

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54592; File No. SR-NYSE-2006-04)

October 12, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to NYSE Rule 116 (“Stop” Constitutes Guarantee) and NYSE Rule 123B (Exchange Automated Order Routing Systems)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 2006, the New York Stock Exchange, Inc. (n/k/a 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, II and III below, which Items have been prepared by the NYSE.<sup>3</sup> The NYSE filed Amendment Nos. 1 and 2 to the proposed rule change on April 5, 2006<sup>4</sup> and September 8, 2006,<sup>5</sup> respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission notes that the rule text submitted by the Exchange contained minor, technical errors. Exchange staff has committed to address these errors following publication of this notice. In addition, certain technical corrections and clarifications were made throughout the discussion of the proposed rule change pursuant to a conversation with NYSE staff. Telephone conversation between Gillian Rowe, Principal Rule Counsel, Office of the General Counsel, NYSE Group, Inc., and Jennifer Colihan, Special Counsel, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on October 2, 2006.

<sup>4</sup> In Amendment No. 1, the Exchange made technical and clarifying changes to the rule text and purpose section.

<sup>5</sup> In Amendment No. 2, which replaced the original filing in its entirety and incorporated Amendment No. 1, the Exchange proposed additional changes to NYSE Rule 116 regarding a specialist’s ability to stop stock in the NYSE’s Hybrid Market.

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

In the proposed rule change, the Exchange seeks to amend NYSE Rule 116 ("Stop" Constitutes Guarantee) and NYSE Rule 123B (Exchange Automated Order Routing Systems) regarding a specialist's ability to "stop" stock and report such a transaction. The text of the proposed rule change is available on the NYSE's Web site ([www.nyse.com](http://www.nyse.com)), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

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 NYSE 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. 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

The practice of stopping stock by specialists on the Exchange refers to a guarantee by the specialist that an order he or she receives will be executed at no worse a price than the contra side price in the market at the time the order was stopped, with the understanding that the order may in fact receive a better price. For example, the Exchange market in a stock is quoted at 20.00 bid, offered at 20.10, and the specialist receives a market order to buy. If the specialist "stops" the buy order, the specialist is guaranteeing that the order will receive no worse a price than 20.10, the then-prevailing offer price. The specialist would then make a bid on behalf of the

market order to buy at a price above the prevailing bid, for example, at 20.05. If a sell order trades with this bid, the stopped order has received price improvement (as has the sell order trading with it). If, however, another buy order enters the market and executes at the offer price of 20.10, the stopped buy order will be executed at that same price pursuant to the specialist's guarantee as evidenced by the "stop."

The current Hybrid Market<sup>SM</sup> is the result of a series of initiatives, approved by the Commission, to implement changes to the operation of the Exchange's market to expand access to automated trading while preserving the advantages of the agency auction market.<sup>6</sup> Customers and other market participants will have greater opportunities for speed and certainty of execution through the enhanced electronic trading. Opportunities for price improvement will continue to be available.

NYSE Rule 116 generally provides for the ability of a member to stop stock. Paragraph .30 in the Rule's Supplementary Material provides three circumstances in which a specialist may stop stock, including at the opening or reopening of trading in a stock, when a broker in the trading crowd is representing another order at the stop price or when requested to by another member. In the latter circumstance, the provisions of NYSE Rule 116.30 require that the

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<sup>6</sup> See The Hybrid Market initiative proposed in SR-NYSE-2004-05 and Amendments Nos. 1, 2, 3, 5, 6, 7 and 8 thereto approved on March 22, 2006. See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) ("Hybrid Market Release"). See also Securities Exchange Act Release Nos. 52362 (August 30, 2005), 70 FR 53701 (September 9, 2005) (SR-NYSE-2005-57); 52954 (December 14, 2005), 70 FR 75519 (December 20, 2005) (SR-NYSE-2005-87); 53014 (December 22, 2005), 70 FR 77228 (December 29, 2005) (SR-NYSE-2005-89); 53359 (February 24, 2006), 71 FR 10736 (March 2, 2006) (SR-NYSE-2006-09); 53487 (March 15, 2006), 71 FR 14278 (March 21, 2006) (SR-NYSE-2006-21); 53780 (May 10, 2006), 71 FR 28398 (May 16, 2006) (SR-NYSE-2006-24); and 53791 (May 11, 2006), 71 FR 28732 (May 17, 2006) (SR-NYSE-2006-33).

quotation spread be not less than twice the minimum variation (currently one cent), or, if the quotation spread is the minimum variation, that the quote conditions (i.e., an imbalance in the amount of shares bid for or offered) suggest the likelihood of price improvement, and that the order be under 2,000 shares. The rule further provides a limitation of a total of 5,000 shares for all stopped orders. A specialist may seek approval of a Floor Official to override these conditions. In addition, a specialist must take specific actions to reduce the spread in the quotation after the stop is granted, may not reduce the size of the market following the stop and must execute orders on the book entitled to priority against the stopped stock.

The Exchange generally believes that the practice of specialists stopping stock makes less sense in a hybrid market. This is primarily due to the dynamics of increased speed of trading and more effective functioning of the market through initiatives such as sweeps,<sup>7</sup> the discretionary e-Quotes<sup>SM</sup><sup>8</sup> and the ability of Exchange specialists to provide electronic price improvement.<sup>9</sup> Given the availability of these other avenues for price improvement, the Exchange believes that the procedures in NYSE Rule 116.30 (3) for granting stops are a less attractive and efficient mechanism to seek price improvement in faster markets due to the time required to perform the procedures.

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<sup>7</sup> The “sweep” functionality will allow orders to automatically execute against contra side interest in the Display Book<sup>®</sup> System at and outside the Exchange best bid or offer until the order is filled.

<sup>8</sup> See Exchange Rule 70.25.

<sup>9</sup> See Exchange Rules 104(b)(i)(H) and 104(e). These rules were approved as part of the Hybrid Market initiative, see Hybrid Market Release, supra note 6, and became operative on October 6, 2006.

The Exchange further believes that in manually stopping stock there is a substantial risk that a stopped order would “miss the market” given the speed of automatic executions and the “sweep” functionality.

As a result, the Exchange seeks to remove the provisions in NYSE Rule 116.30 that permit stopping stock by a specialist in all situations. As explained above, the provisions for stopping stock in situations related to the quote spread and the procedures associated with these are not, in the Exchange’s view, useful going forward in our Hybrid Market<sup>SM</sup>. Additionally, the Exchange no longer systemically supports a specialist’s stopping stock in any situation,<sup>10</sup> which requires a specialist to execute stopped stock transactions manually. The Exchange believes these manual transactions are not conducive to efficient trading in our Hybrid Market<sup>SM</sup>. As such, the Exchange seeks to amend NYSE Rule 116.30 to eliminate a specialist’s ability to stop stock.

The Exchange further seeks to amend subsection (b)(3) of NYSE Rule 123B (Exchange Automated Order Routing Systems) to remove references to the systemic reporting of executions of stopped orders now that Exchange systems no longer execute that function.

## 2. Statutory Basis

The basis under the Act<sup>11</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>12</sup> that an Exchange have rules that are designed to promote just and equitable principles

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<sup>10</sup> As of December 13, 2005 the Exchange eliminated the systemic support for the reporting of executions of stopped orders. The Exchange continues to require manual reporting. See Member Education Bulletin 2005-25 (December 13, 2005) from the NYSE’s Division of Market Surveillance.

<sup>11</sup> 15 U.S.C. 78a.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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.

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 NYSE 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, as amended, 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-2006-04 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-2006-04. 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. 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-2006-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).