

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59869; File No. SR-NYSE-2009-46)

May 6, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending until October 1, 2009 the Six-Month Pilot Program Which Established a New Class of NYSE Market Participants Referred to as “Supplemental Liquidity Providers” and is Designated as Exchange Rule 107B

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 30, 2009, 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 extend until October 1, 2009, the six-month pilot program (“Pilot” or “program”) which established a new class of NYSE market participants referred to as “Supplemental Liquidity Providers” (“SLPs”) and is designated as Exchange Rule 107B. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

<sup>2</sup> 15 U.S.C. 78a.

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

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.

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

1. Purpose

The Exchange proposes to extend until October 1, 2009, the six-month pilot program ("Pilot" or "program") for "Supplemental Liquidity Providers" ("SLPs") under Rule 107B. The SLP pilot program commenced operation on or about the date the SEC approved the NYSE "New Market Model" pilot<sup>4</sup> which is scheduled to be in operation until October 1, 2009. The Exchange proposes to extend the SLP pilot until October 1, 2009, the termination date of the New Market Model pilot, as the SLP program was designed to operate in the New Market Model and was established to supplement the liquidity provided by Designated Market Makers ("DMMs") in the New Market Model.

SLPs have a 5% average quoting requirement per assigned security. Additionally, if an SLP posts displayed or non-displayed liquidity in its assigned securities that results in an execution, the Exchange will pay the SLP a financial rebate. By requiring SLPs to quote at the NBB or the NBO a percentage of the regular trading day in their assigned

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<sup>4</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) ("New Market Model").

securities, and by paying a rebate when the SLP's interest results in an execution, the Exchange rewards aggressive liquidity providers in the market. The Exchange contends that this quoting and rebate program encourages the additional utilization of, and interaction with, the NYSE and has provided customers with the premier venue for price discovery, liquidity, competitive quotes and price improvement and should, therefore, be extended until October 1, 2009.

The Exchange believes that the SLP program has added meaningful liquidity to the marketplace and improved both NYSE and overall market quality. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period. In the future, the Exchange may propose certain changes to Rule 107B, which will be the subject of a 19(b)-4 rule filing and filed with the Commission. Until such time that the Exchange proposes changes to Rule 107B, the Exchange is requesting to extend the operation of Rule 107B until October 1, 2009.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")<sup>5</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> that an Exchange have rules that are 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.

The Exchange proposes to extend the SLP pilot until October 1, 2009, the termination date of the New Market Model pilot, as the SLP program was designed to operate in the New Market Model and run parallel with DMM trading activity. The SLP

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

program has provided benefits to all NYSE customers by bringing price discovery, liquidity, competitive quotes and price improvement to the market and the Exchange seeks to continue providing such benefits to its customer at least until October 1, 2009 with an extension of the SLP pilot program.

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

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 Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

operative for 30 days after the date of filing.<sup>9</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 requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the SLP pilot will expire on April 30, 2009, waiver of this time period is necessary so that no interruption of the pilot will occur. Therefore, the Commission designates the proposal operative upon filing.<sup>10</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.<sup>11</sup>

#### 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:

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<sup>9</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>10</sup> 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).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(C).

- 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-2009-46 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2009-46. 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 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 available publicly. All submissions should refer to File Number SR-NYSE-2009-46 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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