

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58708; File No. SR-NYSE-2008-92)

October 1, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Operation of Reserve Orders on the Exchange to the Earlier of December 31, 2008 or the Date on Which the Commission Approves the Exchange's Filing Pursuant to SR-NYSE-2008-46

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 29, 2008, New York Stock Exchange LLC ("NYSE" or the "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 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 extend the operation of Reserve Orders on the Exchange to the earlier of December 31, 2008 or the date on which the Commission approves the Exchange's filing pursuant to SR-NYSE-2008-46. The text of the proposed rule change is available at NYSE, [www.nyse.com](http://www.nyse.com), and the Commission's Public Reference Room.

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

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

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

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 New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to amend NYSE Rule 13 to extend the operation of its Reserve Order pilot to the earlier of December 31, 2008 or the approval date of the Exchange’s New Market Model<sup>3</sup> pilot.

Background

Reserve Orders were approved by the Commission on April 18, 2008<sup>4</sup> and instituted on the Exchange on April 23, 2008. Reserve Orders are limit orders available to all market participants that enable them to maintain non-displayed liquidity on the Exchange’s Display Book system<sup>®</sup> (“Display Book”) for execution.<sup>5</sup> A portion of the interest represented by a Reserve Order is published (displayed) when it is or becomes the Exchange best bid or offer, while the remaining interest is not displayed, i.e., is held in “reserve.” This reserved portion is used to replenish the displayed amount (which is required to be at least one round lot) when

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<sup>3</sup> See Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46) (“New Market Model filing”).

<sup>4</sup> See Securities Exchange Act Release No. 57688 (April 18, 2008), 73 FR 22194 (April 24, 2008) (SR-NYSE-2008-30). The pilot initially operated in 100 NYSE-traded securities. The Exchange subsequently filed with the Commission to expand the operation of the pilot to all NYSE-traded securities. See Securities Exchange Act Release No. 57792 (May 7, 2008), 73 FR 27601 (May 13, 2008) (SR-NYSE-2008-36).

<sup>5</sup> The Display Book<sup>®</sup> 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.

trades reduce or exhaust such displayed interest. Both displayed and reserve interest is available for automatic execution on the Exchange. With respect to the portion of Reserve Orders that is not displayed, this interest is available for execution only after all displayed interest at the Exchange bid or offer has been executed.

Reserve Orders are also available for manual execution. While the majority of transactions on the Exchange are executed electronically, there are times when manual execution is required. In these situations, specialists seek information on the available interest at various price points to determine the appropriate price at which to complete the manual execution. As with reserve interest in a Floor broker's agency interest file, information on reserve interest entered directly into Exchange systems through Reserve Orders will be made available to the specialist only in the aggregate at each price point for the express purpose of the specialist effecting a manual execution. The reserve interest is not distinguished from other interest available to be executed at a specific price point. Rather, Exchange systems display to the specialist the total number of shares available for execution at the price point and include reserve interest in the total number. In this manner such reserve interest will be available for trades that take place on the Floor of the Exchange that will not be conducted automatically.

#### Extension of the Reserve Order Pilot

The Exchange has proposed in the New Market Model filing to expand Reserve Orders to include a Minimum Display Reserve Order and a Non-Displayed Reserve Order. The latter type of reserve interest for all market participants would not have any of the order designated for display. The Exchange proposed to create the Non-Displayed Reserve Order for Off-Floor

participants and provide Floor brokers and specialists<sup>6</sup> with equivalent functionality.<sup>7</sup>

The Reserve Order type currently operating on the Exchange has been accepted by the Exchange's customer base and is currently being used actively. The Exchange believes that by providing all market participants with the ability to maintain non-displayed liquidity on the Display Book encourages market participants to post liquidity and thus offers Exchange customers additional opportunities for price improvement by expanding the interest available to execute against incoming orders at a single price. The Exchange therefore seeks to continue the pilot for Reserve Orders with a minimum display requirement until the earlier of December 31, 2008 or such time as the New Market Model filing is approved.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)<sup>8</sup> of the Act, in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms 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

No written comments were solicited or received with respect to the proposed rule change.

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<sup>6</sup> In the New Market Model, specialists will be replaced by "designated market makers" or "DMMs".

<sup>7</sup> See New Market Model filing, Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder<sup>10</sup> because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not 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 the public interest.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>11</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 asked the Commission to waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>12</sup> which would make the rule change effective and 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 the proposal is designed to extend the operation of the existing Reserve Order pilot without interruption. Extending the Reserve Order pilot would continue to enable off-Floor market participants to compete through their ability to maintain non-displayed liquidity on the Exchange's Display

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

Book system. Accordingly, the Commission designates the proposed rule change effective and operative upon filing with the Commission.<sup>13</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 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:

##### 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-2008-92 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-92. 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

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<sup>13</sup> 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. See 15 U.S.C. 78c(f).

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 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 publicly available. All submissions should refer to File Number SR-NYSE-2008-92 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon  
Acting Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).