

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56209; File No. SR-NYSE-2007-65)

August 6, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 79A.30 (Miscellaneous Requirements on Stock Market Procedures)

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 July 24, 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 Exchange. The Exchange filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act 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 Exchange is proposing to amend NYSE Rule 79A.30 to remove the requirement to obtain Floor Official approval before trading more than one or two dollars away from the last sale. The proposed amendment would preserve the requirement in situations: (i) where such trades are initiated by a specialist in connection with certain manual transactions when the NYSE market is “slow”; and (ii) where such trades are initiated by the specialist when reaching across

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).

the market when the market is “fast.” The filing also makes certain non-substantive changes to the language of the rule in order to clarify existing provisions and procedures, and conforms the rule to changes in Exchange rules made subsequent to the last time NYSE Rule 79A.30 was amended.

The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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. NYSE has substantially 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 proposing to amend NYSE Rule 79A.30 to remove the requirement that members obtain prior approval from an Exchange Floor Official for trades that are more than \$1.00 from the last sale when such previous sale is under \$20.00 per share, or more than \$2.00 from the last sale when such previous sale is \$20.00 per share or more. The requirement to obtain approval would continue to apply in situations where: (i) the market is “slow”⁵ and a proposed trade results from a pricing decision by the specialist in connection with such market

⁵ For purposes of the rule, the NYSE will be considered to be a slow market when displaying a bid or offer (or both) that is not entitled to protection of Rule 611 under Regulation NMS.

events as, for example, the opening or reopening of trading, the resumption of trading after a gapped quotation has been published, the resumption of trading in the security following the triggering of a Liquidity Replenishment Point[®] (“LRP”), or when the specialist is arranging the closing transaction in a stock; or (ii) the market is “fast” and the specialist as dealer is manually reaching across the market.⁶ The Exchange states that the amendment addresses changes in the marketplace that have resulted from the implementation of the NYSE’s Hybrid Market[®].

NYSE Rule 79A.30, in its original form, predates the federal securities laws. It was initially aimed at preventing undue price dislocation by the specialist at the opening but gradually was extended to all trades significantly away from the last sale.⁷ This requirement had merit in the manual auction market, particularly when the market was both more centralized and less transparent than it is today, but as the market has evolved toward decentralized and transparent trading, the rule has lost some of its original purpose and utility.

For example, the rule functioned in part as a safeguard against market manipulation by specialists and brokers, and also controlled price volatility, by requiring a Floor Official who was not party to the transaction to review and approve all proposed transactions that exceeded the rule’s parameters before they were published to the consolidated tape. This ensured that specialists were maintaining appropriate price continuity and depth, and that Floor brokers were not transacting in the Crowd at unduly wide variations from the last sale.

⁶ When reaching across the market to hit the bid or take the offer, the specialist must engage the report template in the Display Book, ensure that the bid/offer price is correct, enter the amount of the specialist interest, and hit the done key.

⁷ The rule was extended in 1945 to all transactions more than \$2.00 from the last sale, and, in 1970, to groups of related transactions that would move the stock price more than \$2.00. The \$1.00 parameter for stocks trading under \$20.00 per share was added in 1979.

As a result of changes in the market in recent years, particularly the decentralization of control of pricing decisions away from the specialist and Floor broker, and the greater availability to all market participants of timely trade and quote information, the Exchange believes that NYSE Rule 79A.30 is no longer either necessary or viable in its present form. In particular, since the implementation of Phase III of the NYSE Hybrid Market[®], the Exchange has observed that the process of obtaining prior Floor Official approval for transactions one or two points away from the last sale does not add meaningful value in the context of electronic trading, for two reasons: (i) automated quoting and the entry of orders for automatic execution do not permit time for the involvement of Floor Officials before automated executions occur; and (ii) the greater availability of information in the market obviates much of the protection that such approval was designed to provide, in any event.⁸

Regarding the time required to obtain approval, the Exchange notes that requiring Floor Official approval for automated trades would, in effect, turn fast markets slow while a specialist or Floor broker requested approval and a Floor Official considered the request. This delay could impact the ability of a market participant to receive the best execution possible.

At the same time, the Exchange believes that there is less need for such approval in the modern market because of the wide commercial availability of real-time trading data, through such products as NYSE Open Book^{®9} and similar products provided by other market centers that

⁸ Notwithstanding this, NYSE Regulation has continued conducting Rule 79A.30 surveillance, identifying situations where the one or two point parameter was exceeded without Floor Official approval. The NYSE has observed that many of the exceptions generated relate to the automated execution of electronic interest where it would not have been possible for the individual violating the rule to have sought approval for the transaction because either they entered their order from off the floor, or from on the floor but at a distance from the point of sale.

⁹ NYSE Open Book is provided by the NYSE to vendors in two modes. The first displays the depth of the market refreshed every five seconds. The second displays the depth of

trade NYSE-listed securities (e.g., NYSE Arca, the Nasdaq Market Center, and BATS). Before such tools existed, a party entering an order that might trade outside the one or two point parameter had little or no direct way to evaluate the likely price impact of such an order. Consequently, the rule provided for a Floor Official to certify that the price movement was warranted from his or her neutral perspective (that is, based upon information available to the Floor Official but not necessarily to the party entering or representing the order in question). In contrast, in electronic markets there is significantly more information available in near real-time, and so customers engaging in electronic trading can more readily assess the impact of their actions before they enter an order for automatic execution or representation on the Floor, and can adjust their actions as necessary.

The Exchange reaches the same conclusion with respect to manual auction market trading in the Crowd between brokers or between the specialist and a broker. This is both because of the improved, widely-available real-time market information noted above and because in such situations, the transactions are ultimately subject to the business scrutiny of the upstairs trader who entered the order and who generally has access to the same information as the broker or specialist and therefore can determine the appropriateness (or inappropriateness) of the pricing decision. The Exchange believes that this business scrutiny has added teeth as well, since the upstairs customer who believes the price variation was unreasonable could demand price

the market in real time. The monthly subscription price of the former is \$50, and the monthly subscription price of the latter is \$60. NYSE Open Book discloses limit order interest at the price at the best bid and offer and at prices below the best bid and above the best offer. It does not include broker reserve interest, convert and parity orders (“CAP orders”), or stop orders.

adjustment in the form of a difference check¹⁰ or, where the specialist is the agent, could refuse the execution altogether.¹¹

Notwithstanding this general conclusion, the Exchange believes that the restrictions in NYSE Rule 79A.30 continue to be useful in certain situations including: (i) where the market is slow and the specialist is making a unilateral pricing decision not on an agency basis (e.g., at openings, reopenings and the close; when the quotation has been gapped; and when an LRP has been reached and the market is locked or crossed and the specialist trades out of the situation); and (ii) when the market is fast and the specialist as dealer is reaching across the market. The Exchange believes that in these situations, there is continuing merit in requiring Floor Official approval for trades that are more than \$1.00 from the last sale when such previous sale is under \$20.00 per share, or more than \$2.00 from the last sale when such previous sale is \$20.00 per share or more, since independent evaluation and prior approval by a Floor Official of such pricing decisions will ensure that specialists continue to make fair and orderly markets in situations where a significant imbalance between supply and demand is being addressed.

The Exchange notes in addition that the proposed rule change would shift the timing of the approval. Whereas currently Floor Official approval may be obtained after the trade takes place but before it is published to the consolidated tape, the proposed rule change would require that the specialist obtain approval prior to transactions. The Exchange believes this shift is consistent with the underlying concern in the rule of ensuring that there are not undue price dislocations in a stock.

¹⁰ See Exchange Rule 134(d).20.

¹¹ See Exchange Rule 91 and Supplementary Materials.

The Exchange also notes that its proposal to remove the requirement of prior Floor Official approval for most trading as specified under Rule 79A.30 would remove a restriction on the Exchange that does not exist for other automated market centers, thus removing the current undue competitive restraint that application of the rule to automated trading on the Exchange implies, but would retain certain benefits of the existing rule.

In connection with the substantive amendment, the Exchange is proposing to make certain additional conforming amendments to Rule 79A.30. Among other things, the Exchange is proposing to delete the last two paragraphs in the rule, which address situations where a Floor broker is driving the price change in an effort to execute block size interest. Since the proposed amendment would permit such trading without Floor Official approval, the Exchange believes that the language in the two paragraphs is no longer necessary.

The Exchange further proposes to amend Rule 79A.30 to clarify that prior Floor Official for one- and two-point sales as required under the proposed amendment would continue not to apply to inactively traded stocks.¹² The current text of Rule 79A.30 on its face applies only to “stocks at the active Posts,” which is an anachronistic reference to inactively-traded stocks. It derived from the fact that stocks that were very inactively traded used to be handled at the Exchange Floor’s Post 30, often referred to as the “inactive Post.” Some years ago, these very thinly traded securities were moved to a Panel at one of the active Posts, and so the reference in the rule to “active Posts” became unclear. Accordingly, the proposed amendment would delete

¹² For the period January 1 through May 31, 2007, 181 thinly traded or inactive securities traded at Post 4 Panels L, M, and N and include 96 nonconvertible preferred stocks (61 one hundred-share units and 35 ten-share units) and 85 structured products. As to their trading characteristics, these 181 inactive securities had an average of six and a half million shares outstanding (the minimum was 1,600 shares, the median was 11.4 million shares, and the maximum was 81 million shares) and an average daily trading volume of 4,000 shares (the minimum was 3 shares, the median was 4,000 shares, and the maximum was 44,100 shares).

the reference to “active posts” and would insert language that clearly states that neither paragraph (a) nor (b) of the proposed amendment applies to inactively traded securities. The Exchange states that this would not effect a substantive change to the current rule.

The Exchange further proposes to delete the reference to NYSE Rule 123A.40 in paragraph (a) of the rule. Rule 123A.40, which governs the handling of stop orders, was amended in relation to the Hybrid Market. In the Hybrid Market, specialists no longer see accumulating stop order volume and the related electing process and are, therefore, not responsible for manually processing elected stop orders. Instead, an elected stop order becomes a market order upon election and is eligible for automated execution without Floor Official approval. Accordingly, the Exchange believes that the reference to Rule 123A.40 in Rule 79A.30 is outdated and should be deleted.

Finally, with respect to paragraph (c) of the rule, which governs the requirements for reporting a one or two point sale to the consolidated tape, the Exchange believes that the requirement to report a one or two point sale as “sold” would be rendered moot by the proposed amendment. Those markers are intended to signal to the market that a trade was reported to the consolidated tape late and out of sequence with subsequent trades. Since, as proposed for amendment, the rule would require that Floor Official approval be obtained before a trade outside the parameters of the rule is effected, there would no longer be a lag time between the execution of a one and two point sale and the related report to the consolidated tape. Accordingly, one and two point sales that occur after the Opening would no longer need to be reported to the consolidated tape as late to the consolidated tape and out of sequence, unless the report to the consolidated tape was accidentally not made at the time of execution. The NYSE

notes that one and two point sales which occur on the Opening would continue to be marked “OPD,” which means “opened.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, because 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.

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 Exchange has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing.¹⁷ 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 satisfied the five-day pre-filing requirement of Rule 19b-4(f)(6)(iii). In addition, the Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to remove an impediment to Hybrid Market trading without delay. Therefore, the Commission designates the proposal operative upon filing.¹⁸

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 the 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2007-65 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-2007-65. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2007-65 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.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).