

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57003; File No. SR-NYSE-2007-112)

December 20, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 15 (ITS and Pre-Opening Applications)

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 December 14, 2007, 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 substantially by NYSE. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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 NYSE Rule 15 (Intermarket Trading System Plan and Pre-Opening Applications) to create the procedures for publishing pre-opening price information. The text of the proposed rule change is available at www.nyse.com, the Exchange, and the Commission’s Public Reference Room.

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).

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 Item IV below. 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 Exchange proposes to amend Rule 15 to create procedures for the dissemination of pre-opening price information in view of the elimination of the requirement to publish the same pursuant to the Intermarket Trading System (“ITS”) Plan.

From 1978 until its elimination in March 2007, the Exchange routed orders (as commitments to trade) to other market centers and received them through ITS. ITS facilitated trades between members located in different markets. Through ITS, a member in any participating market could send orders, as commitments to trade, at the bid or offer on any other participating market. The ITS Plan was administered by the participating markets, and was filed with and approved by the Commission.

In 2006, the Commission approved a national market system plan (“Linkage Plan”), which became effective on October 1, 2006.⁴ The purpose of the Linkage Plan was to enable the plan participants to act jointly in planning, developing, operating and regulating the NMS Linkage System that was to electronically link the Participant Markets to one another. The

⁴ See Securities Exchange Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006).

Linkage Plan ran concurrently with the ITS Plan until March 5, 2007, at which time the ITS Plan terminated and SEC Rule 611 (the Order Protection Rule) of Regulation National Market System (“Reg. NMS”),⁵ became operative. The Linkage Plan terminated on June 30, 2007.

The ITS Plan required each market center to have procedures that governed the dissemination of pre-opening price information and also provided a model rule. The model rule is encompassed in Rule 15 (the “Pre-Opening Application”). According to Rule 15, there are two instances where the Pre-Opening Application applies: (a) “whenever a market maker in any Participant Market, in arranging an opening transaction in his market in a System security, anticipates that the opening transaction will be at a price that represents a change from the security’s previous day’s consolidated closing price at more than the ‘applicable price change’”; and, (b) “whenever an ‘indication of interest’ (i.e., an anticipated opening price range) is sent to the CTA Plan Processor as required or permitted by the CTA Plan or a Participant market’s rules prior to the opening of trading in a System security or prior to the reopening of trading in a System security prior to the reopening of trading in a security following a Trading Halt.”

The Linkage Plan Pre-Opening provision suspended the operation of the relevant ITS Plan requirements and much of NYSE’s Rule 15. While the specialist was still required to send out an indication when he would open a specialty security at a price that represented a change from the previous days consolidated closing price of more than the “applicable price change,” he or she was no longer required to adhere to any other relevant requirements of the ITS Plan or Rule 15. For example, in contrast to the ITS Plan, the Linkage Plan contained no prohibition against the specialist disseminating a pre-opening price range that straddled the previous day’s consolidated closing price. Further, the ITS Plan and Rule 15 required the specialist, after

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

disseminating a pre-opening notification, to delay the opening of the subject security until at least three minutes had passed from the time of the pre-opening notification. The Linkage Plan did not provide a defined time standard by which a specialist must delay the opening after issuance of a pre-opening notification. The Linkage Plan did not require a specialist to disseminate subsequent pre-opening information. With the elimination of the ITS Plan and the Linkage Plan, specialists were no longer required to disseminate ITS pre-opening indications at all.

The specialists continue to provide this type of information orally to market participants as a part of the performance of their affirmative obligations which require that they provide accurate and timely market information to all inquiring market participants on the Floor upon request. However, customers and market participants informed Exchange management that they found the information the specialists provided pursuant to their obligations under the ITS Plan and the Linkage Plan useful.

In response to customer and market participant requests, the Exchange proposes to amend Rule 15 to re-establish procedures for the publication of pre-opening price information, according to the framework established by the Linkage Plan requirement. This proposed rule change requires no modification of the specialists' proprietary systems. With the re-institution of these procedures, the specialists will now resume using the pre-opening indication template on the NYSE Display Book[®] to disseminate pre-opening price information to all market participants through Exchange systems.

The proposed rule text states that the specialist shall publish a pre-opening price indication whenever the specialist, in arranging the opening transaction in a subject security, anticipates that the price of the opening transaction will be at a price which is different from the

previous day's consolidated closing price by more than the "applicable price change." The pre-opening price indication will include the security and the price range within which the specialist anticipates the opening transaction will occur. Rule 15 as amended will be entitled "Pre-Opening Indications."

The price change parameters under the proposed rule have been broadened to more accurately address the current volatility of today's markets. The "applicable price change" will be \$0.50 where the consolidated closing price of a subject security on the Exchange is under \$100 and \$1.00 where the consolidated closing price of a subject security on the Exchange is equal to or greater than \$100.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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.

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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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

Because the foregoing 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 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 public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)⁹ 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 requested that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act.¹⁰ The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits the Exchange to implement without further delay a proposal that re-establishes procedures for the publication of pre-opening price information, according to the framework established by the Linkage Plan requirement; furthermore, the proposed rule change

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 Commission notes that NYSE has satisfied the five-day pre-filing notice requirement.

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

requires no modification of the specialists' proprietary systems. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.¹¹

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-2007-112 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-2007-112. 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

¹¹ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2007-112 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).