

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54653; File No. SR-NYSE-2006-94)

October 26, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 122 (Orders with More than One Broker) until the Availability of Full d-Quote Functionality in a Particular Security or February 5, 2007, Whichever Comes First

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 October 25, 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. NYSE filed the proposed rule change pursuant to Section 19(b)(3) 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

NYSE seeks to amend Exchange Rule 122 (Orders with More than One Broker) for a period of time commencing from the operative date of this proposed rule change until the availability of full d-Quoting<sup>5</sup> functionality in a particular security or February 5, 2007, whichever comes first. The proposed rule change would permit Floor brokers to maintain

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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).

<sup>5</sup> See Securities Exchange Act Release No. 54577 (October 5, 2006), 71 FR 60208 (October 12, 2006).

discretionary e-Quotes (“d-Quotes”) and CAP-DI orders<sup>6</sup> in a security on the same side of the market for the same order that are capable of trading at the same price. The text of the proposed rule change is available on the Exchange’s Web site ([www.nyse.com](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 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 proposes to permit Floor brokers to enter discretionary e-Quotes and CAP-DI orders in a security on the same side of the market for the same order that are capable of trading at the same price for a limited period of time – that is, from the operative date of this proposed rule change until the availability of full d-Quoting functionality in a particular security or February 5, 2007, whichever comes first. The Exchange believes that discretionary e-Quote capabilities will be fully implemented in Phase IV of the Hybrid Market,<sup>7</sup> which is scheduled to commence rolling out in late December 2006. This amendment will allow Floor brokers to

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<sup>6</sup> See Exchange Rules 13 and 123A.30(a). Exchange Rule 123A.30(a) describes a CAP-DI order as: “The elected or converted portion of a ‘percentage order that is convertible on a destabilizing tick and designated immediate execution or cancel election’ (“CAP-DI order”) may be automatically executed and may participate in a sweep.”

<sup>7</sup> The Commission approved the Hybrid Market on March 22, 2006. See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

participate electronically in certain trades they would otherwise miss while full d-Quoting functionality is being implemented. As such, the amendment enhances the competitive position between Floor brokers (on behalf of customer orders) and specialist proprietary trading that d-Quoting was designed to assist.

Currently, d-Quote functionality permits Floor brokers to assign discretionary price instructions to their e-Quotes. Pursuant to these instructions, a d-Quote may trade with marketable and non-marketable incoming orders, by trading with such orders at a price better than the Exchange best bid or offer. Currently, the functionality to interact with a non-marketable incoming order (i.e., an order that would become the new Exchange best bid or offer) has not been implemented. However, specialists are able to interact with non-marketable incoming orders via their algorithmic systems subject to certain requirements. Specifically, a specialist can send electronically a “hit bid” or “take offer” message based on an incoming order that would create a new best bid or best offer. This allows the specialist to trade electronically with the newly published bid or offer. Until d-Quoting is fully implemented, a Floor broker only has the ability to interact manually with such new bid or offer. Accordingly, the speed disparity between a manual action and an electronic one places the Floor broker at a competitive disadvantage.

A Floor broker can seek to trade at the bid or offer price by manually “hitting the bid” or “taking the offer.” They can also send a CAP-DI order to the specialist for conversion or election at that price. Marketable CAP-DI orders are automatically converted and trade along with specialist proprietary executions. Accordingly, by allowing Floor brokers to have CAP-DI orders and d-Quotes, the Floor brokers retain the ability to compete with specialist algorithmic trading for executions involving marketable incoming orders via discretionary pricing

instructions, but do not miss participating in executions when specialists algorithmically hit a bid or take an offer.

Exchange Rule 122 currently prevents Floor brokers who have transmitted part of an order to a specialist for execution (such as a CAP-DI order) from bidding or offering on behalf of the retained portion of such order at a price at which the transmitted part may be quoted or executed. Because a CAP-DI may execute at the same price as a d-Quote, the Exchange seeks to amend Rule 122 to permit Floor brokers to maintain both d-Quotes and CAP-DI orders in the same security for the account of the same principal that are capable of being executed at the same price.

This filing applies to those securities subject to the Pilot<sup>8</sup> currently operating in conjunction with the implementation of Hybrid Market Phase III.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, 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. The Exchange believes that the proposed rule change is also designed to support the principles of Section 11A(a)(1) of the Act<sup>11</sup> in that it seeks to assure economically efficient execution of securities transactions, the practicability of brokers executing investors' orders in the best market, and an opportunity for investors' orders to

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<sup>8</sup> See Securities Exchange Act Release Nos. 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006) and 54610 (October 16, 2006), 71 FR 62142 (October 23, 2006).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78k-1(a)(1).

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 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 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) by its terms, 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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 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)<sup>14</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 and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

proposal should enable floor brokers to compete with specialists in certain trades on behalf of their customers, while the Exchange is in the process of implementing the d-Quote function. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission until the availability of full d-Quote functionality in a particular security or February 5, 2007, whichever comes first.<sup>15</sup>

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

#### 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-2006-94 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.

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<sup>15</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. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NYSE-2006-94. 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 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-2006-94 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>16</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).