

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57272; File No. SR-NYSE-2007-101)

February 5, 2008

Self-Regulatory Organizations; New York Stock Exchange, LLC; Order Granting Approval of Proposed Rule Change Relating to Amendments to NYSE Rule 104.21 (“Specialist Organizations – Additional Capital Requirements”)

I. *Introduction*

On November 2, 2007, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or the “Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposal to amend its Rule 104.21 regarding additional capital requirements for specialist organizations. The proposed rule change was published for comment in the *Federal Register* on December 28, 2007.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule changes.

II. *Description of the Proposal*

The proposed rule change would reduce the total base capital requirement that must be maintained as net liquid assets for all specialists from \$1 billion to \$250 million. NYSE believes this amount will adequately protect specialist organizations during periods of market stress. Further, each of the specialist organizations have sources of funding that can provide necessary liquidity during a period of market stress. It is no longer necessary for specialist organizations to maintain the currently required levels of liquid capital, as

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

<sup>2</sup> 15 U.S.C. 78(a) et seq.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 57000 (Dec. 20, 2007), 72 FR 73947.

specialist positions and the likelihood of losses have been reduced dramatically due to changes in the structure of the market.

### III. *Discussion*

After careful review and based on the Exchange's representations, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5)<sup>6</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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 Commission believes it is consistent with the Act for the Exchange to amend NYSE Rule 104.21 as proposed, because the level of participation by specialist firms in trading on the Exchange has declined with the proliferation of electronic trading and the significant change in the Exchange's trading system introduced by the Hybrid Market.<sup>7</sup>

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<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> *See* Release No. 34-53539 (March 22, 2006); 71 FR 16353 (March 31, 2006) File No. SR-NYSE-2004-05 (approving amendments to NYSE Rules (approving the proposed rule change to establish the NYSE Hybrid Market). The rule change created a "Hybrid Market" by, among other things, increasing the availability of automatic executions in its existing automatic execution facility, NYSE Direct+, and providing a means for participation in the expanded automated market by its floor members. The change altered the way NYSE's market operates by allowing more orders to be executed directly in Direct+, which in essence moves NYSE from a floor-based auction market with limited automation order interaction to a more automated market with limited floor-based auction market availability.

The NYSE has noted that the increased efficiency with which others can access the Exchange's market has increased liquidity and decreased the market's reliance on the specialist to provide the contra side in a continuous auction. While the NYSE considers specialist participation to still be an important feature of its Hybrid Market, it has documented a lower participation by specialist organizations. This decreased participation means that specialists are assuming less risk.

The Commission notes that FINRA, on behalf of NYSE, will continue to assess the specialists' net liquid asset requirements in relation to the Hybrid Market and monitor their net liquid assets on a daily basis. NYSE and FINRA require notification for all withdrawals of capital, and approval for any withdrawal being made on less than six months advance notice to the Exchange.

#### IV. *Conclusion*

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2007-101), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).