

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60062; File No. SR-NYSE-2009-53)

June 8, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers Pursuant to NYSE Rule 107A and Competitive Traders Pursuant to NYSE Rule 110 to the Earlier of the Approval of SR-NYSE-2009-08 or June 30, 2009

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 June 2, 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 the moratorium related to the qualification and registration of Registered Competitive Market Makers (“RCMMs”) pursuant to NYSE Rule 107A and Competitive Traders (“CTs”) pursuant to NYSE Rule 110 to the earlier of the approval of SR-NYSE-2009-08 or June 30, 2009.

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

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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.

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 the moratorium related to the qualification and registration of Registered Competitive Market Makers (“RCMMs”) pursuant to NYSE Rule 107A and Competitive Traders (“CTs”) pursuant to NYSE Rule 110 to the earlier of the approval of SR-NYSE-2009-08<sup>4</sup> or June 30, 2009.

On September 22, 2005, the Exchange filed SR-NYSE-2005-63<sup>5</sup> with the Securities and Exchange Commission (“Commission”) proposing to implement a moratorium on the qualification and registration of new RCMMS and CTs (“Moratorium”).<sup>6</sup> The Moratorium allowed the Exchange to review the viability of RCMMs and CTs in the Exchange’s evolving more electronic market.

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<sup>4</sup> See Securities Exchange Act Release No. 59746 (April 10, 2009), 74 FR 17702 (April 16, 2009) (SR-NYSE-2009-08).

<sup>5</sup> See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

<sup>6</sup> See Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006)(SR-NYSE-2006-48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007)(SR-NYSE-2006-113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007)(SR-NYSE-2007-57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007)(SR-NYSE-2007-86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR-NYSE-2007-125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR-NYSE-2008-22); 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008)(SR-NYSE-2008-49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR-NYSE-2008-96); 59069 (December 8, 2008); 73 FR 76081 (December 15, 2008) (SR-NYSE-2008-124); 59551 (March 10, 2009), 74 FR 11624 (March 18, 2009) (SR-NYSE-2009-24).

During the Moratorium, the Exchange reviewed the quarterly volume data of RCMM and CT trading data to determine the average trading volume of RCMMs. As a result of its review, the Exchange concluded that RCMMs and CTs no longer serve as viable supplemental market makers. Accordingly, the Exchange determined that RCMMs and CTs should no longer be viable classes of traders on the Exchange. On April 10, 2009, the Exchange filed a separate proposed rule change, SR-NYSE-2009-08 (“2009-08”) with the Commission to eliminate RCMMs and CTs as viable classes of NYSE traders.<sup>7</sup>

The Exchange proposes to extend the Moratorium as amended<sup>8</sup> to the earlier of the approval of proposed rule change 2009-08 or June 30, 2009 to allow 2009-08 to complete the rule filing process pursuant to Rule 19b-4.<sup>9</sup>

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Act”) for this proposed rule change is the requirement under Section 6(b)(5) 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 believes that the instant filing is consistent with these principles. Based on its review of data associated with RCMM and CT trading, the Exchange has concluded that RCMMs and CTs no longer serve as viable supplemental market

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<sup>7</sup> See Securities Exchange Act Release No. 59746 (April 10, 2009), 74 FR 17702 (April 16, 2009) (SR-NYSE-2009-08).

<sup>8</sup> See Securities Exchange Act Release No.53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR-NYSE-2006-11) (making certain amendments to the Moratorium).

<sup>9</sup> 17 CFR 240.19b-4.

makers. In this instant filing, the Exchange seeks an extension of the Moratorium to complete the 19b-4 rule filing process following its proposed rule filing to eliminate RCMMs and CTs as viable classes of NYSE traders.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup> because the foregoing proposed rule: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) 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.<sup>12</sup> The Exchange believes that an extension of the Moratorium is appropriate to permit the resolution of the rule filing process with respect to SR-

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 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.

NYSE-2009-08. Therefore, the Commission believes that this proposed rule change qualifies for immediate effectiveness under paragraph (f)(6) of Rule 19b-4.<sup>13</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Moratorium to continue without interruption while awaiting the completion of the rule filing process with respect to SR-NYSE-2009-08. Therefore, the Commission designates that the proposed rule change become operative immediately.<sup>16</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.

#### 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:

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<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2009-53 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-2009-53. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-53 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>17</sup>

Florence E. Harmon  
Deputy Secretary

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