

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54985; File No. SR-NYSE-2006-113)

December 21, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Moratorium on the Qualification and Registration of New Registered Competitive Market Makers and New Competitive Traders, Governed by Rules 107A and 110, Respectively, for an Additional Six Months

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 December 13, 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 substantially prepared by the Exchange.<sup>3</sup> The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A)(iii) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> 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 extend for six months the moratorium related to the qualification and registration of Registered Competitive Market Makers (“RCMMs”) pursuant to Exchange

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Certain technical corrections were made throughout the discussion of the proposed rule change pursuant to a conversation with NYSE staff. Telephone conversation between Jean Walsh, Principal Rule Counsel, NYSE, and Sara Gillis, Attorney, Division of Market Regulation, Commission, on December 18, 2006.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

Rule 107A and Competitive Traders (“CTs”) pursuant to Exchange Rule 110. The text of the proposed rule change is available on the NYSE’s Web site (<http://www.nyse.com>), at the NYSE’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. 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 extend for six months the current moratorium related to the qualification and registration of RCMs pursuant to Exchange Rule 107A and CTs pursuant to Exchange Rule 110.

On September 22, 2005, the Exchange filed SR-2005-63<sup>6</sup> (“Filing 2005-63”) with the Commission proposing to implement a moratorium on the qualification and registration of new RCMs and CTs in order to allow the Exchange an opportunity to review the viability of RCMs and CTs in the NYSE HYBRID MARKET<sup>SM</sup> (“Hybrid Market”).<sup>7</sup>

---

<sup>6</sup> See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

<sup>7</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05).

Subsequent to the submission of Filing 2005-63, the Exchange filed SR-NYSE- 2006-11<sup>8</sup> (“Filing 2006-11”) proposing to modify the moratorium and grant RCMM firms the ability to replace a RCMM who relinquishes his or her registration and ceases to conduct business as a RCMM during the moratorium, with a newly qualified and registered RCMM. The moratorium does not restrict RCMMs from joining any RCMM firm or becoming or remaining an independent RCMM. Neither does the moratorium restrict any RCMM firm from hiring any existing RCMMs.

Subsequently, the Exchange extended the moratorium, as amended, in order to allow the Exchange to continue its review during the phasing in of the Hybrid Market for an additional six months until on or about December 31, 2006.<sup>9</sup>

The Exchange now proposes to extend the moratorium, as amended, for an additional six months in order to include in its review, data from the full operation of the Hybrid Market with respect to RCMMs and CTs that can only be obtained when the remainder of the third phase and the fourth phase of the Hybrid Market are implemented in the beginning of 2007. This data will allow the Exchange to make a more informed decision as to the viability of RCMMs and CTs in the Hybrid Market. As such, the Exchange believes an additional six-month extension of the moratorium is necessary.

The Exchange will issue an Information Memo announcing the extension of the moratorium. The review is currently estimated to be completed on or about June 29, 2007.

---

<sup>8</sup> See Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR-NYSE-2006-11).

<sup>9</sup> See Securities Exchange Act Release No. 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR-NYSE-2006-48).

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>10</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. The moratorium gives the Exchange time to fully study the future viability of RCMMs and CTs in order to improve the market. The proposed rule change is a six month extension of the RCMM and CT moratorium implemented in Filing 2005-63 and modified in Filing 2006-11.

### 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,

---

<sup>10</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>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its 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 NYSE 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 will allow the moratorium to continue without interruption so that the Exchange may have additional time to fully study the future viability of RCMMs and CTs in the Hybrid Market. For these reasons, the Commission designates that the proposed rule change become operative immediately.<sup>15</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.

---

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

<sup>12</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 requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

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

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

<sup>15</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-2006-113 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-2006-113. 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-2006-113 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>

Florence E. Harmon  
Deputy Secretary

---

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