

Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2007-99 and should be submitted on or before November 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56621; File No. SR-NYSE-2007-94]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend NYSE Rule 70.30 Relating to the Definition of a Crowd

October 5, 2007.

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 September 28, 2007, 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 NYSE. On October 4, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 NYSE proposes to amend Exchange Rule 70.30 to define the Crowd as the rooms on the Exchange Trading Floor ("Floor") that contain active posts/panels where Floor brokers are able to conduct business. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at <http://www.nyse.com>, and at 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 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

Through this filing, NYSE proposes to amend Exchange Rule 70.30, which sets forth the definition of a Crowd. The Exchange seeks to define the Crowd as the rooms on the Floor that contain active posts/panels where Floor brokers are able to conduct business.

Currently, a Crowd is defined as one of the three trading zones located on the Floor where Floor brokers are able to conduct business at each post/panel within the Crowd.<sup>5</sup> The Main Room and Garage each constitute a separate Crowd. The third Crowd consists of the current Blue Room and the Extended Blue Room ("EBR"). It was believed that defining the Crowd in this manner best facilitated the essential interaction among Floor participants and between Floor brokers and orders in the Display Book® System.

As the Exchange has gained experience operating its Hybrid Market, certain practical considerations make it necessary for the Exchange to modify its rules. Based on its experience, the

Exchange seeks to amend the definition of a Crowd.<sup>6</sup>

The Exchange is currently in the process of consolidating its Floor operations.<sup>7</sup> At present, the Exchange operates four rooms that make up the Floor (*i.e.*, the Main Room, the Garage, the Blue Room, and the EBR).<sup>8</sup> The trading floor consolidation plan calls for the closing of the Blue Room and the EBR. The specialist firms and the floor brokerage firms that currently occupy the Blue Room and the EBR will be relocated to the Main Room and the Garage. This consolidation will significantly reduce the physical area where Floor brokers will be conducting business.

It is anticipated that the consolidation of the Exchange's Floor operation will be accomplished by first moving the posts/panels located in the EBR and the Blue Room to new locations in the Main Room and the Garage. Until the relocation of the posts/panels from the EBR and Blue Room is complete, Floor broker booths will remain in the EBR and the Blue Room. Upon completion of the relocation of the posts/panels in the EBR and the Blue Room, the Exchange will commence moving Floor broker booths located in the EBR and the Blue Room into new locations in the Main Room and the Garage. During this transition period, to end no later than December 15, 2007, Floor brokers will be considered part of the Crowd and permitted to electronically represent orders from the EBR and the Blue Room.

The Exchange believes that the reduction of the physical areas that constitute the Floor and the increase of electronic trading warrant amending the definition of the Crowd. As such, NYSE proposes to amend Exchange Rule 70.30 to define the Crowd as the rooms on the Floor that contain active posts/panels where Floor brokers are able to conduct business. The Exchange submits that the proposed amendment to the Rule accurately identifies the areas where the essential interaction among Floor participants and between Floor brokers and orders in the Display Book® System occur. Accordingly, pursuant to the proposal, a Floor broker will be considered to be in the Crowd when he or she is physically present in one of the aforementioned rooms.

<sup>6</sup> Telephone conversation on October 4, 2007, between Deanna Logan, Director, Office of the General Counsel, Exchange, and David Liu, Assistant Director, Division of Market Regulation, Commission.

<sup>7</sup> The Exchange states that it anticipates that the consolidation of the Floor will be completed no later than November 2007.

<sup>8</sup> In February 2007, the Exchange closed the operation of a fifth trading room located at 30 Broad Street.

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 55316 (February 20, 2007), 72 FR 8825 (February 27, 2007) (SR-NYSE-2007-14).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and with Section 6(b)(5) of the Act<sup>10</sup> 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> As required under Rule 19b-4(f)(6)(iii),<sup>13</sup> the Exchange provided the Commission with 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.

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. 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 interest. The Exchange 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. Specifically, the Commission believes that, given the Exchange's plan to consolidate its Floor operations, the proposed rule change would enable Floor brokers to promptly facilitate transactions from the physical areas on the Floor where business will ultimately be conducted. For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.<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.<sup>15</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 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-2007-94 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-2007-94. 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/>

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

<sup>15</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on October 4, 2007, the date on which the Exchange filed Amendment No. 1.

[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 a.m. and 3 p.m. 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-2007-94 and should be submitted on or before November 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris,  
Secretary.

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Commission has scheduled a public hearing regarding whether Amendment 9 pertaining to offenses involving cocaine base ("crack") and Amendment 12 pertaining to certain criminal history rules, see 72 FR 28558 (May 21, 2007); 72 FR 51882 (September 11, 2007), should be applied retroactively to previously sentenced defendants.

**DATES:** The Commission has scheduled a public hearing for November 13, 2007. Requests to testify should be received by the Commission not later than October 29, 2007. Written testimony for the public hearing must be received by the Commission not later than November 5,

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>10</sup> 15 U.S.C. 78(f)(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

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

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