

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58033; File No. SR-NYSE-2008-49)

June 26, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend for Three Months the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers, Pursuant to NYSE Rule 107A, and Competitive Traders, Pursuant to NYSE Rule 110

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 June 23, 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 substantially prepared by the Exchange. 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 proposes to extend for three months the moratorium related to the qualification and registration of Registered Competitive Market Makers (“RCMMs”), pursuant to Exchange Rule 107A, and Competitive Traders (“CTs”), pursuant to Exchange Rule 110 (“Moratorium”). The text of the proposed rule change is available at <http://www.nyse.com>, the NYSE, and 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be

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

<sup>2</sup> 17 CFR 240.19b-4.

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

The Exchange proposes to extend for three months the current Moratorium related to the qualification and registration of RCMMs, pursuant to Exchange Rule 107A, and CTs, pursuant to Exchange Rule 110.

On September 22, 2005, the Exchange filed SR-NYSE-2005-63<sup>3</sup> with the Commission proposing to implement a Moratorium on the qualification and registration of new RCMMs and CTs. The purpose of the Moratorium was to allow the Exchange an opportunity to review the viability of RCMMs and CTs in the NYSE HYBRID MARKET<sup>SM</sup> (“Hybrid Market”).<sup>4</sup>

During each phase of the Hybrid Market, new system functionality was included in the operation of Exchange systems, and new data was generated. As a result, the Exchange was unable to make an informed decision as to the viability of RCMMs and CTs in the Hybrid Market. The phased-in implementation of the Hybrid Market required the Exchange to extend the Moratorium an additional six times over the next twenty-four months.<sup>5</sup>

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<sup>3</sup> See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

<sup>4</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).

<sup>5</sup> See Securities Exchange Act Release Nos. 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR-NYSE-2006-48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR-NYSE-2006-113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR-NYSE-2007-57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR-NYSE-2007-86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR-NYSE-2007-125); and 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR-NYSE-2008-22).

The Exchange is now proposing to extend the Moratorium, as amended,<sup>6</sup> for an additional three months to September 30, 2008 in order to finalize its determination as to the roles of RCMMs and CTs and to formally submit a proposal to the Commission outlining the role, if any, these classes of traders have in the Exchange's evolving market.

On June 12, 2008, the Exchange filed its proposal to create its new market model ("New Model").<sup>7</sup> Pursuant to its proposal, the Exchange intends to: (i) provide market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) create a Designated Market Maker ("DMM") and phase out the NYSE specialist; and (iii) enhance the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs.

In light of these proposed changes, the Exchange seeks to continue its review of the data related to RCMMs' and CTs' current trading on the NYSE. Accordingly, the Exchange requests additional time to decide what roles, if any, RCMMs and CTs should perform in the proposed New Model.

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

## 2. Statutory Basis

The basis under the Act<sup>8</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>9</sup> that an exchange have rules that are designed to promote just and equitable principles of

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<sup>6</sup> See Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR-NYSE-2006-11) (making certain amendments to the Moratorium).

<sup>7</sup> See SR-NYSE-2008-46.

<sup>8</sup> 15 U.S.C. 78a.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 Exchange is currently reviewing the data related to RCMMs and CTs to evaluate its trading volume in the current, more electronic market. Since it is undergoing significant developments in its technology and its market model, the Exchange believes that an extension of time to finalize its determination of what, if any, roles the RCMMs and CTs will play in this evolving marketplace could potentially remove impediments to, and better improve, the mechanism of a free and open market.

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, 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<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required 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

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. 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 Moratorium to continue without interruption so that the Exchange may have additional time to make a final determination as to the future roles of RCMMs and CTs in the proposed New Model and to file with the Commission a proposed rule change outlining such roles. For these reasons, the Commission designates that the proposed rule change become operative immediately.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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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 five-day pre-filing requirement.

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

#### 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 Number SR-NYSE-2008-49 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2008-49. 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, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the 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-2008-49 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>15</sup>

Florence E. Harmon  
Acting Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).