

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58936; File No. SR-NYSE-2008-117)

November 13, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete Section (3) of Exchange Rule 123D, Which Provides for the “Sub-Penny Trading” Condition

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 6, 2008, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. 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 delete section (3) of Exchange Rule 123D, which provides for the “Sub-penny trading” condition. The text of the proposed rule change is available at www.nyse.com, NYSE’s principal office, 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 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 those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Regulation NMS, adopted by the Securities and Exchange Commission (“SEC”),⁴ provides that each trading center intending to qualify for trade-through protection under Regulation NMS Rule 611⁵ is required to have a Regulation NMS-compliant trading system fully operational by March 5, 2007 (the “Trading Phase Date”).⁶

For stocks priced below \$1.00 per share, Regulation NMS Rule 612⁷ permits markets to accept bids, offers, orders and indications of interest in increments smaller than a \$0.01, but not less than \$0.0001, and to quote and trade such stocks in sub-pennies. Markets may choose not to accept such bids, offers, orders or indications of interest and the NYSE has done so, maintaining a minimum trading and quoting variation of \$0.01 for all securities trading below \$100,000. See NYSE Rule 62.

The SEC’s interpretation of Rule 612 requires a market that routes an order to another market in compliance with Rule 611 and receives a sub-penny execution, to accept the sub-penny execution, report that execution to the customer, and compare, clear and settle that trade. The SEC, however, provided a limited exemption to Rule 611’s proscription against trade-

⁴ 17 CFR 242.600 to 242.612. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁵ See 17 C.F.R. § 242.611.

⁶ See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007) (S7-10-04).

⁷ 17 C.F.R. 242.612. Rule 612 originally was to become effective on August 29, 2005, but the date was later extended to January 31, 2006. See Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005) (S7-10-04).

throughs to protected quotes that include a sub-penny component to such quotes that are better-priced by a minimum of \$0.01.⁸

In March, 2007, the Exchange amended Rule 123D to provide for a “Sub-penny trading” condition because the Exchange’s trading systems did not then accommodate sub-penny executions on orders routed to better-priced protected quotations, nor could it recognize a quote disseminated by another market center if such quote had a sub-penny component and, therefore, could have inadvertently traded through better protected quotations. The amended rule allowed the Exchange to halt trading in a security whose price was about to fall below \$1.00, without delisting the security, so that the security could continue to trade on other markets that deal in bids, offers, orders or indications of interest in sub-penny prices, until the price of the security had recovered sufficiently to permit the Exchange to resume trading in minimum increments of no less than one penny or the issuer is delisted for failing to correct the price condition within the time provided under NYSE rules.⁹ A subsequent amendment established that any orders received by the NYSE in a security subject to a “Sub- penny trading” condition would be routed to NYSE Arca, Inc. and handled in accordance with the rules governing that market.¹⁰

Through this filing, the Exchange proposes to eliminate the “Sub-penny trading” condition in its entirety. The NYSE now has the technical capability to recognize protected

⁸ See Securities and Exchange Act Release No. 54714 (November 6, 2006), 71 FR 66352 (November 14, 2006). (Order Granting National Securities Exchanges a Limited Exemption from Rule 612 of Regulation NMS under the Securities Exchange Act of 1934 to Permit Acceptance by Exchanges of Certain Sub-Penny Orders.)

⁹ See Securities and Exchange Act Release No. 55398, 72 FR 11072 (March 12, 2007) (SR-NYSE-2007-25).

¹⁰ See Securities and Exchange Act Release No. 55537 (Mar. 27, 2007), 72 FR 15749 (April 2, 2007) (SR-NYSE-2007-30).

quotations with a sub-penny component in its round-lot market and accommodate away market executions in sub-pennies, in compliance with SEC Rules 611 and 612.

The Exchange system enhancements that will enable recognition of sub-penny quotations for pricing of odd-lots in the odd-lot system are contained in the technology associated with Phase 2 implementation of the New Market Model.¹¹ Until the conclusion of the second Phase of implementation, which is scheduled to be completed no longer than ten weeks after October 24, 2008, those odd-lot orders that would receive an execution price based on the NBBO as set forth in NYSE Rule 124 will be priced at the last NBBO that did not contain a sub-penny price.

Given that Exchange systems will now be able to accommodate these orders and away-market executions, the Sub-penny trading condition halt is no longer required.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹² of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)¹³ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the instant proposal is in keeping with these principles in that it seeks to operate technology on the NYSE that allows the Exchange to recognize protected quotations with a sub-penny component and

¹¹ See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

accommodate away market executions in sub-pennies, in compliance with SEC Rules 611 and 612.

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 foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of 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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.¹⁶ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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 business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

interest. NYSE requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),¹⁷ which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Exchange systems are now capable of recognizing protected quotations with a sub-penny component in its round-lot market and can accommodate away market executions in sub-pennies, in compliance with SEC Rules 611 and 612. The Commission finds that it is appropriate to waive the 30-day operative delay for this proposed rule change because the “Sub-penny trading” condition no longer serves any purpose and waiving the delay should allow the Exchange to immediately come into full compliance with Regulation NMS with respect to sub-pennies. For these reasons, the Commission designates the proposed rule change as operative upon filing.¹⁸

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:

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s effect on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- 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-2008-117 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-2008-117. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-117 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.¹⁹

Florence E. Harmon
Acting Secretary

¹⁹ 17 CFR 200.30-3(a)(12).