

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54215; File No. SR-NYSE-2006-51)

July 26, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 36 to Allow a Registered Competitive Market Maker to Call to and Receive Calls from the Booth

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 3, 2006, 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 prepared by the Exchange. The Exchange filed the proposed rule change pursuant Section 19(b)(3)(A) of the Act <sup>3</sup> and Rule 19b-4(f)(6) <sup>4</sup> thereunder, 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

NYSE is proposing to amend NYSE Rule 36 (Communication Between Exchange and Members’ Offices) to allow a Registered Competitive Market Maker (“RCMM”) to use an Exchange authorized and provided portable telephone on the Exchange Floor to call to and receive calls from his or her booth on the Floor, provided certain conditions are met.

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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

NYSE Rule 36

NYSE Rule 36 governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Currently, NYSE Rules 36.20 through 36.22 provide that, subject to certain restrictions, Floor brokers and RCMMs are allowed to use Exchange authorized and provided portable phones on the Exchange Floor.<sup>5</sup>

Under the existing Pilot, subject to certain restrictions, RCMMs are allowed to use an Exchange authorized and provided portable phone solely to communicate with their or their member organizations' off-Floor office and the off-Floor office of their clearing member organization to enter off-Floor orders and to discuss matters related to the clearance and settlement of transactions, provided the off-Floor office uses a wired telephone line for these discussions. RCMMs are not allowed to use a portable phone to conduct any agency business.<sup>6</sup>

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<sup>5</sup> The Exchange has authorized the use of portable phones by Floor brokers and RCMMs pursuant to a series of pilots. The current pilot is scheduled to expire July 31, 2006 ("Pilot"). See Securities Exchange Act Release No. 53277 (February 13, 2006), 71 FR 8877 (February 21, 2006) (SR-NYSE-2006-03).

<sup>6</sup> See Securities Exchange Act Release No. 53213 (February 2, 2006), 71 FR 7103 (February 10, 2006) (SR-NYSE-2005-80).

## Proposed Amendment to NYSE Rule 36.22

The Exchange proposes to amend NYSE Rule 36.22 to allow RCMMs to call their booths on the Floor for business-related purposes, including discussing trade reporting and executions and clearance and settlement of trades, much as they do today by calling their upstairs office personnel and their clearing member organization's upstairs offices. Booth personnel would also be allowed to call their RCMMs' Exchange authorized and provided portable phones for business-related purposes. In turn, all booth phones on the Floor which are used to make calls to and receive calls from RCMMs' Exchange authorized and provided portable phones would be systemically blocked by the Exchange from call-forwarding and conference calling.<sup>7</sup> By allowing RCMMs to communicate with their booths on the Floor, NYSE believes that the proposed rule change would increase the efficiency of trading on the Floor.

In addition, all Exchange authorized and provided portable phones used by Floor brokers and RCMMs do not have call-forwarding or conference calling capabilities and would continue to not have such capabilities.<sup>8</sup> The Exchange would issue a revised Member Education Bulletin outlining the amendment to the Pilot.

### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>9</sup> in that it is 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. NYSE believes that the

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<sup>7</sup> See proposed NYSE Rule 36.22(c)(ii).

<sup>8</sup> See proposed NYSE Rules 36.21(a)(v) and 36.22(c)(iii).

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

amendment to NYSE Rule 36 supports the mechanism of free and open markets by providing for increased means by which communications on the Floor of the Exchange may take place.<sup>10</sup>

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.

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 foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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 furtherance of the purposes of the Act.

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<sup>10</sup> Telephone conversation between David Matta, Principal Rule Counsel, NYSE, and Molly M. Kim, Special Counsel, Division of Market Regulation, Commission, on July 11, 2006.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

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

The Exchange has requested that the Commission waive the 30-day operative period under Rule 19b-4(f)(6)(iii) of the Act.<sup>13</sup> The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective upon filing. The Commission believes that the waiver of the 30-day operative delay may increase the efficiency of the Exchange by providing immediate use of Exchange authorized and portable phones to RCMMs to communicate with their booths on the Floor. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>14</sup>

The Commission notes that proper surveillance is an essential component of any telephone access policy to an exchange trading floor. Surveillance procedures should help to ensure that RCMMs use portable phones as authorized by NYSE Rule 36. The Commission expects the Exchange to actively review these procedures and address any potential concerns that arises. In this regard, the Commission notes that the Exchange should address whether telephone records are adequate for surveillance purposes. The Commission also requests that the Exchange report any problems, surveillance, or enforcement matters associated with RCMMs' use of an Exchange authorized and provided portable telephone on the Exchange Floor. Furthermore, in any future additional filings on the Pilot, the Commission would expect that the Exchange submit information documenting the usage of the Exchange authorized and portable phones and any problem that have occurred, including, among other things, any regulatory actions or concerns.

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

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, 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-2006-51 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-2006-51. 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 will also 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-2006-51 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>

Nancy M. Morris  
Secretary

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