

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59025; File No. SR-NYSE-2008-123)

November 26, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC to Establish the Minimum Price Variation of \$0.0001 for Orders and Quotations in Equity Securities that are Priced Below \$1.00 Per Share

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 26, 2008, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 62 (Variations) to establish the minimum price variation of \$0.0001 for orders and quotations in equity securities that are priced below \$1.00 per share, which will enable the Exchange to accept orders in sub-penny increments for those securities.

The text of the proposed rule change is available at www.nyse.com, NYSE’s principal office, 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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

1. Purpose

The Exchange seeks to amend Exchange Rule 62 (Variations) to establish the minimum price variation of \$0.0001 for orders and quotations in equity securities that are priced below \$1.00 per share, which will enable the Exchange to accept orders in sub-penny increments³ for those securities.

Background

On August 28, 2000, the Exchange began trading in decimals.⁴ At that time, the Exchange amended NYSE Rule 62 to provide that bids and offers in securities traded on the NYSE would be at a minimum price variation set by the NYSE.⁵ At the initiation of decimal trading, the NYSE announced that the minimum price variation for all stocks trading on the Exchange would be one cent (\$.01).⁶ Rule 62 was subsequently amended to establish a

³ The Exchange is currently modifying its systems to enable it to quote and trade in sub-penny increments and will file a separate proposal with the Commission at a later date.

⁴ See Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

⁵ See Securities Exchange Act Release No. 43230 (August 30, 2000), 65 54589 (September 8, 2000) (SR-NYSE-00-22).

⁶ Id.

minimum price variation of \$.10 (ten cents) for securities trading on the Exchange priced at \$100,000 and above.⁷

On April 6, 2005, the SEC adopted Regulation NMS, which is a series of initiatives designed to modernize and improve the national market system for trading equity securities. Rule 612 of Regulation NMS⁸ permits markets to accept, rank and display orders priced less than \$1.00 per share in a minimum pricing increment of \$0.0001.

Currently the Exchange systems do not accept orders in sub-penny increments for securities priced below \$1.00; however, Exchange systems recognize protected quotations with a sub-penny component in its round-lot⁹ market and accommodate away market executions in sub-pennies, in compliance with SEC Rules 611 and 612.

Proposed Amendment to NYSE Rule 62

The Exchange proposes to amend its Rule 62 to conform to the provisions of SEC Rule 612 by establishing that the minimum price variation for orders and quotations in equity securities on the Exchange below a \$1.00 will be \$0.0001. Specifically, the Exchange proposes to amend .10 under Supplementary Material of Rule 62 to provide the following table:

<u>Price of Order or Interest</u>	<u>Minimum Price Variation</u>
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⁷ See Securities Exchange Act Release No. 49374 (March 8, 2004), 69 FR 11923 (March 12, 2004)(SR-NYSE-2004-10).

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) 17 CFR 242.612.

⁹ The Exchange system enhancements that will enable recognition of sub-penny quotations for pricing of odd-lots in the odd-lot system are contained in the technology associated with Phase 2 implementation of the New Market Model. See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008)(SR-NYSE-2008-46). Until the conclusion of the second Phase of implementation, which is scheduled to be completed no longer than ten weeks after October 24, 2008, those odd-lot orders that would receive an execution price based on the NBBO as set forth in NYSE Rule 124 will be priced at the last NBBO that did not contain a sub-penny price.

<u>Less than \$1.00</u>	<u>\$.0001</u>
<u>\$1.00 – 99,999.99</u>	<u>\$.01</u>
<u>\$100,000 and greater</u>	<u>\$.10</u>

When an order is received on the NYSE that contains a sub-penny component, the Exchange will round down any bid price down to the next round penny and round any offer price up to the next round penny. The order will be sent to NYSE trading systems and the Consolidated Quotation System¹⁰ with the rounded price. The Exchange therefore proposes to replace .20 under Supplementary Material with language to indicate that for securities whose MPV is \$.0001, the Exchange will round the bid price down to the next whole penny or round the offer price up to the next whole penny when transmitting the bid or offer to the Consolidated Quotation System. The rounded price assigned to the order or quotation is used for all order handling purposes including routing and execution.

The Exchange intends to initiate the systemic operation related to the above rule change on November 28, 2008. Commencing operation on that date will enable the Exchange, on a traditionally moderate trading day, to ensure the optimal efficiency of its software prior to resumption of normal trading on December 1, 2008.

2. Statutory Basis

¹⁰ This practice is currently done on NYSE Arca Exchange. Commentary .04 NYSE Arca Rule 7.6(a) provides:

The minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001, provided, however, that the Corporation shall round the bid down to the next whole penny or the offer up to the next whole penny and display the rounded bid or offer in the consolidated quotation system.

The basis under the Securities Exchange Act of 1934 (the “Act”)¹¹ for this proposed rule change is the requirement under Section 6(b)(5)¹² that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)¹³ in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors’ orders in the best market and provide an opportunity for investors’ orders to be executed without the participation of a dealer. The Exchange believes that the instant proposal is in keeping with these principles in that it seeks to amend NYSE Rule 62 to conform to the provisions of SEC Rule 612 by establishing that the minimum price variation for securities trading on the Exchange below a \$1.00 will be \$0.0001.

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.

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

¹¹ 15 U.S.C. 78a.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1).

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

NYSE requested that the Commission waive the 30-day operative delay, which would make the rule change operative as of November 28, 2008. The Commission hereby grants the Exchange's request and believes this action is consistent with the protection of investors and the public interest.¹⁶ The Exchange's proposed rule is based on that of another exchange¹⁷ and does not appear to raise any novel or significant issues. Accordingly, the Commission designates the proposed rule change operative as of November 28, 2008.

At any time within 60 days of the filing of such 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.¹⁸

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). 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.

¹⁶ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ See supra note 10.

¹⁸ 15 U.S.C. 78s(b)(3)(C).

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-2008-123 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-2008-123. 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 also will 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-2008-123 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

¹⁹ 17 CFR 200.30-3(a)(12).