

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56088; File No. SR-NYSE-2007-63)

July 18, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 92(d)(6), Limitations on Members' Trading Because of Customers' Orders

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 July 13, 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 a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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 to amend NYSE Rule 92 to permit specialists to trade between the hours of 6:00 p.m. and 9:15 a.m. Eastern Time ("ET") in any security in which the specialist is registered, notwithstanding any open customer orders on the Display Book. The text of the proposed rule change is available on NYSE's Web site (<http://www.nyse.com>), at NYSE, and at the Commission's Public Reference Room.

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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> 15 U.S.C. 78s(b)(3)(A).

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

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. 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 Exchange proposes to amend NYSE Rule 92 to permit specialists to trade for their dealer accounts after hours notwithstanding that they have unexecuted customer orders in their possession that could be executed at the same prices as the specialists' trades. The proposed amendment would both minimize trading risks for specialists and harmonize NYSE Rule 92 with NASD's Manning Rule.<sup>5</sup>

NYSE Rule 92 generally prohibits members or member organizations from entering proprietary orders ahead of, or along with, customer orders that are executable at the same price as the proprietary order. Because the rule is not limited to market hours, it prohibits, subject to certain exceptions, specialists from trading after hours in any security in which they are registered while they are holding unexecuted customer orders on their Book, which they have knowledge of, that could be executed at the same price as the specialist's proposed trade (e.g., good-till-cancelled orders). At present, under NYSE rules, specialists remain responsible for orders that have been left on the Book after the trading and crossing sessions have closed even though they cannot execute those orders until the next Exchange trading session begins.

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<sup>5</sup> See NASD Rule 2111 and IM-2110-2.

Accordingly, if a specialist had such an order on the Book, any after-hours trading by the specialist in such security could violate Rule 92.<sup>6</sup>

Because of the specialist's agency obligation to the Book after trading at NYSE has closed, the Rule 92 limit on specialist's after-hours trading can increase the specialist's trading risks, particularly where specialists are trading for the purpose of hedging their risk and/or bringing their dealer or investment account positions into parity with trading in away markets. To correct this, the Exchange proposes amending Rule 92 to permit specialists to trade for the dealer account after hours, notwithstanding unexecuted interest that is left on the specialist's Book.

The proposed change, in addition to properly allocating the obligation to protect customer orders after hours, also has the effect of harmonizing NYSE Rule 92 to its NASD counterpart, the Manning Rule. The Manning Rule generally prohibits NASD member firms that are holding a customer limit or market order from trading for that member's market making proprietary account at a price that would satisfy the customer's limit or market order without executing the customer's order.<sup>7</sup> Notably, however, the Manning Rule only applies between 9:30 a.m. and 4:00 p.m. ET, and in some cases to 6:30 p.m. ET, meaning that after hours, NASD market makers may trade for their dealer accounts without regard to customer orders in their possession.

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<sup>6</sup> Specialists could trade and offer any better-priced executions to their customers, but as a practical matter, because specialists may have to give up executions of transactions that were intended to hedge the specialist's trading risks, this limitation effectively prevents the specialist from engaging in hedging transactions in most securities.

<sup>7</sup> See NASD IM 2110-2 and Rule 2111. As originally approved, the Manning Rule applied only to trading during regular trading hours. In 1999, when NASD expanded the operation of certain Nasdaq transactions and the quotation and reporting systems and facilities to 6:30 p.m. ET, the Commission approved the extension of the Manning Rule to any trading between 9:30 a.m. and 6:30 p.m. ET for certain orders. See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (SR-NASD-99-57).

The proposed amendment would add a new subsection (6) to the exemptions listed in Rule 92(d) that would adopt a similarly restricted time frame on the rule's prohibitions on specialist trading while in possession of an unexecuted customer order. Similar to the Manning Rule, the Exchange proposes beginning the exemption period for specialists after both the regular trading and the crossing sessions at the Exchange have ended. On a regular trading day, therefore, the exemption period would begin at 6:30 p.m. ET. If the regular NYSE trading session closes earlier than 4:00 p.m. ET, the exemption period would begin two-and-one-half hours after the close of the trading session. This window of time not only provides that the trading-ahead provisions of Rule 92 would continue to apply during any period while Exchange facilities are operating and customer orders are subject to execution through such systems, but also provides brokers time to meet any obligations to customers to withdraw any open orders that may have previously been submitted to the Exchange. Accordingly, while the specialist has responsibility for orders on the Book, brokers are on notice that after 6:30 p.m. ET, specialists would be able to trade notwithstanding those orders and therefore the broker should consider his or her best execution obligations to the customer when determining whether to leave an order at the Exchange after trading has closed.<sup>8</sup>

The Exchange further proposes ending the exemption period 15 minutes before the opening of a security at the Exchange, which, except for StreetTRACKS Gold Shares, would be 9:15 a.m. ET. This is a slight difference from the Manning Rule, which is only applicable as of the commencement of trading. The Exchange proposes this difference because of the specialist's

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<sup>8</sup> The Exchange notes that as agent for their customers, brokers can, and should be expected to, take affirmative steps to protect their customers' orders after hours by trading on behalf of those orders in the after market if appropriate trading opportunities exist. Similarly, sophisticated customers can protect their own interests after hours as effectively as any agent by trading themselves in the after markets.

access to pre-opening orders submitted to NYSE, which may give the specialist unique knowledge of the pricing trend for a security. The 15-minute time frame reflects the fact that at approximately 9:15 a.m. ET (8:05 a.m. ET for Gold Shares) there generally begins to be a sufficient influx of orders such that a meaningful trend might be discernible; prior to that time, there is commensurately less order flow and meaningful trends are less discernible.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>9</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.

### 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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

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>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> 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 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 specialists to better manage the trading risks that accompany their market making function, and harmonize Rule 92 with NASD's Manning Rule. For these reasons, the Commission designates that the proposed rule change become operative immediately.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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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). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written 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. The Exchange has satisfied the five-day pre-filing requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>14</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).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-63 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-2007-63. 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 am and 3:00 pm. Copies of the 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-2007-63 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).