

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-60 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2008-60. 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 a.m. and 3 p.m. Copies of such 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-2008-60 and should be submitted on or before August 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58268; File No. SR-NYSE-2008-67]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce the Order Flow Sent to the Specialist Application Programmed Interface

July 30, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 29, 2008, 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 prepared by NYSE. NYSE filed the proposed 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 it 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

NYSE proposes to reduce the order flow sent to the Specialist Application Programmed Interface ("Specialist APISM" or "SAPI"). 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, NYSE 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. 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

NYSE proposes to reduce the information that is made available to specialists with respect to orders as they enter Exchange systems. The reduction of order information provided to the specialist is the Exchange's way of gradually transitioning the specialists into their new role as Designated Market Makers ("DMMs").<sup>5</sup> The DMM on the Exchange will ultimately not be provided any order by order information as of the complete implementation of the Exchange's enhancements to its trading model.<sup>6</sup>

##### Background

Pursuant to NYSE Rule 104, Exchange specialists in their capacity as dealers for their assigned securities, maintain systems that use proprietary algorithms, based on predetermined parameters, to electronically participate in the Exchange market ("Specialist Algorithm"). The Specialist Algorithm communicates with the NYSE Display Book<sup>®</sup> system<sup>7</sup> via an Exchange-owned external application program interface (the "API"). The Specialist Algorithm is intended to replicate electronically some of the activities specialists are permitted to engage in on the Floor in the auction market and to facilitate the specialists' ability to fulfill their obligation to maintain a fair and orderly market.

Specialist Algorithms may generate quoting and trading messages as prescribed by Exchange Rule 104(b)(i). To that end, the Specialist Algorithm receives information via the API,<sup>8</sup>

<sup>5</sup> See generally Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46).

<sup>6</sup> *Id.*

<sup>7</sup> The Display Book<sup>®</sup> system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

<sup>8</sup> Exchange systems provide specialist algorithms with the following information: (1) Specialist dealer position; (2) quotes; (3) information about orders in the Display Book system such as limit orders, percentage orders ("state of the book"); (4) incoming orders as they are entering NYSE systems; and (5) information with respect to odd-lot executions to which the specialist was the contra-side. In addition, a specialist firm may supply its algorithm with any publicly available information the specialist firm chooses. The Specialist Algorithm does not have access to: (1) Information

<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>20</sup> 17 CFR 200.30-3(a)(12)

including information about orders entering Exchange systems before that information is available to other market participants. Specialist Algorithms are only provided a copy of one order at a time and must process and respond to each order prior to Exchange systems providing any subsequent order information. Exchange systems enforce the proper sequencing of incoming orders and messages generated by the Specialist Algorithm in response to this information. Once an algorithmic message is generated, it cannot be stopped, changed, or cancelled on its way to the Display Book system.

#### Proposal To Reduce Order Information Provided to the Specialist Algorithm

As discussed above, the evolution of the Exchange's market model will phase out the specialist's role and create a DMM. The DMM will be a market maker with the ability to trade competitively for its dealer account. As such, the Exchange has proposed that the DMM be on parity with other market participants in the execution of market interest in most automatic trading situations. Recognizing, that in order for the DMM to compete on a more equal footing with other market participants, the DMM should not have access to order information not available to the other market participants; the Exchange will no longer provide the DMM Algorithm with a copy of order by order information traditionally provided to the specialist.

In order to gradually transition specialists into their new DMM role, the Exchange proposes to modify its systems so that the current Specialist Algorithm will no longer receive a copy of all orders prior to display. Instead, Exchange systems will provide in certain securities, as explained further below, copies of the following types of orders to the Specialist Algorithm: (i) Market orders; (ii) buy limit orders priced at the NYSE bid price or sell limit orders priced at the NYSE offer price; (iii) limit orders priced in between the NYSE bid price and the NYSE offer price; and (iv) limit orders that are priced at or through the opposite side quote (*i.e.*, below the bid in the case of an order to sell or at or above the offer in the case of an order to buy).

For example, if the NYSE is quoted at \$10.05 bid and \$10.10 offer, Exchange

systems will provide the Specialist Algorithm with copies of the following:

- i. All market orders;
- ii. Buy orders priced at \$10.05;
- iii. Sell orders priced at \$10.10;
- iv. All buy and sell Limit orders priced at \$10.06, \$10.07, \$10.08 and \$10.09;
- v. Buy orders priced at \$10.10 or greater; and
- vi. Sell orders priced at \$10.05 or lower.

The Exchange will commence the reduction of the order information provided to the Specialist Algorithm in two securities. After a period of monitoring Exchange system operation, the Exchange will progressively implement the reduction in additional securities.<sup>9</sup> It is anticipated that this will result in a reduction of approximately 75% of orders provided to the Specialist Algorithm in those securities where the order reduction is operational. Specialist Algorithms will still be restricted to responding to one order at a time, and the sequencing of order information and responses will continue to be enforced by Exchange systems. When the new market model is fully implemented,<sup>10</sup> DMMs will not receive a copy of orders prior to the order being published to Exchange systems.

The Exchange believes that the reduction of order flow information to the current Specialist Algorithm will not adversely affect the quality of Exchange markets. Specialists will still be required to meet their affirmative obligations to maintain fair and orderly markets in their assigned securities.

#### 2. Statutory Basis

The basis under the Act<sup>11</sup> for this proposed rule change is the requirement under sections 6(b)(5) of the Act<sup>12</sup> that an Exchange have rules that are 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. The proposed rule change is designed to

support the principles of section 11A(a)(1)<sup>13</sup> in that it seeks to assure economically efficient execution of securities transactions and fair competition among Exchange market participants.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE 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 does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>16</sup> However, Rule 19b-4(f)(6)(iii)<sup>17</sup> 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 so that the proposal may become operative immediately upon filing. The Exchange believes the waiver of this period will allow it to immediately foster competition by continuing the ability of all market participants to compete on a more equal basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby

<sup>13</sup> 15 U.S.C. 78k-1(a)(1).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 complied with this requirement.

<sup>17</sup> *Id.*

identifying the firms entering orders, customer information, or an order's clearing broker; (2) Floor broker agency interest files or aggregate Floor broker agency interest available at each price; or (3) order cancellations, except for cancel and replace orders. See NYSE Rule 104(c)(ii).

<sup>9</sup> Ultimately, the Exchange anticipates that the reduction of order information will operate in all securities traded on the Floor.

<sup>10</sup> Subject to Securities and Exchange Commission approval, the Exchange anticipates that DMMs will begin to trade on parity in the third quarter of 2008, and that the complete removal of order by order information to the DMM will commence in the fourth quarter of 2008.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

grants the Exchange's request and designates the proposal as operative upon filing.<sup>18</sup>

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*

- 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 No. SRVNYSE-2008-67 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2008-67. 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, 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-2008-67 and should be submitted on or before August 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58278; File No. SR-NYSE-2008-61]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 104(e) (Dealings by Specialists) To Modify the Conditions Governing the Specialists' Use of the Price Improvement Trading Message Pursuant to NYSE Rule 104(b)(i)(H)

July 31, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on July 25, 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, 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 amend Exchange Rule 104(e) (Dealings by Specialists) to modify the conditions governing the specialists' use of the price improvement trading message pursuant to Rule 104(b)(i)(H). The text of the proposed rule change is available at NYSE, [www.nyse.com](http://www.nyse.com), 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 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 seeks to modify the conditions that govern the ability of specialists to provide price improvement pursuant to Rule 104 (Dealings by Specialists). Specifically, the Exchange proposes to amend Exchange Rule 104(e) to remove the requirement that specialists be represented in the quote in a "meaningful amount" before they can send a trading message that will provide price improvement to arriving marketable orders (*i.e.*, those orders capable of trading in the current market upon arrival).

Pursuant to Exchange Rule 104(b)(i), a specialist's algorithm may generate and transmit quoting and trading messages in a number of specific situations detailed in the rule. Under Rule 104(b)(i)(H), one of the permitted algorithmic trading messages allows the specialist to provide price improvement to an order subject to the provisions of Rule 104(e). Rule 104(e)(i) calls for the specialist to be represented in the quote for a "meaningful amount" in order to provide price improvement to an arriving order.<sup>3</sup> A "meaningful amount" is defined in Rule 104(e)(ii) as at least ten round lots (usually 1,000 shares) for the 100 most active securities (based on average daily volume) on the Exchange, and at least five round lots (usually 500 shares) for all other securities on the Exchange.

The price improvement message capability was designed to provide trading opportunities for which the specialist's algorithm could interact with orders electronically, supplying

<sup>18</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>19</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> Under Rule 104(e)(i), for an incoming buy order, the specialist must be represented in the offer, and for an incoming sell order, the specialist must be represented in the bid. The price improvement offered must be at least one cent.