SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50337; File No. SR-NYSE-2004-06)

September 9, 2004

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to Exchange Rule 104 and Rule 123

On February 6, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Rule 104.10 (Dealings by Specialists) to provide that customers may limit the ability of specialists to trade along with their orders or to invoke precedence based on size when the specialist is liquidating a position in its specialty security for its dealer account, and to make a corresponding change to NYSE Rule 123 (Records of Orders) concerning record keeping. On April 5, 2004, the Exchange amended the proposed rule change.[3] On July 14, 2004, the Exchange again amended the proposed rule change.[4] The proposed rule change, as amended, was

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 2, 2004 and accompanying Form 19b-4 ("Amendment No. 1"). In Amendment No. 1, the NYSE clarified that, under the proposed rule change, customers may limit specialists from trading along with their orders and from invoking precedence based on size.

4 See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 13, 2004 and accompanying Form 19b-4 ("Amendment No. 2"). In Amendment No. 2, NYSE amended the proposed rule text and added additional explanatory material to clarify the

published for comment in the Federal Register on August 2, 2004.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act,[6] applicable to a national securities exchange.[7] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things 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.

Currently, when a specialist liquidates a position in his or her specialty security, the specialist is permitted to trade on parity with the crowd or may invoke precedence based on size.[9] The Exchange believes that there may be circumstances in which a

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proposal. Amendment No. 2 replaced the Exchange's original filing and Amendment No. 1 thereto in their entirety.

5 See Securities Exchange Act Release No. 50090 (July 27, 2004), 69 FR 46197.

6 See 15 U.S.C. 78f.

7 In approving this proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

8 15 U.S.C. 78f(b)(5).

9 Specialist dealer transactions when liquidating a position are subject to specific affirmative market-making standards and review. NYSE Rule 104 requires that specialists' proprietary dealings be reasonably necessary to permit the specialist to maintain a fair and orderly market. In addition, specialists are required to obtain Floor Official approval for any liquidating sale transactions on a direct minus tick or purchase transactions on a direct plus tick.

customer will wish to preclude a specialist from trading on parity or invoking precedence based on size. Accordingly, the Exchange has proposed to amend NYSE Rule 104.10(6)(i) to include new paragraph (C) to provide that transactions by a specialist for his or her dealer account in liquidating or decreasing a position in a specialty security must yield to a customer's order in the crowd upon the request of the member representing such order, where such request has been documented as a term of the order, to the extent of the volume of such order included in the quote prior to the transaction. The customer's order will then participate in the transaction to the extent that priority, parity and precedence rules permit. In addition, the Exchange has proposed to amend NYSE Rule 123 to add new paragraph (g) to provide that a request to a specialist to yield to a customer order is a condition of that order and must be documented in accordance with applicable books and records requirements.[10]

By giving the crowd broker the ability to require that the specialist yield to his or her customer's order, the Commission believes that the proposed amendment will create more similarity in the way orders on the book and in the crowd are handled. The Commission further believes that the proposal may enhance the execution of customer orders on the Exchange.

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[10] Relevant rules include NYSE Rules 123 and 410 and Rules 17a-3 and a-4 under the Act, 17 CFR 240.17a-3 and 240.17a-4.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change, as amended, (SR-NYSE-2004-06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland
Deputy Secretary

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11 15 U.S.C. 78s(b)(2).

12 17 CFR 200.30-3(a)(12).