SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58722; File No. SR-NYSE-2008-95)

October 2, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 104.10 to extend the Duration of the Pilot Program Applicable to Conditional Transactions as defined in Rule 104.10(6)(i) in all Securities to the Earlier of December 31, 2008 or the Approval of SR-NYSE-2008-46

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 30, 2008, 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 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 amend Exchange Rule 104.10 to extend the duration of the pilot program applicable to Conditional Transactions as defined in Rule 104.10(6)(i) in all securities to the earlier of December 31, 2008 or the approval of SR-NYSE-2008-46.

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 self-regulatory organization 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 those 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 parts of such statements.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Exchange Rule 104.10 to extend the duration of the pilot program applicable to Conditional Transactions as defined in Rule 104.10(6)(i) in all securities to the earlier of December 31, 2008 or the approval of SR-NYSE-2008-46.[3]

On October 26, 2007, the Securities and Exchange Commission (the "Commission") approved the ability of NYSE specialists to effect Conditional Transactions pursuant to Exchange Rule 104.10(6) in all securities traded on the NYSE to operate as a pilot through March 31, 2008 (the "Conditional Transaction Pilot").[4]

(1) Current Conditional Transaction Pilot

Conditional Transactions are specialists' transactions that establish or increase a position and reach across the market to trade as the contra-side to the Exchange published bid or offer. Under the current Conditional Transaction Pilot, NYSE specialists are allowed to effect Conditional Transactions in all securities traded on the NYSE until September 30, 2008.

When a specialist effects a Conditional Transaction, he or she has obligations to re-enter the market on the opposite side from which the specialist effected his or her Conditional Transaction pursuant to the rule. Specifically, pursuant to Exchange Rule 104.10(6)(ii), "Appropriate" re-entry means "re-entry on the opposite side of the market at or before the price

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[3] See Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46) ("New Market Model filing").

[4] See Securities Exchange Act Release No. 56711 (October 26, 2007), 72 FR 62504 (November 5, 2007) (SR-NYSE-2007-83). The Pilot was next extended for an additional three months until June 30, 2008. See Securities Exchange Act Release No. 57592 (April 1, 2008), 73 FR 18836 (April 7, 2008) (SR-NYSE-2008-23). On June 26, 2008, the operation of the Pilot was extended until September 30, 2008. See Securities Exchange Act Release No. 58040 (June 26, 2008), 73 FR 38272 (July 3, 2008) (SR-NYSE-2008-50).

participation point or the 'PPP.'"[5] Depending on the type of Conditional Transaction, a specialist's obligation to re-enter may be immediate or subject to the same re-entry conditions of Non-Conditional Transactions.[6] Conditional Transactions are subject to a specialist's overall negative obligation.[7] As a condition of operating the Conditional Transaction Pilot, the

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5 NYSE Rule 104.10(6)(iii)(a) provides that the PPP identifies the price at or before which a specialist is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a specialist is meeting its obligations. The Exchange issued guidance regarding PPPs in January 2007. See NYSE Member Education Bulletin 2007-1 (January 18, 2007).

6 NYSE Rule 104.10(6)(iii)(c) provides that immediate re-entry is required after the following Conditional Transactions:

(I) A purchase that (1) reaches across the market to trade with an Exchange published offer that is above the last differently priced trade on the Exchange and above the last differently priced published offer on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published offer size.

(II) A sale that (1) reaches across the market to trade with an Exchange published bid that is below the last differently priced trade on the Exchange and below the last differently priced published bid on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published bid size.

Pursuant to current NYSE Rule 104.10(6)(iv), Conditional Transactions that involve:

(a) A specialist's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange **or** above the last differently-priced published offer on the Exchange; and

(b) A specialist's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange are subject to the re-entry requirements for Non-Conditional Transactions pursuant to Rule 104.10 (5)(i)(a)(II)(c).

NYSE Rule 104.10(5)(i)(a)(II)(c) provides:

Re-entry Obligation Following Non-Conditional Transactions - The specialist's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Non-Conditional Transactions. Such re-entry transactions should be commensurate with the size of the Non-Conditional Transactions and the immediate and anticipated needs of the market.

7 The negative obligation, which is part of NYSE Rule 104, requires that specialists restrict their dealings so far as practicable to those reasonably necessary to permit the specialists to maintain a fair and orderly market. Specifically, NYSE Rule 104(a) provides:

Exchange committed to providing the Commission with data related to specialist executions of Conditional Transactions. The Exchange has provided the Commission's Division of Trading and Markets and the Office of Economic Analysis with statistics related to market quality, specialist trading activity and sample statistics for the months of November 2007 through July 2008. The data included the daily Consolidated Tape volume in shares, daily number of trades, daily high-low volatility in basis points, and daily close price in dollars.

The Exchange will continue to provide data to the Commission on or before the 20th of the calendar month as outlined in its filing to create the Exchange New Market Model.[8]

Furthermore, NYSE Regulation ("NYSER") continues to have appropriate surveillance procedures in place to surveil for compliance with the negative obligations of specialists. NYSER monitors, using a pattern-and-practice and/or outlier approach, specialist activity that appears to cause or exacerbate excessive price movement in the market (since such transactions would appear to be in violation of a specialist's negative obligation). In this connection, NYSER continues to surveil for specialist compliance with the PPP re-entry requirements, and, based on its reviews of surveillance data to date, has not identified significant compliance issues. The Division of Market Surveillance of NYSER also monitors specialist trading to cushion such price movements.

No specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he, his member organization or any other member, allied member, or approved person, (unless an exemption with respect to such approved person is in effect pursuant to Rule 98) in such organization or officer or employee thereof is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer in such security.

8 See Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46) ("New Market Model filing").

(2) Conclusion

The Exchange believes that an extension of the current Conditional Transaction Pilot program will continue to provide NYSE specialists with the flexibility to compete and to efficiently and systematically trade and quote in their securities as well as equip them to fluidly manage their risk.

In view of the above, the NYSE believes it is appropriate to extend the operation of the Conditional Transaction Pilot program to the earlier of December 31, 2008 or the approval of SR-NYSE-2008-46.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[9] 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] in that it seeks to assure economically efficient execution of securities transactions. The Exchange believes that extending the operation of the Conditional Transaction Pilot will provide specialists with the required flexibility to compete, thus adding value to the Exchange market by encouraging specialists to continue to commit capital. Ultimately, the Exchange believes that the Conditional Transaction Pilot benefits the marketplace by allowing specialists to manage their risk and, therefore, provides them with the

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9 See Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008)(SR-NYSE-2008-46) ("New Market Model filing").

10 15 U.S.C. 78k-1(a)(1).

ability to increase the liquidity they provide at prices outside the best bid and offer, as well as meet their obligation to bridge temporary gaps in supply and demand and dampen volatility.

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 either solicited or received with respect to the proposed rule change.

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

The Exchange has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 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. Therefore, the foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[11] and Rule 19b-4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.[13] However, Rule 19b-4(f)(6)(iii)[14] permits the Commission

11 15 U.S.C. 78s(b)(3)(A).

12 17 CFR 240.19b-4(f)(6).

13 Id. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 this requirement.

to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange believes that the instant filing is non-controversial because it merely seeks to extend the operation of the current Conditional Transaction Pilot. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.[15]

The Exchange further respectfully requests that the Commission waive the 30-day delayed operative date so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b-4(f)(6)[17] thereunder. The Exchange submits that good cause exists to justify waiver of the operative delay because the instant filing seeks to extend the operation the Conditional Transaction Pilot without interruption thus allowing specialists to continue managing their risk and therefore providing them with the ability to increase the liquidity they provide at prices outside the best bid and offer, as well as meeting their obligation to bridge temporary gaps in supply and demand, and dampening volatility. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Conditional Transaction Pilot to continue without interruption through the earlier of December 31, 2008 or the approval SR-NYSE-2008-46 and provide the Exchange and the Commission additional time to evaluate the pilot.[18] Accordingly, the

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14 17 CFR 240.19b-4(f)(6).

15 17 CFR 240.19b-4(f)(6).

16 15 U.S.C. 78s(b)(3)(A).

17 17 CFR 240.19b-4.

18 For the 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. 78(c)(f).

Commission designates the proposed rule change effective and operative upon filing with the Commission.

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. Please include File Number SR-NYSE-2008-95 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2008-95. 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 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-2008-95 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.[19]

Florence E. Harmon
Acting Secretary

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[19] 17 CFR 200.30-3(a)(12).