SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56588; File No. SR-NYSE-2007-92)

October 1, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rules 104(b) and 123D

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 September 28, 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 NYSE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] 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 NYSE proposes to amend its Rule 104(b) to provide for an automated opening message that will be effectuated through the Specialist Application Programmed Interface ("SAPI"), to allow specialists to open a security on a quote. Additionally, the Exchange seeks to amend its Rule 123D (Openings and Halts in Trading) to clarify that

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

2 17 CFR 240.19b-4.

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

4 17 CFR 240.19b-4(f)(6).

specialists may open a security on a trade or a quote. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at http://www.nyse.com, 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 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 Exchange is filing this proposed rule change to amend its Rules 104(b) and 123D to allow specialists to open a security on a quote by sending a message from the SAPI to the NYSE Display Book® system for publication of a quote when there is no opening trade.[5] The proposed rule change merely provides the specialist with the ability to electronically open a security on a quote, which currently may be accomplished manually.

[5] The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

Proposed Rule 104(b)

The Exchange seeks to add this electronic opening quote message provision to Exchange Rule 104(b), which includes other SAPI trading and quoting messages. The Exchange believes that, with increased automation of trading, specialists should be able to perform their trading and quoting functions both electronically and manually. To do otherwise would unnecessarily limit their effectiveness in the market and disadvantage investors. The proposed Rule 104(b) provision refers to proposed Rule 123D, which clarifies that a specialist is permitted to open a security in which he or she is registered on either a trade or a quote.

Rule 123D: Specialist Obligations at the Opening

The provisions of Exchange Rule 123D require a specialist to open the securities in which he or she is registered. According to Rule 123D, specialists must, among other things, do the following when opening and reopening their assigned securities:

- open a registered security as close to the opening bell as possible;
- open securities in a timely, fair and orderly manner; and
- provide timely and impartial information at all phases of the opening process.

The proposed rule change will codify the practice of the specialist in the opening process, which is that the specialist may open an assigned security on a trade or on a quote. The specialist may open a security on a quote when there is no trade upon which to open. The practice has been and will remain that if a specialist opens a security on a quote, he or she must provide the highest bid price and lowest offer price available to them.[6] The proposed amendment to Rule 123D refers to the proposed amendment of Rule 104(b) as described above.

Delayed or Untimely Openings

Specialists' delayed or untimely openings of securities potentially disadvantage market participants, as investors are unable to trade such securities at the NYSE until the security is opened. The ability to open a security on a quote via an automated quoting message will enable the specialist to open their assigned securities in a timely manner, thereby providing investors with access to the NYSE market as close to 9:30 a.m. as possible. Opening securities in a timely, fair and orderly manner is consistent with the specialist's obligations under Exchange Rules 123D and 104. Therefore, the Exchange believes it is imperative to provide the specialist with an automated message that will assist the specialist in opening their assigned securities on a quote. Through this rule filing, the Exchange is merely seeking to automate an approved specialist function that is presently performed manually.

When a specialist on the NYSE fails to timely open a security that also trades on other exchanges, the investor will generally trade that particular security on other exchanges so as not to miss the market. As a consequence of late openings, the NYSE could lose market volume and market data revenue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section

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[6] The specialist must also be guided by Exchange Rules 79A.30 (one or two points or more away from the last sale) and 115A (Orders at Openings or in Unusual Situations) when opening and reopening securities.

6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 also believes that the proposed rule change is designed to support the principles of Section 11A(a)(1) of the Act[8] in that it seeks to assure economically efficient execution of securities transactions by making it easier for specialists to open securities in which they are registered on a quote in a timely fashion by providing an automated quoting message that is effectuated through the SAPI.

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 forgoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the

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7 15 U.S.C. 78(f)(b)(5).

8 15 U.S.C. 78k-1(a)(1).

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.[9]

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) 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 should assist the specialist in its ability to open securities in a timely, fair, and orderly manner. The Commission notes that the Exchange has represented that this proposal would merely automate the ability that specialists currently have to manually open trading in a security on a quote when there is no opening trade. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.[10]

At any time within 60 days of the filing of such 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.

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9 In addition, Rule 19b-4(f)(6) requires a self-regulatory organization 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 NYSE has satisfied this requirement.

10 For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 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. Please include File Number SR-NYSE-2007-92 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-2007-92. 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 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-2007-92 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.[11]

Nancy M. Morris
Secretary

[11] 17 CFR 200.30-3(a)(12).