

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57213; File No. SR-NYSE-2008-07)

January 28, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of Crossing Sessions III and IV Pilots

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 January 22, 2008, 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 to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<sup>4</sup> 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 until February 1, 2009 the following pilot programs: Crossing Session III, for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange’s 9:30 a.m. to 4:00 p.m. trading session;

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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).

and Crossing Session IV, whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price (“VWAP”) for the subject security.

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 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 NYSE 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 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

In SR-NYSE-2002-40<sup>5</sup>, the Commission approved the establishment of two new crossing sessions (Crossing Sessions III and IV) in the Exchange’s Off-Hours Trading Facility (“OHTF”) as a pilot program (“Pilot”), expiring on December 1, 2004. In SR-NYSE-2005-01<sup>6</sup>, the Commission approved an extension of the Pilot to February 1, 2006. In SR-NYSE-2006-02<sup>7</sup>, the Commission approved an extension of the Pilot to February

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<sup>5</sup> See Securities Exchange Act Release No. 48857 (December 1, 2003), 68 FR 68440 (December 8, 2003) (SR-NYSE-2002-40).

<sup>6</sup> See Securities Exchange Act Release No. 51091 (January 28, 2005), 70 FR 6484 (February 7, 2005) (SR-NYSE-2005-01).

<sup>7</sup> See Securities Exchange Act Release No. 53275 (February 13, 2006), 71 FR 8626 (February 17, 2006) (SR-NYSE-2006-02).

1, 2007. In SR-NYSE-2007-07<sup>8</sup> the Commission approved an extension of the Pilot to February 1, 2008.

This filing seeks to extend the Pilot until February 1, 2009. Crossing Sessions III and IV are described below.

### Background

The purpose of the original proposed rule change was to add two additional "Crossing Sessions" (Crossing Sessions III and IV) to the Exchange's OHTF. Before the proposed rule change, the OHTF consisted of Crossing Sessions I and II. Crossing Session I permits the execution, at the Exchange's closing price, of single-stock, single-sided closing price orders and crosses of single-stock, and closing price buy and sell orders. Crossing Session II permits the execution of crosses of multiple-stock ("basket") aggregate-priced buy and sell orders. For Crossing Session II, trade reporting is accomplished by reporting to the Consolidated Tape the total number of shares and the total market value of the aggregate-price trades. There is no indication of the individual component stocks involved in the aggregate-price transactions.

### Crossing Session III

The Exchange is proposing to extend until February 1, 2009, the Pilot in Crossing Session III. Crossing Session III is described in Exchange Rule 907. This Pilot would continue to allow for the execution on the NYSE of "guaranteed price coupled orders" whereby member organizations could fill the unfilled balance of a customer order at a price which was guaranteed to the customer prior to the close of the Exchange's 9:30 a.m. to 4:00 p.m. trading session.

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<sup>8</sup> See Securities Exchange Act Release No. 55281 (February 12, 2007), 72 FR 7804 (February 20, 2007) (SR-NYSE-2007-07).

Member firms, in serving their institutional customers, may offer them a guarantee that a large size order will receive no worse than a particular price. Such a practice is usually referred to as an “upstairs stop,” meaning that the firm guarantees that its customer's order will be executed at no worse price than the agreed-upon, guaranteed price, with the member firm trading for its own account, if necessary, to effectuate the guarantee.

Typically, a member firm will seek to execute as much of the order as possible during the trading day at or below the “stop” price (in the case of a buy order) or at or above the “stop” price (in the case of a sell order). Any portion of the order not filled during the trading day will be completed after hours, with the firm either buying from, or selling to, its customer at a price which ensures that the entire order is executed at a price which is no worse than the “stop” price.

Member firms typically execute the unfilled balance of the order, after the U.S. Consolidated Tape is closed, in the London over-the-counter market, where trades are not reported in real time. The purpose of this is simply to minimize the possibility that other market participants may ascertain the firm's, or the customer's inventory position, and possibly trade in the subject security to the detriment of the firm that granted the “upstairs stop.” The Exchange believes that it is more transparent to print the trade in the NYSE primary market during U.S. Consolidated Tape hours.

#### Crossing Session IV

The Exchange is also proposing to extend the Pilot in Crossing Session IV (which is also described in Exchange Rule 907), until February 1, 2009. Crossing Session IV is a facility whereby member organizations may fill the unfilled balance of a customer's

order at a price such that the overall order is filled at a price that is no worse than the VWAP (the volume weighted average price) for the subject security on that trading day. The member organization would be required to document its VWAP agreement with the customer and the basis upon which the VWAP price would be determined.

#### Operation of Crossing Sessions

As described in NYSE Information Memos 04-30 and 05-57 and Rule 907,

Crossing Sessions III and IV would continue to operate as follows:

- (i) the original order as to which an “upstairs stop” or “VWAP” has been granted may be of any size;
- (ii) the customer must have received a “stop” (guaranteed price) or VWAP for the entire order;
- (iii) the member firm must record all details of the order, including the price it has guaranteed its customer or that the entire order will be filled at no worse than the VWAP;
- (iv) an order or the unfilled balance of an order that would be executed in Crossing Session III or Crossing Session IV may be of any size;
- (v) the customer's order must be executed in Crossing Session III or Crossing Session IV at a price that ensures that the entire order is executed at a price that is no worse than the guaranteed price or the VWAP;

- (vi) orders may be entered in Crossing Session III or Crossing Session IV between 4:00 p.m. and 6:30 p.m., and must be identified as either a Crossing Session III or Crossing Session IV order;
- (vii) member firms will receive an immediate report of execution upon entering an order into Crossing Session III or Crossing Session IV;
- (viii) orders may be entered into Crossing Session III for execution at prices outside the trading range in the subject security during the 9:30 a.m. to 4:00 p.m. trading session;
- (ix) orders may not be entered into Crossing Session III or Crossing Session IV in a security that is subject to a trading halt at the close of the regular 9:30 a.m. to 4:00 p.m. trading session; and
- (x) at 6:30 p.m., the Exchange will print trades reported through Crossing Session III as guaranteed price coupled orders or in Crossing Session IV as VWAP executions.

## 2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6 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.

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

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

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

<sup>13</sup> Rule 19b-4(f)(6) also requires the Exchange 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 satisfied the pre-filing requirement.

4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes the waiver of this period will allow it to continue the Pilots without undue delay, which it believes is in the public interest as it will avoid inconvenience and interruption to the public. The Commission believes such waiver is consistent with the protection of investors and the public interest because it presents no new issues and would allow the Pilots to operate without interruption. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.<sup>15</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.

#### 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

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

<sup>15</sup> For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-07 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-2008-07. 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 a.m. and 3:00 p.m. 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-2008-07 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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