

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58736; File No. SR-NYSE-2008-91)

October 6, 2008

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC to Adopt a Policy Relating to its Treatment of Trade Reports that it Determines to be Inconsistent with the Prevailing Market

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Exchange Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on September 26, 2008, New York Stock Exchange, LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been 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 adopt a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market. The Exchange does not expect that the proposed rule change will have any direct effect, or significant indirect effect, on any other Exchange rule in effect at the time of this filing.

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 self-regulatory organization 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a et SEC [sic].

³ 17 CFR 240.19b-4.

places specified in Item IV below. The 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

Trades in listed securities occasionally occur at prices that deviate significantly from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security.

The Consolidated Tape Association (“CTA”) offers each Participant in the CTA Plan the discretion to append an indicator (an “Aberrant Report Indicator”) to a trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market for the security. The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low and last sale prices for the security.

The Exchange proposes to adopt as policies of the Exchange:

- i. that it shall monitor for trade prices that do not accurately reflect the prevailing market for a security;
- ii. that it shall append an Aberrant Report Indicator to any trade report with respect to any trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and
- iii. that it shall discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security.

The Exchange shall act retroactively to append the Aberrant Report Indicator to trades that do not accurately reflect the prevailing market for a security commencing as of January 1, 2007.

The Exchange will urge vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy. Upon initial adoption of the Aberrant Report Indicator, the Exchange will also contact all of its listed companies to explain the aberrant trade policy and will notify users of the information that these are still valid trades. The Exchange will inform the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE-listed stock and will remind the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

While the CTA disseminates its own calculations of high, low and last sale prices, vendors and other data recipients – and not the Exchange – frequently determine their own methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange shall endeavor to explain to those vendors and other data recipients the deleterious effects that can result from including in the calculations a trade to which the Aberrant Report Indicator has been appended.

In making the determination to append the Aberrant Report Indicator, the Exchange shall consider all factors related to a trade, including, but not limited to, the following:

- material news released for the security;
- suspicious trading activity;

- system malfunctions or disruptions;
- locked or crossed markets;
- a recent trading halt or resumption of trading in the security;
- whether the security is in its initial public offering;
- volume and volatility for the security;
- whether the trade price represents a 52-week high or low for the security;
- whether the trade price deviates significantly from recent trading patterns in the security;
- whether the trade price reflects a stock-split, reorganization or other corporate action;
- the validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- the general volatility of market conditions

Currently, the Exchange does not trade on an unlisted trading privilege (“UTP”) basis any securities listed on other markets. In the event that the Exchange commences UTP trading at some future date, the Exchange proposes that its policy shall be to consult with the listing exchange (if the Exchange is not the listing exchange) and with other markets (in the case of executions that take place across multiple markets) and to seek a consensus as to whether the trade price is consistent with the prevailing market for the security.

In monitoring trade prices that may be inconsistent with the prevailing market, the Exchange proposes that Exchange policy shall be to follow the following general guidelines: The Exchange will review whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (i.e., 9:30 a.m. to 4 p.m.) and occurs at a

price that deviates from the “Reference Price” by an amount that meets or exceeds the following thresholds:

<u>Trade Price</u>	<u>Numerical Threshold</u>
Between \$0 and \$15.00	Seven Percent
Between \$15.01 and \$50.00	Five Percent
In excess of \$50.00	Three Percent

The “Reference Price” refers to (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security, or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide apart as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If the Exchange determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade’s designation as the last sale. The Exchange may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from markets and other market participants.

The Exchange has always monitored for trade prices that do not accurately reflect the prevailing market for a security. For more than a year, the Exchange has embraced the policy of discouraging vendors and other data recipients from including trade reports that are inconsistent

with the prevailing market in their calculations of high, low and last sale prices. The Exchange proposes to use the Aberrant Report Indicator in accordance with the guidelines set forth above. Where appropriate, the Exchange may apply the Aberrant Report Indicator to trades that were reported prior to the adoption of this policy.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,⁴ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,⁵ in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

In particular, the Aberrant Report Indicator is consistent with the protection of investors and the public interest in that the Exchange will seek to ensure a proper understanding of the Aberrant Report Indicator among securities market participants by: (i) urging vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy; (ii) informing the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE-listed stock; and (iii) reminding the users of the information that these are still

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

From time to time, the Exchange has received comments from representatives of its listed companies that a trade report for a transaction in the stock of that listed company is inconsistent with the prevailing market for that stock and that the inconsistent trade price has inappropriately distorted the high, low and last sale price calculations for the listed company. While those commenters have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and this proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 Exchange 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. Please include File Number SR-NYSE-2008-91 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-2008-91. 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 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-2008-91 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.⁶

Florence E. Harmon
Acting Secretary

⁶ 17 CFR 200.30-3(a)(12).