

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58517; File No. SR-NYSE-2008-61)

September 11, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending NYSE Rule 104(e) (Dealings by Specialists) to Modify the Conditions Governing the Specialists' Use of the Price Improvement Trading Message Pursuant to NYSE Rule 104(b)(i)(H)

On July 25, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the rule governing the specialists' use of the price improvement trading message. The proposed rule change was published for comment in the Federal Register on August 7, 2008.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

Pursuant to NYSE Rule 104(b), specialists may use algorithms to generate quoting and trading messages. Such trading messages may provide price improvement to an order, subject to the conditions set forth in Rule 104(e). In order to provide price improvement to a marketable incoming order, Rule 104(e)(i) requires that the specialist must be represented in the bid or offer in a "meaningful amount." Rule 104(e)(ii) defines "meaningful amount" as at least ten round-lots for the 100 most active securities on the Exchange, based on average daily volume, and at least five round-lots for all other securities on the Exchange. NYSE proposes to delete the requirement in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58278 (July 31, 2008), 73 FR 46124 ("Notice").

Rule 104(e)(i) that specialists must be represented in a bid or offer in a meaningful amount to provide price improvement to the incoming order.⁴

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁵ and, in particular, Section 6(b)(5) of the Act,⁶ which requires, among other things, that NYSE rules be 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.

As NYSE stated in its proposal, average quote sizes on the Exchange have decreased in recent years.⁷ Because of this, the Exchange believes the meaningful amount requirement for price improvement is a deterrent to specialists' participation in price improvement. The Commission believes that deletion of the meaningful amount requirement should encourage greater participation by specialists in the Exchange's price improvement mechanism. At the same time, the Commission must carefully review trading rule proposals that seek to offer special advantages to market participants. Although an exchange may reward its participants for the benefits they provide to the exchange's market, such rewards must not be disproportionate to the services provided.⁸ In considering the totality of the benefits accorded to and obligations

⁴ As part of this rule change, NYSE also proposes deleting the definition of "meaningful amount" in Rule 104(e)(ii).

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ See Notice supra note 3, at 46125.

⁸ See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) at 40148.

imposed upon specialists on the Exchange, the Commission believes that it is reasonable for NYSE to delete the “meaningful amount” requirement of Rule 104(e).⁹

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2008-61) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Acting Secretary

⁹ The Commission notes that, through a separate proposed rule change, the Exchange has proposed to eliminate all of the provisions relating to the specialists’ price improvement mechanism under NYSE Rule 104(e) by October 15, 2008. See Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46).

¹⁰ 17 CFR 200.30-3(a)(12).