

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -57000; File No. SR-NYSE-2007-101)

December 20, 2007

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing of a Proposed Amendment to NYSE Rule 104.21 (“Specialist Organizations – Additional Capital Requirements”)

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Exchange Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on November 2, 2007, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or the “Commission”) the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange LLC (“NYSE” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NYSE Rule 104.21 (“Specialist Organizations – Additional Capital Requirements”), which would reduce the net liquid asset requirements for specialist member organizations. The text of the proposed rule change is set forth below. Proposed new language is underlined; brackets indicate deletions.

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

<sup>2</sup> 15 U.S.C. 78(a) et seq.

<sup>3</sup> 17 CFR 240.19b-4.

**Rule 104. Dealings by Specialists**

(a) – (b) - No Change

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**Supplementary Material:** -----

**Functions of Specialists**

.10 through .20 - No Change

**.21 Specialist Organizations – Additional Capital Requirements.—**

(1) Each specialist organization subject to Rule 104.21 must maintain minimum net liquid assets equal to:

- (i) [\$1,000,000] \$250,000 for each one tenth of one percent (.1%) of Exchange transaction dollar volume in its registered securities, exclusive of Exchange Traded Funds, plus \$500,000 for each Exchange Traded Fund; and \* \* \*

Remainder of Rule - No Change

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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. The text of these 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 aspects of such statements.

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

(1) Purpose

Background

Specialist member organizations must maintain net liquid assets as required by NYSE Rule 104, and in addition, must satisfy the net capital requirements prescribed in Rule 15c3-1,<sup>4</sup> promulgated under the Securities Exchange Act of 1934 (the “Exchange Act”).<sup>5</sup> NYSE Rule 325 requires members and member organizations to comply with Exchange Act Rule 15c3-1 and also requires notification to the Exchange whenever tentative net capital has declined below defined levels. In addition, Rule 325 gives the Exchange the authority, at any time, to prescribe greater net capital or net worth requirements than those explicitly prescribed by the rule, or to require more stringent treatment of items when computing net capital, net worth and, by implication, net liquid assets. Further, the NYSE can restrict the business activities of specialist organizations consistent with good business practices and its obligation to maintain a fair and orderly market. Such restrictions may include prohibitions against business expansion and business reduction requirements.

The term “net liquid assets” refers to liquidity, in the form of cash and cash equivalents, that is immediately available (within twenty four hours) to a specialist organization for the continuing purchase and sale of securities in which a specialist is registered, in support of the specialist book, and market maintenance. It is a shorter-term form of liquidity that is meant to be available to the specialist organization to facilitate

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<sup>4</sup> 17 CFR 240.15c3-1.

<sup>5</sup> 15 U.S.C. 78a et seq.

the performance of its affirmative duty to maintain a fair and orderly market on the Exchange. In addition, it is important for all specialist organizations and market participants to know that specialists have sufficient liquidity to support the specialist book and market maintenance activities.

Specialist member organizations' unique liquidity needs dictate the general form of the net liquid asset requirement. Therefore, a specialist organization's net liquid asset requirement functions to ensure that the specialist is able to continue operations; whereas a broker-dealer's net capital requirement functions to ensure that, if the broker-dealer were liquidated, the broker-dealer's obligations to its customers and creditors would be satisfied.

On July 25, 2006, the SEC approved amendments to NYSE Rule 104 ("Dealings by Specialists") to change the net liquid asset requirement for specialist member organizations.<sup>6</sup> The amendments restructured the net liquid asset requirement for specialist organizations from an approach based on valuation of classes of allocated securities ("concentration measures"), which included penalties for mergers among specialists, to an approach based on specialist market share that is measured by total dollar volume traded combined with market stress and volatility risk analysis.

Pursuant to the 2006 amendments, NYSE Rule 104.21 ("Specialist Organizations – Additional Capital Requirements") currently requires, in part, that each specialist organization subject to the provision maintain minimum net liquid assets equal to

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<sup>6</sup> See Release No. 34-54205 (July 25, 2006); 71 FR 43260 (July 31, 2006) File No. SR-NYSE-2005-38) (approving amendments to NYSE Rules 104 and 123E ("Specialist Combination Review Policy") which change the capital requirements of specialist organizations). See also NYSE Information Memo 06-56 (August 2, 2006).

\$1,000,000 for each one tenth of one percent (.1%) of the Exchange transaction dollar volume in its registered securities, exclusive of Exchange Traded Funds, plus \$500,000 for each Exchange Traded Fund, in addition to the market risk add-on under Rule 104.21(2). Additionally, the filing noted that, as a result of the changes to the structure of the marketplace, NYSE would be assessing market risks annually to determine the continuing adequacy of the net liquid asset requirements.

#### Proposed Rule Change

The proposed rule change would reduce the total base capital requirement that must be maintained as net liquid assets for all specialists from \$1 billion to \$250 million. NYSE believes this amount will adequately protect specialist organizations during periods of market stress. Further, each of the specialist organizations have sources of funding that will provide necessary liquidity during a period of market stress. It is no longer necessary for this liquidity to be maintained as capital, as specialist positions and the likelihood of losses have been reduced dramatically due to changes in the structure of the market.

#### Analysis

The role of specialists has changed significantly as increased electronic trading and the Exchange's "Hybrid Market"<sup>7</sup> have contributed to lower participation by, and

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<sup>7</sup> See Release No. 34-53539 (March 22, 2006); 71 FR 16353 (March 31, 2006) File No. SR-NYSE-2004-05) (approving amendments to NYSE Rules (approving the proposed rule change to establish the NYSE Hybrid Market). The rule change created a "Hybrid Market" by, among other things, increasing the availability of automatic executions in its existing automatic execution facility, NYSE Direct+, and providing a means for participation in the expanded automated market by its floor members. The change altered the way NYSE's market operates by allowing more orders to be executed directly in Direct+, which in essence moves NYSE from a

therefore less risk being assumed by, specialist organizations. In light of the reduced participation, NYSE is proposing a reduction in the minimum net liquid asset requirement under Rule 104.21(1) for specialist organizations.

The proposed net liquid asset reduction for specialist organizations is consistent with the current dealer position levels, the profitability results during the volatile periods of July and August 2007, as well as specialist participation statistics. FINRA, on behalf of the Exchange, undertook an assessment for the periods of: 1) July 2, 2007 through August 17, 2007, selected due to the volatility in the marketplace during this period; and 2) February 27, 2007, when the Dow Jones Industrial Averages, DJIA, declined by 416.02 points to test levels of specialist trading on the Exchange. The assessment focused on position levels, daily dealer account profit and loss, and market volatility. In addition, FINRA compared participation by equity specialists in trading on the Exchange pre and post Hybrid Market.

- Generally, during periods of volatility there were no material net losses by specialists. Also, there were no material drops in specialist Net Liquid Assets during these periods.
- The participation by specialist firms in trading on the Exchange has declined along with the proliferation of electronic trading and the significant change in the Exchange's trading system introduced by the Hybrid Market. The increased efficiency with which others can access the Exchange's market has increased liquidity and decreased the market's reliance on the specialist to provide the

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floor-based auction market with limited automation order interaction to a more automated market with limited floor-based auction market availability.

contra side in our continuous auction. While the NYSE considers specialist participation to still be an important feature of its Hybrid Market, that participation can be and is at a significantly lower level. For example, specialists participated in 15.1% of all shares bought and sold on the Exchange in August 2002, but consistent with the evolution of trading styles and our market model, the participation rate dropped to 8.5% in November 2005, and to approximately 3.9% today.

- Pro-forma daily net liquid asset positions with the proposed requirement for the week ending September 14, 2007 were prepared using actual computations submitted by each of the seven equity specialist firms.<sup>8</sup> The first summary of calculations reflects the \$1 billion requirement, whereas, the second set of calculations reflects the proposed \$250 million requirement. Each of the calculations includes a market risk add on amounting to three times the average of the twenty prior business days securities haircuts on its specialist dealer positions computed pursuant to SEA Rule 15c3-1(c)(2)(vi) exclusive of paragraph (N) or three times VaR, if approved to calculate under this methodology:

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<sup>8</sup> Effective at the close of business on November 30, 2007, one equity specialist firm resigned from the NYSE and its stocks will be reassigned to one of the six remaining firms. Further consolidation and/or reallocation of specialist books is possible in the future.

<b><u>AGGREGATE SPECIALIST DATA</u></b>					
<b><u>CURRENT REQUIREMENT:</u></b>					
<b><u>\$1 BILLION PLUS MARKET RISK ADD-ONS</u></b>					
<b><u>(000 Omitted)</u></b>					
<b>TRADE DATE</b>	<b>LMV</b>	<b>SMV</b>	<b>NLA</b>	<b>NLA REQUIRED</b>	<b>EXCESS NLA</b>
> 9/10/2007	\$183,841	\$49,955	\$1,380,063	\$1,117,106	\$262,957
> 9/11/2007	\$122,939	\$128,276	\$1,381,871	\$1,112,180	\$269,692
> 9/12/2007	\$162,047	\$121,583	\$1,379,123	\$1,109,360	\$269,763
> 9/13/2007	\$148,012	\$181,734	\$1,378,222	\$1,108,381	\$269,841
> 9/14/2007	\$135,832	\$164,699	\$1,378,537	\$1,106,220	\$272,317

<b><u>AGGREGATE SPECIALSIT DATA</u></b>					
<b><u>PRO-FORMA REQUIREMENT:</u></b>					
<b><u>\$250 MILLION PLUS MARKET RISK ADD-ONS</u></b>					
<b><u>(000 Omitted)</u></b>					
<b>TRADE DATE</b>	<b>LMV</b>	<b>SMV</b>	<b>NLA</b>	<b>PROPOSED NLA REQUIRED</b>	<b>PROPOSED EXCESS NLA</b>
> 9/10/2007	\$183,841	\$49,955	\$1,380,063	\$367,106	\$1,012,957
> 9/11/2007	\$122,939	\$128,276	\$1,381,871	\$362,180	\$1,019,692
> 9/12/2007	\$162,047	\$121,583	\$1,379,123	\$359,360	\$1,019,763
> 9/13/2007	\$148,012	\$181,734	\$1,378,222	\$358,381	\$1,019,841
> 9/14/2007	\$135,832	\$164,699	\$1,378,537	\$356,220	\$1,022,317

Based on the foregoing assessment, the proposed amendments would require a specialist organization to meet, with its own assets, a net liquid asset requirement equal to \$250,000 for each one tenth of one percent (.1%) of the Exchange transaction dollar volume in its registered securities, exclusive of Exchange Traded Funds, plus \$500,000 for each Exchange Traded Fund, in addition to the market risk add-on under Rule 104.21(2), amounting to three times the average of the prior twenty business days securities haircut on its specialist dealer positions computed pursuant to SEA Rule 15c3-

1(2)(vi) exclusive of paragraph (N) or three times VaR, if approved to calculate under this methodology.

Finally, the proposal takes into consideration the circuit breakers in effect to prevent a market freefall included in NYSE Rule 80B. NYSE Rule 80B provides for trading halts that are triggered when the DJIA declines below its closing value on the previous trading day by: 10% (level 1), 20% (level 2), and 30% (level 3). At level 3, trading shall halt and not resume for the rest of the day. The intent of the halts is to allow buyers and sellers an opportunity to regroup and objectively assess the marketplace.

FINRA, on behalf of NYSE, will continue to assess the specialists' net liquid asset requirements in relationship to the Hybrid Market and monitor their net liquid assets on a daily basis. NYSE and FINRA require notification for all withdrawals of capital, and approval for any withdrawal being made on less than six months advance notice to the Exchange.

(2) Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act<sup>9</sup> which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, 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 perfect the mechanism of a free and open market and national market system, and in general to protect investors and the

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

public interest. The Exchange believes that the proposed rule change will reduce the burden on specialist member organizations to maintain net liquidity while still ensuring adequate protection of specialist organizations during periods of market stress. Each of the specialist organizations have sources of funding that will provide necessary liquidity during a period of market stress and thus, it is no longer necessary for this liquidity to be maintained as capital, as specialist positions and the likelihood of losses have been reduced dramatically due to changes in the structure of the market.

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 not necessary or appropriate in furtherance of the purposes of the Exchange 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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-2007-101 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-2007-101. 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 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 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-2007-101 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).