

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56920; File No. SR-NYSE-2007-111)

December 6, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Rule 48 Permitting the Exchange to Declare an Extreme Market Volatility Condition

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 5, 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. The NYSE has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 NYSE is proposing to add NYSE Rule 48 to permit the Exchange to declare an extreme market volatility condition and suspend certain NYSE requirements relating to the opening of securities at the Exchange. The text of the proposed rule change is available on <http://www.nyse.com>, at NYSE, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 NYSE 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 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

The Exchange is proposing to add NYSE Rule 48 to provide the Exchange with the ability to suspend the requirement to disseminate price indications and obtain Floor Official approval prior to the opening when extremely high market volatility could negatively affect the operation of the market by causing Floor-wide delays in the opening of securities on the Exchange. The Exchange believes that this rule change is necessary to ensure the fair and orderly operation of the Exchange market.

Background

NYSE Rule 123D(1) states that specialists are responsible for ensuring that registered securities open as close to the scheduled opening of trading on the Exchange as possible and that the opening be fair and orderly. When arranging the opening price of a security, specialists must make a professional assessment of market conditions at the time, including considering the balance of supply and demand as reflected by orders in the market, any price disparity from the prior close, and such other market conditions that would affect the opening price of a security.

While the specialist has ultimate responsibility under the rule for opening a security, in certain situations arising out of unusual market conditions, specialists must obtain prior Floor Official approval of the price at which they will open trading in the security. For example, the rule provides that specialists should consult with a Floor Official as soon as it becomes apparent that an unusual trading situation exists. The rule further provides that a specialist should consult with a Floor Governor if it is anticipated that the opening price may be at a significant disparity from the prior close.

In the event of a large pre-opening order imbalance or before a stock opens at a large price change, specialists must publicly disseminate a price indication at least once (and possibly more than once, depending on pre-opening interest) before opening a security. For securities priced under \$10, such indications are mandatory if the price change is one dollar or more; for securities between \$10 and \$99.99, indications are required for price movements of the lesser of 10% or three dollars; and for securities over \$100, indications are required for price movements of five dollars or more. NYSE Rule 123D(1) requires supervision and approval by a Floor Official for all such indications.

In addition to these requirements, NYSE Rule 79A.30 requires specialists to obtain prior Floor Official approval if a security is going to open at one or more dollars away from the closing price at the Exchange when the closing price was under \$20 a share, or two dollars or more away from the closing price at the Exchange when the closing price was \$20 per share or more.

Proposed New Rule 48

The requirements described above are designed to ensure that in unusual situations, there is an impartial professional assessment of the proposed opening price and that advice for

specialists is available when a significant disparity in supply and demand exists. The Exchange continues to believe that these requirements are, in most cases, desirable and enhance the fair and orderly operation of the market.

Recently, the equities markets world-wide have experienced unprecedented levels of volatility, which has caused unprecedented levels of pre-opening interest and volatility in the United States markets around the opening of the markets. When these extreme levels of volatility occur Floor-wide, the pre-opening requirements described above, instead of facilitating the fair and orderly operation of the markets, can have the paradoxical effect of impeding the fair and orderly operation of the market. For example, Exchange systems currently are programmed such that only NYSE operations staff can publish the mandatory pre-opening indications to the Consolidated Tape. On a regular trading day, when such notices occur in only a subset of its listed securities, the Exchange has sufficient resources to ensure the timely publication of such notices. But on days when the Exchange experiences extremely high Floor-wide market volatility that would stress the Exchange's staffing resources, the Exchange wants to ensure that openings are not delayed due to difficulties in timely publishing the mandatory indications.

Similarly, as noted above, in unusual market situations, Floor Officials, and in certain circumstances, Senior Floor Officials, Floor Governors, and Executive Floor Governors, need to be involved on a security-by-security basis before a stock can open at the Exchange. In the event of an extreme, Floor-wide market volatility condition, the Exchange is concerned that Floor Officials would not be able to timely review each security that faces an unusual market condition. In such case, the operation of the Exchange could be significantly impaired and investors adversely impacted because securities cannot be opened on a timely basis.

For example, on Friday, August 17, 2007, due to a confluence of factors, including the impact of the sub-prime mortgage crisis on market volatility and the Federal Reserve Board's announcement that it had approved a 50 basis point reduction in the primary credit rate, the securities markets experienced an extreme level of market volatility that affected securities across industry lines. At the Exchange, because of the overwhelming imbalance of pre-opening orders and price variations from the prior day's close, specialists were required to disseminate price indications and consult with and obtain prior Floor Official approval before opening trading in large numbers of stocks. Because of the number of securities impacted by that extreme market volatility, this process could not be completed for approximately 300 securities before the scheduled opening of trading. As a result, the Exchange experienced Floor-wide delays in the opening of securities that impaired the ability of the Exchange to operate efficiently. This Floor-wide delay also impacted those customers that had already submitted orders to the Exchange for execution and who had to wait until trading opened before such orders could be executed.

As proposed, in the event of extremely high market volatility that would have a Floor-wide impact on the ability of specialists to arrange for the timely opening of trading at the Exchange under the normal rules, NYSE Rule 48 would permit a qualified Exchange officer to declare an extreme market volatility condition. For purposes of the rule, a "qualified Exchange officer" means the Chief Executive Officer of NYSE Euronext, Inc. or his or her designee, or the Chief Executive Officer of NYSE Regulation, Inc., or his or her designee. While either may declare the extreme market volatility condition, each must make a reasonable effort to consult with the other prior to taking such action.

The proposed rule is intended to be invoked only in those situations where the potential for extreme market volatility would likely impair Floor-wide operations at the Exchange by impeding the fair and orderly opening of securities. Accordingly, the proposed rule sets forth a number of factors that the qualified Exchange officer would have to consider before declaring such a condition, including: volatility during the previous day's trading session; trading in foreign markets before the open; substantial activity in the futures market before the open; the volume of pre-opening indications of interest; evidence of pre-opening significant order imbalances across the market; government announcements; news and corporate events; and any such other market conditions that could impact Floor-wide trading conditions.

Once the qualified Exchange officer has reviewed such factors and determined that an extreme market volatility condition exists, the qualified Exchange officer must make reasonable efforts to consult with Commission staff before making such a declaration. The qualified Exchange officer must also document the basis for making such a declaration. If the qualified Exchange officer is unable to reach Commission staff before the opening, he or she may declare such a condition, but must, as promptly as practicable in the circumstances, inform Commission staff of such declaration, and the basis for making such declaration.

Because the declaration of an extreme market volatility condition concerns the opening of securities at the Exchange, the proposed rule further provides that such condition must be declared before the scheduled opening of securities at the Exchange. Moreover, such declaration would be in effect only for the opening of that trading session (or reopenings during the same trading day following the imposition of a mandatory halt pursuant to NYSE Rule 80B). Should market conditions that led to the declaration continue on subsequent days, the Exchange would

have to review on a day-by-day basis the factors necessitating such a declaration and on each day make a reasonable effort to consult with Commission staff as described above.

The Exchange notes that even when the dissemination and Floor Official (including Senior Floor Official and above) approval requirements are suspended, specialists would remain responsible for the fair and orderly opening of securities. Exchange rules already provide that when Floor Official approval is sought for certain actions, the specialist remains ultimately responsible for arranging the opening of securities at the Exchange. This obligation would remain unchanged. Even in the absence of price indications and a Floor Official's independent, impartial review of the opening, specialists will still be charged with ensuring that an opening price reflects market conditions and all participants have had a reasonable opportunity to participate. In the event of an extreme market volatility condition, the Exchange represents that it will review actions by the specialist at the opening to ensure that they have met their affirmative market maintenance obligations with respect to arranging a fair and orderly opening of securities at the Exchange.

The Exchange notes also that, if proposed Rule 48 were invoked, it would not affect situations where the opening of a security was delayed for reasons unrelated to extreme market volatility, such as where there is material news pending that justifies a regulatory halt under NYSE Rule 123D. In such cases, notwithstanding the invocation of proposed Rule 48, the specialist in the affected security would be expected to follow regular procedures for opening the security (that is, as if proposed Rule 48 had not been invoked).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)⁵ of the Act 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.

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.

B. 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 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 this 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)⁶ of the Act and Rule 19b-4(f)(6) thereunder.⁷ As required under Rule 19b-

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii),⁸ 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 the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii).¹¹ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to immediately implement proposed Rule 48, allowing the Exchange to utilize these new procedures to open trading in a security in a timely manner in extreme market volatility conditions that may occur within 30 days after the filing of this proposed rule change.¹² Accordingly, the Commission designates that the proposed rule change effective and operative upon filing with the Commission.

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.

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ Id.

¹² For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-NYSE-2007-111 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-2007-111. 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 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2007-111 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).