

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57627; File No. SR-NYSE-2008-19)

April 4, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to Amend NYSE Rule 46 to Permit the Appointment of Qualified Exchange Employees to Act as Floor Governors

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 March 14, 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, II, and III below, which Items have been prepared by NYSE. On April 4, 2008 the Exchange filed Amendment No. 1 to the proposed rule change. NYSE has designated this proposal as concerned solely with the administration of a self-regulatory organization, pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(3) thereunder,<sup>3</sup> which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 46 to permit the appointment of qualified Exchange employees to act as Floor Governors. The text of the proposed rule change is available at [www.nyse.com](http://www.nyse.com), the Exchange and the Commission’s Public Reference Room.

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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> 17 CFR 240.19b-4(f)(3).

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, 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. 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

NYSE Rule 46 currently provides a process for the Exchange to appoint NYSE members as Floor Officials. NYSE Rule 2(a) states that the term “member,” when referring to a natural person, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Floor of the Exchange or any facility thereof. Floor Officials are delegated certain authority from the Board of Directors of the Exchange to supervise and regulate active openings and unusual situations that arise in connection with the making of bids, offers or transactions on the trading Floor, and to review and approve certain trading actions, such as trades to be effected at wide variations in price and delayed openings and trading halts.<sup>4</sup>

Floor Officials have traditionally been drawn from the ranks of experienced NYSE Floor members and serve in a volunteer capacity in addition to their regular obligations as either brokers or specialists. Within the broad category of “Floor Official,” there are several ranks

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<sup>4</sup> See NYSE Rules 37, 47, 48, 60, 64, 75, 79A, 85, 90, 91, 93, 100, 103, 103A, 103B, 104, 107A, 110, 111, 112, 115A, 122, 123A, 123C, 123D, 127, 128B, 284, 325, 476A, 903 and 906.

reflecting the experience of the member serving, including (in ascending order of seniority) Floor Official, Senior Floor Official, Floor Governor, and Executive Floor Governor. Under NYSE Rule 46, more senior-level Floor Officials may take any action that a lower-level Floor Official is authorized to take.

Floor Officials at all ranks are appointed by the NYSE's Chairman and Board of Directors, in consultation with the Executive Floor Governors and NYSE Regulation Board, which advises on the fitness of the individuals designated. In connection with the NYSE Regulation Board's advisory function, NYSE Regulation staff gives a mandatory education program to the prospective officials, which all candidates for Floor Official (including Floor Governors) must complete. NYSE Regulation also administers a qualifying examination to newly-named Floor Officials, who must pass the exam prior to being recommended by the NYSE Regulation Board for appointment.

As the NYSE's trading Floor has downsized from five trading rooms to two, a number of highly-experienced members have left the Floor as a result of retirement, layoffs and restructurings within their member organizations. Because of these departures, the available pool of experienced members who can serve as senior-level Floor Officials (particularly Floor Governors) has shrunk commensurately.

During this same time, the Exchange has hired several former members who, while they were active on the Floor, served as senior-level Floor Officials.<sup>5</sup> The Exchange believes that these individuals have the necessary business and rule knowledge that would enable them to act as Floor Governors if the need arose, but are restricted by the provision in NYSE Rule 46 that states that Floor Governors must be "members" of the Exchange. In order to broaden the pool

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<sup>5</sup> For example, one such individual served as an Executive Floor Governor, while two others served as Floor Governors.

of experienced individuals who can participate in and supervise unusual trading situations on the Floor, the Exchange is proposing an amendment to NYSE Rule 46 that would permit the Exchange to designate qualified Exchange employees, who would have the same authority as Floor Governors, in addition to appointing active members as Floor Governors. To avoid any conflicts of interest between business interests and regulatory interests, the proposed amendment also provides that the Exchange may not appoint employees of NYSE Regulation as Floor Governors.

The proposed amendment would preserve the Exchange's flexibility to appoint both qualified members and qualified staff to act as Floor Governors. In addition, and as importantly, the amendment would not change either the selection or the qualification processes: qualified Exchange employees (like qualified members) would need to be appointed by the Exchange's chairman in consultation with the Executive Floor Governors and NYSE Regulation Board of Directors and approved by the NYSE Board of Directors; and they would need to complete the mandatory education program and, if necessary, the qualifications exam.<sup>6</sup> By retaining these processes, the Exchange intends to limit the appointment of Exchange employees to only those employees who meet the standards that the Exchange currently expects of member Floor Governors.

Because the proposed amendment adds a new category of Floor Official (qualified Exchange employee), the Exchange is proposing to add new supplementary material, Rule 46.20, to clarify that qualified Exchange employees are authorized to take any action that a Floor

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<sup>6</sup> The Exchange notes that under NYSE Regulation policy, former Floor Governors employed by the Exchange and appointed as qualified Exchange employees under Rule 46 would not need to retake the qualifying examination. This is consistent with the treatment of members being promoted to Floor Governor from Floor Official positions; such members are deemed to be qualified for the position after completing the mandatory education program, and are exempt from retaking the examination.

Governor may take. Because all Floor Governors are also empowered to take any action that a Floor Official may take, the rule further clarifies that qualified Exchange employees may also take any action that a Floor Official may take.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms 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 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is concerned solely with the administration of the Exchange and has, therefore, become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(3)<sup>9</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(3).

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>10</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2008-19 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-2008-19. 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

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<sup>10</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 4, 2008, the date on which NYSE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 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-2008-19 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).