

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55852; File No. SR-NYSE-2007-47)

June 4, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Rules 103A and 103B

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 22, 2007, the 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 and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as “non-controversial” under Section 19(b)(3)(A)(iii)³ of the Act and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 a moratorium on the administration of the Specialist Performance Evaluation Questionnaire (“SPEQ”) pursuant to Exchange rule 103A and the use of the SPEQ pursuant to Rule 103B. In addition, the Exchange proposes that the use of SuperDot turnaround for orders received (“Order Reports”) and responses to administrative messages (“Administrative Responses”) not be used as objective measures in the assessment of specialist performance during the moratorium. The Exchange further proposes that the SPEQ and Order

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

Reports/Administrative Responses no longer serve as criteria for a specialist performance improvement action during the moratorium.

The text of the proposed rule changes is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange'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 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. NYSE 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 Exchange proposes an immediate moratorium on the administration and use of the SPEQ and Order Reports/Administrative Responses to commence on the date of publication in the Federal Register of the formal submission of the Rule 19b-4 filing by the NYSE to the Commission to amend Exchange Rules 103A and 103B and ending no later than December 31, 2007 ("Moratorium"). In addition, the Exchange proposes that the use of Order Reports/Administrative Responses not be used as objective measures in the assessment of specialist performance during the Moratorium pursuant to Exchange Rule 103B or used as criteria for a specialist performance improvement action pursuant to Exchange Rule 103A.

SPEQ

Pursuant to Exchange Rule 103A, on a quarterly basis, the Exchange distributes a twenty

question survey known as the SPEQ to eligible Floor brokers⁵ to evaluate specialist performance during the quarter immediately prior to the distribution of the SPEQ. Initially, this subjective feedback provided critical information to assist the Exchange in maintaining the quality of the NYSE market.

However, the current SPEQ no longer adequately allows the Floor broker to assess the electronic interaction between the specialist and the Floor broker. The Hybrid Market provided Floor brokers and specialists with electronic trading tools that have resulted in less personal and verbal contact between Floor brokers and specialists. Currently approximately 90% of the transactions executed on the Exchange are done through electronic executions.

In addition, the dramatic increase in transparency with respect to the Display Book through, among other things, Exchange initiatives like Exchange OPENBOOK^{TM6} (“OPENBOOK”) has decreased the need for the Floor broker to obtain market information verbally from the specialist. This increased transparency gives all market participants, both on and off the Floor, a greater ability to see and react to market changes.

The questions on the SPEQ do not take into account the operation of the electronic tools available in the Hybrid Market. The SPEQ does not provide Floor brokers with a means to evaluate specialist performance under the current market model. As a result of the more

⁵ The Exchange believed that conscientious participation in the SPEQ process was a critical element in the Exchange's program for evaluating the overall performance of its specialists. All eligible Floor brokers are required to participate in the process and evaluate from one to three specialist units each quarter. Floor brokers are selected to participate in the SPEQ process based on broker badge data submitted in accordance with audit trail requirements. Brokers who intentionally fail or refuse to participate in the SPEQ process may be subject to disciplinary action, including the imposition of a summary fine pursuant to Exchange Rule 476A.

⁶ OPENBOOK Online Database is an Exchange online service that allows subscribers to view the contents of the specialist book for any stock at any given point in the day, or

electronic interaction between Floor brokers and specialists, Floor brokers are unable to assess specialist performance using the current SPEQ.

The questions posed to the Floor brokers on the SPEQ require Floor brokers to opine on the specialists' ability to offer single price executions and specialists' ability to provide notification to Floor brokers of market changes in particular stocks. In the current Hybrid Market, specialists are unable to offer single price executions and the relative speed of executions makes it virtually impossible for specialist to notify brokers of changes in a particular security.

Given the above, the SPEQ no longer serves as a meaningful measure of specialist performance. As such, the Exchange proposes an immediate Moratorium on the administration and use of the SPEQ in order to provide the Exchange with an opportunity to review its entire specialist allocation policy.

Objective Measures

The Exchange further requests that during the Moratorium, allocations of newly listed securities on the Exchange continue to be based on the objective measures identified in Exchange Rule 103B,⁷ with the exception of SuperDot turnaround for orders received and response to administrative messages.

over a period of time. Results are returned in an Excel spreadsheet. OPENBOOK Online Database is a historical database with data stored online for a 12-month period.

⁷ Pursuant to Exchange Rule 103B, specialist dealer performance is measured in terms of participation (TTV); stabilization; capital utilization, which is the degree to which the specialist unit uses its own capital in relation to the total dollar value of trading in the unit's stocks; and near neighbor analysis, which is a measure of specialist performance and market quality comparing performance in a stock to performance of stocks that have similar market characteristics. Additional objective measures pursuant to Exchange Rule 103B are those measures included in Exchange Rule 103A which are: (a) timeliness of regular openings; (b) promptness in seeking Floor official approval of a non-regulatory

As a result of the Hybrid Market, SuperDot turnaround for orders received and response to administrative messages no longer provide meaningful objective standards to evaluate specialist performance. Specifically, in the current more electronic Hybrid Market, orders received by Exchange systems that are marketable upon entry are eligible to be immediately and automatically executed by Exchange systems. As such, SuperDot turnaround no longer provides a meaningful objective measure of a specialist's performance. The Exchange therefore seeks to remove SuperDot turnaround as an objective measure of specialist performance during the Moratorium.

Furthermore, in the current Hybrid Market the Exchange system automatically responds to the majority of the administrative messages. Today, there are two administrative messages that require a manual response from specialists. These are messages that require the specialist to provide status information on market orders and stop orders. With regard to requests for the status of stop orders, the specialists are no longer capable of providing this information. In December 2006, following Commission approval,⁸ the Exchange changed its stop order handling process. Stop orders are no longer visible to the part of the NYSE Display Book[®] that the specialist "sees." When a transaction on the Exchange results in the election of a stop order that had been received prior to such transaction, the elected stop order is sent as a market order⁹ to the Display Book and the specialist's system employing algorithms where it is handled in the

delayed opening; (c) timeliness of DOT turnaround; and (d) response to administrative messages.

⁸ See Securities Exchange Act Release No. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR-NYSE-2006-65).

⁹ As used herein, the term "market order" refers to market orders that are not designated as "auction market orders."

same way as any other market order. The specialist therefore is unable to provide any information regarding the status of stop orders.

Currently, market orders are eligible to receive immediate and automatic execution on the Exchange. The immediate and automatic execution of market orders eliminates the need for the specialists to respond to the administrative request for the status of market orders. In practice, a customer that submits a market order will likely receive a report of execution before the administrative message requesting the status of the market order has been printed and read by the specialist.

The Exchange anticipates that this change will have a minimal impact on its customers. In the past few years, the average number of administrative messages received on a daily basis has steadily declined. The Exchange believes that immediate and automatic execution of orders will virtually eliminate administrative messages that require a manual response from a specialist. As a result, a specialist's ability to respond to administrative messages no longer provides a meaningful measure of specialists' performance during the Moratorium. The Exchange therefore seeks to remove the response to administrative messages as a measure of specialist performance during the Moratorium.

Given that SuperDot turnaround and responses to administrative messages no longer provide significant objective measures of specialists' performance in the Hybrid Market, the Exchange seeks to suspend the use of both measures as criteria used to assess specialists' performance during the Moratorium.

Performance Improvement Actions

Similarly, during the Moratorium, the Exchange seeks to suspend the use of the SPEQ and Order Reports/Administrative Reports as criteria for the implementation of a performance improvement action pursuant to Exchange Rule 103A. Exchange Rule 103A(b) provides that:

The Market Performance Committee shall initiate a Performance Improvement Action (except in highly unusual or extenuating circumstances, involving factors beyond the control of a particular specialist unit, as determined by formal vote of the Committee) in any case where a specialist unit's performance falls below such standards as are specified in the Supplementary Material to this rule. The objective of a Performance Improvement Action shall be to improve a specialist unit's performance where the unit has exhibited one or more significant weaknesses, or has exhibited an overall pattern of weak performance that indicates the need for general improvement.

The SPEQ and Order Reports/Administrative Reports are two criteria included in the standards specified in Exchange Rule 103A Supplementary Material. Given that SPEQ and Order Reports/Administrative Reports no longer provide significant objective measures of specialists' performance in the Hybrid Market, the Exchange seeks to suspend the use of both measures as criteria for the implementation of a performance improvement action during the Moratorium.

Creation of a New Process

During the Moratorium, the Exchange will analyze how specialists function in the Hybrid market in order to determine which objective standards accurately assess and measure the

specialists' performance of its market-making function. Using newly identified objective measures, the Exchange will formally submit a proposal to the Commission, no later than August 1, 2007, to amend Exchange rules that govern the allocation of securities to specialist firms and other related rules.

The Exchange believes that the use of objective measures will provide for a more significant comparison of specialist performance. It is anticipated that the use of more objective and detailed measures will promote healthy competition between specialists firms and ultimately result in better market-making for Exchange customers.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁰ 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)¹¹ in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1).

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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 Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁴ However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has satisfied the five-day prefiling requirement.¹⁶ In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

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 Exchange to immediately implement this proposal and thus the Exchange would not need to rely on factors

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ Id.

¹⁶ Id.

that no longer provide significant objective measures of specialists' performance in the Hybrid Market. The Commission notes that the Exchange expects to file a proposed rule change under Section 19(b) of the Act¹⁷ by August 1, 2007, which would amend Exchange rules that govern the allocation of securities to specialist firms and other related rules. The Commission designates the proposal to become effective and operative upon filing.¹⁸

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 the 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:

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. Please include File Number SR-NYSE-2007-47 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.

¹⁷ 15 U.S.C. 78s(b).

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NYSE-2007-47. 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 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-2007-47 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.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).