

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56958; File No. SR-NYSE-2006-99)

December 13, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change as Modified by Amendment Nos. 2 and 3 Thereto Relating to Rule 104 (Dealings by Specialists)

I. Introduction

On November 9, 2006, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 104 to allow the specialist’s algorithm systems to generate trading messages that provide supplemental specialist volume to partially or completely fill an order at a sweep price. The Exchange filed and withdrew Amendment No. 1 to the proposal on October 24, 2007 and October 29, 2007, respectively. The Exchange filed Amendment Nos. 2 and 3 on October 29, 2007 and November 5, 2007, respectively. The proposed rule change was published for public comment in the Federal Register on November 13, 2007.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 56747 (November 5, 2007), 72 FR 63946 (“Notice”).

Currently, Rule 104(b)(i)(F) permits the specialist proprietary algorithm (“Specialist Algorithm”) to generate a trading message to provide supplemental specialist volume at the Exchange published best bid or offer (“BBO”). This trading message enables specialists, through the use of their algorithms, to provide more volume where, technically, there is no other interest available to trade with the customer order.

The Exchange seeks to further provide its customers with additional opportunities for a better priced execution by amending Rule 104(b)(i)(F) to allow the specialist to also partially or completely fill an order beyond the Exchange published best bid or offer at a sweep price.⁴ The Specialist Algorithm will generate this trading message in reaction to one order at a time and only as that order is entering Exchange systems. Additionally, this trading message will only be able to interact with the targeted order to add volume at one place, either at the Exchange best bid or offer or at a particular sweep price. In other words, the specialist will not have two opportunities to provide supplemental specialist volume to the incoming order at the Exchange best bid or offer and also at a particular price point should the order sweep the Display Book. There will be no change with respect to priority and parity. The specialist’s algorithm will make a determination about where and how much supplemental specialist volume to provide based on the state of the book information when the order is received by Exchange systems.

⁴ The instant filing was initially filed with the Commission on November 9, 2006. In the notice, the Exchange stated that the proposed functionality inadvertently became operational in Exchange systems without Commission approval on or about January 24, 2007. The proposed rule change, as amended, is intended to codify the current Exchange system functionality. See Notice, supra note 3, at note 6.

The specialist would not be required to buy the full size remaining of the sell order at the particular sweep price. The Exchange states that there is no disadvantage to the customer in allowing the specialists to partially fill an order at a particular sweep price especially when applicable rules only allow the supplemental specialist volume to interact with the order when no other interest exists.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁵ which requires an Exchange to 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.⁶ Specifically, the Commission believes that the proposal should benefit investors and the public interest by enabling customers to receive better priced executions than they otherwise would have received. Additionally, when specialists choose, through their algorithms, to partially or completely fill orders beyond the Exchange BBO, the Commission notes that the Exchange has represented that its systems would not permit a trading message to provide supplemental specialist volume that would trade-through a protected quotation in violation of Rule 611 of Regulation NMS under the Act.⁷ The Commission also notes that the supplemental

⁵ 15 U.S.C. 78f(b)(5).

⁶ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 17 CFR 242.611.

specialist volume would yield to displayed and reserve interest (i.e., customer limit orders, Floor broker agency interest and specialist interest).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSE-2006-99), as amended, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).