

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56777; File No. SR-NYSE-2007-87)

November 9, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Incorporate Certain Definitions of Exchange Act Rules 13d-1 and 13d-3 into NYSE Rule 460

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 28, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On October 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule, as amended, 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 NYSE Rule 460 to reference Rules 13d-1(i) and (j), and 13d-3, under the Act for the purpose of determining whether a specialist is a beneficial owner of an equity security in which the specialist is registered, and to make non-substantive clarifying amendments to the rule. The text of the proposed rule change is available at NYSE, the Commission’s Public Reference Room, and <http://www.nyse.com>.

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<sup>1</sup> 15 U.S.C 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 NYSE 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 NYSE 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 NYSE is proposing to add NYSE Rule 460.40 to incorporate the definitions of Rules 13d-1(i) and (j), and 13d-3, under the Act<sup>3</sup> for the purpose of determining whether a specialist is a beneficial owner of more than ten percent of any security in which the specialist is registered under NYSE Rules 460.10 and 460.20.

NYSE Rule 460.10 precludes specialists from being the beneficial owner, either directly or indirectly, of more than ten percent of the outstanding shares of any equity security in which the specialist is registered. For purposes of determining whether this ten percent threshold has been met, the specialist's position is aggregated with those of the specialist's member organization, as well as other members, allied members, approved persons, officers, and employees of the specialist's member organizations.

The rule contains a number of exceptions, including that the ten percent ownership threshold does not apply to specialists if the security is a convertible or derivative security, American Depositary Receipt, Global Depositary Receipt, or similar instrument so long as the

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<sup>3</sup> 17 CFR 240.13d-1(i) and (j); and 17 CFR 240.13d-3.

conversion of such instrument would not result in a position in the common stock of such security that exceeds that ten percent threshold.

Similarly, specialists in Exchange Traded Funds and other investment company units or Trust Issued Receipts can own such securities so long as the redemption of such securities would not result in a position in any equity security in which such specialist is also registered that exceeds the ten percent threshold.

To ensure consistency with federal laws and regulations, the Exchange proposes adding NYSE Rule 460.40 to incorporate the definition under the Act for determining beneficial ownership of securities. Rule 13d-3 under the Act defines a beneficial owner as any person who directly or indirectly has either voting power over a security or investment power, including the power to dispose, or to direct the disposition of a security. The rule further provides that all securities in the same class, regardless of the form that such beneficial ownership takes, shall be aggregated for purposes of calculating the number of shares beneficially owned by such person. Rule 13d-3 also defines how various financial instruments, including options, warrants, convertible securities, and trusts should be treated for purposes of determining beneficial ownership.

Rule 13d-1(i) under the Act provides that for purposes of Section 13(d) of the Act,<sup>4</sup> including Rule 13d-3 thereunder, the term “equity security” refers to those securities that are registered pursuant to Section 12 of the Act.<sup>5</sup> In addition, Rule 13d-1(j) under the Act provides that for purposes of determining the number of outstanding shares for any security, firms can rely on an issuer’s most recent quarterly or annual report, or any more current report, that has been filed with the Commission.

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<sup>4</sup> 15 U.S.C. 78m.

<sup>5</sup> 15 U.S.C. 78l.

NYSE Regulation staff also proposes making technical amendments to both NYSE Rule 460.10 and 460.20 to clarify the text of those rules. These proposed revisions would not effect any substantive changes to the rule and are intended to make the rule easier to implement and enforce.

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> of the Act that an 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.

### 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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

- (A) by order approve such proposed rule change, or

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<sup>6</sup> 15 U.S.C. 78f(b)(5).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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-2007-87 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-2007-87. 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 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-2007-87 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>7</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).