically by including these orders in a separate file ("Floor broker agency interest file") within the Exchange's Display Book system.⁴ Floor brokers are permitted to place the liquidity representing customer orders at or outside the best bid or offer on the Exchange ("Exchange BBO"). Similarly, specialists have the ability to place in a separate file ("specialist interest file") within the Display Book system their dealer interest at prices at or outside the Exchange BBO. Pursuant to Exchange Rules 70.20 and 104(d), some of the interest in either of these files that is at the Exchange BBO may, at the choice of the Floor broker or specialist, be non-displayed interest. That is, the Floor broker or specialist may decide to hold additional interest in "reserve" and not have it be part of the

⁴ The Display Book[®] system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

published bid or offer. Reserve interest is eligible to participate in automatic executions on the Exchange after displayed interest on that side of the market trades. Reserve Floor broker interest and specialist interest participate on parity with each other when trading with contra-side interest.

Exchange Rules 70.20 and 104(d) further provide that Floor brokers and specialists, respectively, must display a minimum of 1,000 shares of interest at the Exchange BBO on the same side of the market in order to maintain undisplayed reserve interest at that price. For example, if a Floor broker or specialist were to choose to have non-displayed interest in their files at the Exchange bid, 1,000 shares must be made part of the disseminated bid.⁵ Both Rule 70.20 and Rule 104(d) require that, if an execution occurs that does not exhaust displayed Floor broker or specialist interest at the Exchange BBO, the displayed interest would automatically be replenished from any reserve interest so that at least 1,000 shares (or whatever amount remains if less than 1,000 shares) would be displayed.

b. Reduction of Minimum Display Requirement

The Exchange is proposing to reduce the minimum display requirement that Floor brokers and specialists must meet to one round-lot (for most stocks, 100 shares) in order to have non-displayed interest in the Exchange market. The ability to have reserve interest was designed, in part, to allow Floor brokers flexibility to determine the best way in which to represent customer orders, especially larger customer orders. One way in which they can do this is to decide what portion of customer interest should be displayed based on the Floor broker's

⁵ Specialists were originally required to have 2,000 shares of displayed interest at the Exchange BBO in order to have non-displayed reserve interest. However, on June 30, 2006, the Commission approved a proposed rule change submitted by the Exchange to conform the minimum display to that for Floor brokers. See Securities Act Release No. 54086 (June 30, 2006), 71 FR 38953 (July 10, 2006) (SR-NYSE-2006-24).

sense of the market in a particular security. The reserve gives customers the advantage of both auction market and automatic execution capability, without the risk of missing the market.

The Exchange believes that, for specialists, the reserve function allows the possibility of more liquidity at the best bid or offer price and facilitation of single-price executions on behalf of customers.

The Exchange has found that the current display requirement may be acting as a hindrance to the utilization of Floor broker agency interest and specialist interest file reserve functionality. For many stocks traded on the Exchange, 1,000 shares would be a sizeable order or would represent a sizeable position commitment for a specialist based on the trading characteristics of the stock. In less active securities, there would be no ability to use the reserve functionality since there would not be a sufficient volume of shares available beyond the current minimum display requirement.

This can have a compounding effect of inhibiting trading that could take place if reserves could be available for executions beyond the displayed quotation. In addition, the Exchange is aware that concerns associated with possible signaling of interest have arisen in connection with the display requirement. The Exchange states that, as trade and quote sizes have declined on the Exchange,⁶ analysis of displayed amounts or the absence of a displayed amount can signal that there is no reserve available and inform a trader or an algorithm that order size can be limited at a particular price point. Additional interest may then be priced at higher or lower prices, creating more volatility.

⁶ The average size of quotes on the Exchange has declined from 2,146 shares to 1,231 shares in the period from November 2006 to August 2007. Average execution size has declined from 334 shares to 254 shares during the same period.

The Exchange believes that the reduction of the minimum display requirement will not have a detrimental impact on trading or quoting on the Exchange. There remains an incentive for displaying interest, versus non-display of interest, in that displayed interest has priority in execution over non-displayed interest. Reduction of the display requirement will also allow Floor brokers and specialists the flexibility to align their strategies more closely to the trading characteristics of individual stocks and the market in general without an imposed minimum of 1,000 shares.

The Exchange is retaining the ability to automatically replenish the displayed amount of interest at the Exchange BBO when trades reduce or exhaust such displayed interest. As is currently the case today, the displayed quantity will be replenished based on the initial instructions from the Floor broker or specialist. For example, assume a Floor broker or specialist had originally placed 2,000 shares in reserve and had given instructions to maintain 500 shares as a displayed amount in the quote. If an execution takes place which reduces the displayed amount to 200 shares, 300 shares would be shifted from the reserve to replenish the displayed amount. If the reserve quantity is less than the amount to be displayed, the remainder of the reserve interest will be displayed in full. In the aforementioned example, if only 200 shares of the original reserve interest remains, then the displayed quantity will be replenished by the final 200 shares, bringing the total displayed amount to 400 shares. In this way, Floor brokers and specialists will have the flexibility to replenish liquidity that is in keeping with the market need at the specific time and at that price point. Moreover, if Floor brokers and specialists are able to display liquidity in keeping with the current trading characteristics of the security, then there is more incentive for them to use the reserve function and thus provide additional liquidity to the market.

The Exchange further believes that the reduction of the display requirement to use the reserve function will not adversely impact current quoted size. The Exchange understands that specialists have not been using reserves to any great extent and, thus, the reduction of the minimum display requirement will not have any impact on the displayed quotes representing specialist interest.

Lastly, the Exchange is not aware of any other domestic securities market that has a minimum display requirement for the use of its reserve function on the same scale as that currently required by the NYSE, yet many of these markets have sizeable displayed liquidity.⁷

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁸ that the 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)⁹ 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

⁷ For example, American Stock Exchange ("Amex") Rule 131(s)-AEMI (Types of Orders) defines a reserve order and allows the visible size of the reserve to be "...not less than one lot...". See also The NASDAQ Stock Market LLC ("Nasdaq") Rule 4751(e)(3) (defining "non-displayed order").

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U. S. C. 78k-l(a)(1).

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 proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹² normally does not become operative for 30 days after the date of its 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 NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give 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 requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

delay is consistent with the protection of investors and the public interest because NYSE's proposed minimum display requirement for reserve orders is similar to the minimum display requirement of another exchange.¹⁴ For these reasons, the Commission designates that the proposed rule change become operative on October 2, 2007, the date the Exchange filed Amendment No. 1.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.¹⁶

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-2007-93 on the subject line.

¹⁴ See Amex Rule 131(s)-AEMI. See also Nasdaq Rule 4751(e)(3).

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

¹⁶ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on October 2, 2007, the date on which the Exchange filed Amendment No. 1.

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-2007-93. 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, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the 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-2007-93 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.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).