

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57287; File No. SR-NYSE-2008-12)

February 7, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE 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 February 4, 2008, 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 prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.⁴ 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 NYSE proposes to amend Exchange Rule 104 (Dealings by Specialists) to conform its language to other recent amendments of Rule 104 and Rule 70 (Bids and Offers).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and 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 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 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 proposes to amend Exchange NYSE Rule 104 (Dealings by Specialists) to conform its language to recent amendments of NYSE Rule 104 and NYSE Rule 70 (Bids and Offers). Specifically, on October 2, 2007, the Exchange amended NYSE Rules 70 and 104 to reduce the minimum display requirement to 100 shares for Floor brokers and specialists to utilize the reserve functionality of the e-Quote and s-Quote.⁵ In doing so, the Exchange referred to the new display requirement in terms of a "round-lot" instead of using the term "shares." The change in language takes into account that, for certain equity securities that trade on the Exchange, a round-lot is other than 100 shares.⁶

⁵ See Securities Exchange Act Release No. 56599 (October 2, 2007) 72 FR 57622 (October 10, 2007) (SR-NYSE-2007-93).

⁶ Exchange Rule 55 (Unit of Trading—Stocks and Bonds) provides in pertinent part, that: "The unit of trading in stocks shall be 100 shares, except that in the case of certain stocks designated by the Exchange the unit of trading shall be such lesser number of shares as may be determined by the Exchange, with respect to each stock so designated."

Pursuant to Exchange Rule 104(e), specialists are allowed to provide price improvement to an order through the use of an algorithmically generated trading message provided the specialist is represented in the bid or offer in a “meaningful amount.” This is defined in the Rule as 1,000 shares for the 100 most active securities on the Exchange, and 500 shares for all other securities on the Exchange.

The Exchange proposes to amend the language in NYSE Rule 104(e)(ii) in order to conform it to the language contained in recent amendments to NYSE Rule 70.20(c) and NYSE Rule 104(d), by changing the reference to “1,000 shares” to “ten round-lots” and the reference to “500 shares” to “five round-lots.”

The Exchange believes that the proposed amendment clarifies the operation of the rule by adding language that takes into account those equity securities that trade on the Exchange in units other than 100 shares.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, in that it is 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 Exchange believes that the instant proposal is consistent with the objectives of the Act in that the amendment serves to remove the ambiguity that currently exists in the rule text of Exchange Rule 104(e)(ii) by clarifying the number of shares that a specialist must display

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

in order to use his or her ability to provide price improvement in those equity securities that trade on the Exchange in units other than 100 shares.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹¹

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ Rule 19b-4(f)(6) also requires the Exchange 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 pre-filing requirement.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes the waiver of this period will allow it to immediately clarify certain terms within NYSE Rule 104, which it believes is in the public interest as it will avoid ambiguity or confusion by market participants as to how NYSE Rule 104 operates. The Commission believes such waiver is consistent with the protection of investors and the public interest because it presents no new issues and would provide clarification of the Exchange's rules with respect to equity securities that trade on the Exchange in units other than 100 shares. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.¹³

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 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:

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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. Please include File Number SR-NYSE-2008-12 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-2008-12. 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 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the 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-2008-12 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).