

2007.<sup>4</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

The proposed amendments to Rule G-40 would require dealers to: (i) Promptly update any change in the required information for their primary contact but not later than 30 days following such change; (ii) review and, if necessary, update required information on their primary contact within 17 business days after the end of each calendar year; and (iii) promptly comply with any request by the appropriate regulatory agency (as defined in Section 3(a)(34) of the Act) for such information but not later than 15 days following such request, or such longer period that may be agreed to by the appropriate regulatory agency. A full description of the proposal is contained in the Commission's Notice.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB<sup>5</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act<sup>6</sup> and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the Act because substantially conforming Rule G-40 to comparable FINRA requirements relating to e-mail contact information will promote regulatory consistency by facilitating dealer compliance with such requirements, as well as the inspection and enforcement thereof. The proposal will be effective December 31, 2007, as requested by the MSRB.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-MSRB-2007-04) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56958; File No. SR-NYSE-2006-99]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change as Modified by Amendment Nos. 2 and 3 Thereto Relating to Rule 104 (Dealings by Specialists)

December 13, 2007.

#### I. Introduction

On November 9, 2006, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend Exchange Rule 104 to allow the specialist's algorithm systems to generate trading messages that provide supplemental specialist volume to partially or completely fill an order at a sweep price. The Exchange filed and withdrew Amendment No. 1 to the proposal on October 24, 2007 and October 29, 2007, respectively. The Exchange filed Amendment Nos. 2 and 3 on October 29, 2007 and November 5, 2007, respectively. The proposed rule change was published for public comment in the **Federal Register** on November 13, 2007.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change, as amended.

#### II. Description of the Proposed Rule Change

Currently, Rule 104(b)(i)(F) permits the specialist proprietary algorithm ("Specialist Algorithm") to generate a trading message to provide

supplemental specialist volume at the Exchange published best bid or offer ("BBO"). This trading message enables specialists, through the use of their algorithms, to provide more volume where, technically, there is no other interest available to trade with the customer order.

The Exchange seeks to further provide its customers with additional opportunities for a better priced execution by amending Rule 104(b)(i)(F) to allow the specialist to also partially or completely fill an order beyond the Exchange published best bid or offer at a sweep price.<sup>4</sup> The Specialist Algorithm will generate this trading message in reaction to one order at a time and only as that order is entering Exchange systems. Additionally, this trading message will only be able to interact with the targeted order to add volume at one place, either at the Exchange best bid or offer or at a particular sweep price. In other words, the specialist will not have two opportunities to provide supplemental specialist volume to the incoming order at the Exchange best bid or offer and also at a particular price point should the order sweep the Display Book. There will be no change with respect to priority and parity. The specialist's algorithm will make a determination about where and how much supplemental specialist volume to provide based on the state of the book information when the order is received by Exchange systems.

The specialist would not be required to buy the full size remaining of the sell order at the particular sweep price. The Exchange states that there is no disadvantage to the customer in allowing the specialists to partially fill an order at a particular sweep price especially when applicable rules only allow the supplemental specialist volume to interact with the order when no other interest exists.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the

<sup>4</sup> See Securities Exchange Act Release No. 56736 (November 2, 2007), 72 FR 63633 (November 9, 2007) ("Commission's Notice").

<sup>5</sup> In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> Securities Exchange Act Release No. 56747 (November 5, 2007), 72 FR 63946 ("Notice").

<sup>4</sup> The instant filing was initially filed with the Commission on November 9, 2006. In the notice, the Exchange stated that the proposed functionality inadvertently became operational in Exchange systems without Commission approval on or about January 24, 2007. The proposed rule change, as amended, is intended to codify the current Exchange system functionality. See Notice, *supra* note 3, at note 6.

Act<sup>5</sup> which requires an Exchange to 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.<sup>6</sup> Specifically, the Commission believes that the proposal should benefit investors and the public interest by enabling customers to receive better priced executions than they otherwise would have received. Additionally, when specialists choose, through their algorithms, to partially or completely fill orders beyond the Exchange BBO, the Commission notes that the Exchange has represented that its systems would not permit a trading message to provide supplemental specialist volume that would trade-through a protected quotation in violation of Rule 611 of Regulation NMS under the Act.<sup>7</sup> The Commission also notes that the supplemental specialist volume would yield to displayed and reserve interest (*i.e.*, customer limit orders, Floor broker agency interest and specialist interest).

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2006-99), as amended, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56968; File No. SR-NYSE-2007-114]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to NYSE Rule 92 and Riskless Principal Trading at the Exchange

December 14, 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 December 11, 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 Exchange. The Exchange has designated the proposed rule change as a “non-controversial” rule change 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 proposed rule change effective upon filing with the Commission. 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 the operative date of NYSE Rule 92(c)(3) from January 16, 2008 to May 14, 2008. The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 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 the delayed operative date of NYSE Rule 92(c)(3) from January 16, 2008 to May 14, 2008. On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the Exchange.<sup>5</sup> In connection with those amendments, the Exchange implemented NYSE Rule 92(c)(3), which requires members to

submit to a designated Exchange database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the Exchange requires that when executing riskless principal transactions, firms must submit order execution reports to the Exchange's Front End Systemic Capture (“FESC”) database linking the execution of the riskless principal order on the Exchange to the specific underlying orders. The information provided must be sufficient for both member firms and the Exchange to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required member organizations to make certain changes to their trading and order management systems, the Commission approved a delay to January 16, 2008 of the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.

The Exchange has been working diligently to develop its FESC database to accept riskless principal order types and the underlying batch orders. On October 12, 2007, the Exchange published an Information Memo that provided member organizations with information relating to the FESC technology interface and data requirements for riskless principal trading at the Exchange. The development of the systems, however, has taken longer than anticipated, which could affect the ability of member organizations to meet the operative date. Several member organizations have informed the Exchange that they need additional time to program their respective systems to meet the new FESC requirements.

To accommodate both the Exchange's and the member organization community's need to complete the development of the FESC technology to both accept and route riskless principal orders, the Exchange proposes to delay the operative date for NYSE Rule 92(c)(3) from January 16, 2008 to May 14, 2008.

Pending implementation of the FESC database and use of the riskless principal account type indicator, the Exchange will continue to require that,

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

<sup>6</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 17 CFR 242.611.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR-NYSE-2007-21).