

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59551; File No. SR-NYSE-2009-24)

March 10, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending for Two Months to May 31, 2009 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)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 3, 2009, 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, II, and III 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 extend for two months to May 31, 2009 the moratorium related to the qualification and registration of Registered Competitive Market Makers (“RCMMs”) pursuant to NYSE Rule 107A and Competitive Traders (“CTs”) pursuant to NYSE Rule 110.

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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

The Exchange proposes to extend for two months to May 31, 2009 the moratorium related to the qualification and registration of RCMMs pursuant to NYSE Rule 107A and CTs pursuant to NYSE Rule 110.

On September 22, 2005, the Exchange filed SR-NYSE-2005-63<sup>4</sup> with the Securities and Exchange Commission (“Commission”) proposing to implement a moratorium on the qualification and registration of new RCMMs and CTs (“Moratorium”). 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>5</sup>

During each phase of the Hybrid Market, the NYSE implemented new system functionality that generated additional data to review. 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 phasing in implementation of the Hybrid Market required the Exchange to extend the Moratorium an additional six times over a twenty-four (24) month period.<sup>6</sup> During the

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<sup>4</sup> See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

<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 NYSE HYBRID MARKET<sup>SM</sup>).

<sup>6</sup> See Securities Exchange Act Release Numbers 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); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR-NYSE-2008-22).

Moratorium, the Exchange reviewed the quarterly volume data of RCMM and CT trading data to determine the average trading volume of RCMMs.

On October 24, 2008, the Commission approved the Exchange's new market model filing ("Next Generation NYSE").<sup>7</sup> The Next Generation NYSE filing: (i) provided market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) created a Designated Market Maker ("DMM"), and phased out the NYSE specialist; and (iii) enhanced the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs. In light of the implementation of Next Generation NYSE, the Exchange requested extensions of the Moratorium to evaluate the viability of the RCMMs and CTs in the proposed Next Generation NYSE.<sup>8</sup>

Next Generation NYSE is currently operating as a pilot scheduled to end on October 1, 2009. The Exchange continued to review RCMM and CT trading data. As a result of its review, the Exchange concluded that RCMMs and CTs no longer serve as viable supplemental market makers. Accordingly, the Exchange determined that RCMMs and CTs should no longer be viable classes of traders on the Exchange and will formally file a separate proposed rule change with the Commission to eliminate RCMMs and CTs as viable classes of NYSE traders.

The Exchange therefore proposes to extend the Moratorium as amended<sup>9</sup> for an

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<sup>7</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

<sup>8</sup> See Securities Exchange Act Release Numbers 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR-NYSE-2008-49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR-NYSE-2008-96); 59069 (December 8, 2008), 73 FR 76081 (December 15, 2008) (SR-NYSE-2008-124).

<sup>9</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).

additional two (2) months to May 31, 2009 in order to complete the 19b-4 filing process.<sup>10</sup> The Exchange's proposal will be filed consistent with the Act<sup>11</sup> in order to afford interested persons an opportunity to submit written data, views, and arguments concerning the Exchange's proposal.<sup>12</sup>

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

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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. The Exchange believes that the instant filing is consistent with these principles. Based on its review of data associated with RCMM and CT trading, the Exchange has concluded that RCMMs and CTs no longer serve as viable supplemental market makers. In this instant filing, the Exchange seeks an extension of the Moratorium to finalize its proposal to eliminate RCMMs and CTs from the NYSE and will file that proposal with the Commission.

### 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.

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<sup>10</sup> 17 CFR 240.19b-4.

<sup>11</sup> 15 U.S.C. 78s(a)(1).

<sup>12</sup> Id.

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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act.<sup>13</sup> The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given 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 business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

An extension of the Moratorium does not burden competition because it does not restrict RCMMs from joining any RCMM firm or becoming or remaining an independent RCMM nor does it restrict any RCMM firm from hiring existing RCMMs. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.<sup>14</sup>

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 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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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

#### 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-2009-24 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSE-2009-24. 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-2009-24 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  
Deputy Secretary

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