

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57295; File No. SR-NYSE-2008-11)

February 8, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 13 and 124 to Remove Certain Manual Order Types

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 31, 2007, 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 substantially by NYSE. NYSE filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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 proposes to amend to amend Rules 13 and 124 to remove certain manual order types. The text of the proposed rule change is available at NYSE, the Commission’s Public Reference Room, and [www.nyse.com](http://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, NYSE included statements concerning the purpose of,

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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).

and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE 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

NYSE seeks to amend Rules 13 and 124 to remove certain manual order types that are no longer compatible in today's electronic market. These order types are defined in Rule 13 (i.e., the "Alternative Order – Either/Or Order", "Orders Good Until a Specified Time", "Scale Order" and "Switch Order – Contingent Order") and Rule 124 (i.e., the "Limited Order, With or Without Sale" and "Basis Price Order"). The Exchange also seeks to make conforming changes to the enumeration of the Supplementary Material of Rule 124 based on the elimination of the text related to the Basis Price Order.

Hybrid Market Trading Environment

The Hybrid Market rules were implemented in a series of phases beginning with a pilot on December 14, 2005 through February 27, 2007.<sup>5</sup> During the implementation process, the Exchange continually reviewed the operation of the Hybrid Market and changes in the behavior of market participants resulting from the new rules in order to assess whether the rules resulted in operations as envisioned by the Hybrid Market initiative. As a result of this continual review,

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

<sup>5</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05) (establishing the Hybrid Market).

NYSE amended certain rules to better accomplish the goals intended with the creation of the Hybrid Market.<sup>6</sup>

In the current more electronic Hybrid Market, orders received by Exchange systems that are marketable upon entry are eligible to be immediately and automatically executed by Exchange systems. The Exchange believes that, in this current environment, order types that require manual intervention pose significant impediments to the efficient functioning of the Hybrid Market. As such, the Exchange seeks to eliminate the order types described below.

#### Description of Manual Order Types

An Alternative Order – Either/Or Order allows a customer to submit two separate orders simultaneously for the same security. For example, an order may be entered to sell (buy) XYZ at a limit price or sell (buy) on stop. If the order is for one unit of trading (generally 100 shares), when one of the designated alternative orders is executed (i.e., the sale of the security at its limit price), then the other alternative (i.e., the sale of a security on a stop) is cancelled. Pursuant to Rule 13, where the order is for more than one unit of trading, the number of units executed

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<sup>6</sup> See, e.g., Securities and Exchange Act Release Nos. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR-NYSE-2006-65) (amendment to clarify certain definitions and systematic processing of certain orders in the Hybrid Market); 55316 (February 20, 2007), 72 FR 8825 (February 27, 2007) (SR-NYSE-2007-14) (amendment of Exchange Rule 70.30 to change the concept of a Crowd from being “specific areas on the Floor where Floor brokers are generally able to see and hear the business” conducted at each post/panel to “specific identifiable areas where Floor brokers are able to conduct business at each post/panel within the Crowd”); 54427 (September 12, 2006), 71 FR 54862 (September 19, 2006) (SR-NYSE-2006-58) (amendment of Exchange Rule 70.30 to change the concept of a Crowd as “any five contiguous panels” to “specific identifiable areas on the Floor where Floor brokers are generally able to see and hear the business conducted at each post/panel within the Crowd”); 54086 (June 30, 2006), 71 FR 38953 (July 10, 2006) (SR-NYSE-2006-24) (amendment to Exchange Rule 104(d)(i) to conform the minimum display requirements for reserve interest for specialists and Floor brokers such that specialists, like Floor brokers, only be required to provide at least 1,000 shares displayed interest at the bid and offer in order to have reserve interest on that side of the quote).

determines the amount of the alternative order to be treated as cancelled. Therefore, if the order was to sell (buy) 300 XYZ at a limit price or sell (buy) 300 shares on stop and only 200 shares of XYZ were executed at the limit price, then only 200 shares of the sell stop order would be cancelled.

Orders Good Until a Specified Time are market or limited price offers which are to be represented in the Trading Crowd until a specified time, after which time such orders or the portion thereof not executed are to be treated as cancelled.

A Scale Order is an order to buy (sell) a security which specifies the total amount to be bought (sold) at specified price variations.

A Switch Order–Contingent Order is an order for the purchase (sale) of one security and the sale (purchase) of another security at a stipulated price difference.

The Limited Order, With or Without Sale, is a type of odd-lot order that may be filled on an effective round-lot transaction or an effective bid (when the price of a limit order to sell is at or above the Exchange’s best bid) or offer (when a limit order to buy is at or below the Exchange best offer), whichever occurs first after receipt of the order by Exchange systems.

The Basis Price Order is a type of odd-lot order that may be filled at a specified “Basis Price”<sup>7</sup> provided that the Basis Price has been established and approved by a Floor Official, the order is marked “On Basis” and was received at least a half hour before the close of the market. Basis Prices are established by the specialist where there has been no round-lot sale in the subject security during the trading session, the spread between the closing bid and offer prices is two

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<sup>7</sup> See Exchange Rule 124.10 (explaining how Basis Prices are established).

points or more and the specialist has been given an On Basis order. The Basis Price must be reviewed and approved by a Floor Official. A Basis Price order to sell is filled at the Basis Price plus any differential,<sup>8</sup> and a Basis Price order to buy is filled at the Basis Price minus any differential.

#### Proposed Elimination of the Manual Order Types

The Exchange proposes to eliminate the above-described orders as acceptable order types by Exchange systems. The manual order types described above are remnants of a time when the Exchange functioned completely as a manual auction market. Each of the aforementioned order types cannot be processed electronically. Today, when one of these orders is submitted to the Exchange, it is printed on paper for manual processing on the Floor. As a result of the current speed of order execution in the Hybrid Market, orders that are printed to paper for manual execution run the very real risk of “missing the market.”

In addition, the inefficiency of these order types is made obvious by the fact that they are infrequently used by market participants. A review of the different types of orders received by the Exchange during the week of September 17, 2007 through September 21, 2007 revealed that none of these orders were utilized by market participants.

Inherent in most of these order types are specific trading strategies whose desired effect can be replicated by means of electronic trading. For example, the desired result of a Scale Order may be achieved by the use of the Floor broker agency interest (“e-Quote”) at specified price points. Member organizations may achieve the desired outcome of a Switch Order – Contingent Order by combining orders with instructions for automatic execution. The Exchange

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<sup>8</sup> A “differential” is a stated charge (historically 1/8 of a point) per share of odd-lots executed by the odd-lot dealer. The differential is a legacy of a time when the Exchange had odd-lot dealers who were solely responsible for the execution of odd-lots on the Exchange.

believes that the elimination of these order types will further the protection of investors since the manual handling of the trading strategies inherent to these order types places its customers at risk of missing the market or inferior price executions. The use of current electronic functionality available in the Hybrid Market will provide Exchange customers with better execution opportunities.

The Exchange states that its commitment to provide its market participants with the ability to have their orders executed in the most efficient manner necessitates the elimination of the manual order types described above. As such, the Exchange seeks to delete the references to those order types from Rules 13 and 124. In addition, the Exchange seeks to make conforming changes to Rule 124 in order to ensure accurate consecutive enumeration of the rule text.

## 2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Sections 6(b)(5) of the Act,<sup>10</sup> in particular, in that the proposal 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. NYSE believes that the proposed rule change accomplishes these goals by rescinding legacy order types that place customers at risk of missing the market and possibly receiving inferior priced executions. NYSE believes that rescission of these order types promotes the use of electronic functionality and therefore would provide its customers with better execution opportunities.

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

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

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE 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

Written comments were neither solicited nor received.

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) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it 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 under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>13</sup> 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 to immediately remove a current impediment to the efficient operation of its market and to provide

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

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. NYSE has complied with this requirement.

<sup>14</sup> Id.

customers with better execution opportunities. The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.<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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSE-2008-11 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-11. 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

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<sup>15</sup> For purposes only of waiving the 30-day 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).



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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2008-11 and should be submitted on or before [insert date 21 days from the date of 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).