

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55543; File No. SR-NYSE-2007-31]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 60 To Allow the Exchange To Identify Its Quotation as Slow Non-Firm During the Manual Reporting of a Block-Sized Transaction

March 27, 2007.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 20, 2007, the New York Stock Exchange LLC (“NYSE” or the “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. NYSE has designated the proposed rule change as constituting a “non-controversial” rule change under 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 from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 60 to provide that when the Exchange quotation is not available for automatic execution due to the manual reporting of a block-sized transaction, the Exchange will identify such quotes with an indicator signifying that they are non-firm within the context of Regulation National Market System (“Reg. NMS”).<sup>5</sup> The text of the rule proposal is available on the Exchange’s Web site (<http://www.nyse.com>), at the

Exchange, 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. 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 NYSE proposes to amend Rule 60 to specify that when a specialist manually reports a block-sized transaction<sup>6</sup> that involves orders in the Display Book® system (“block-sized transaction”), the Exchange will use an indicator to signify that the NYSE quote is non-firm. During the brief moment it takes a specialist to manually report a block-sized transaction in a security, autoquoting of the highest bid/lowest offer is suspended in that stock.<sup>7</sup> In addition, during that same period of time, automatic executions against the displayed quotation are not available.<sup>8</sup> After the specialist has completed the report of a block-sized transaction, autoquote will resume immediately,<sup>9</sup> and the NYSE quotation will similarly again be available for automatic executions.<sup>10</sup>

In the NYSE Hybrid Market<sup>SM</sup> (“Hybrid Market”), autoquote and the availability of the Exchange quotation for automatic executions are likewise both disengaged for limited periods in connection with two other specific auction market activities: (1) When the specialist gaps the quotation in accordance with Exchange policies and procedures,<sup>11</sup> and (2) when trading on the Exchange reaches a Liquidity

Replenishment Point (“LRP”).<sup>12</sup> For both of these situations, as provided in Rule 60(c)(2)(b), the Exchange identifies its quotation as unavailable for automatic execution in accordance with Reg. NMS.

Through this filing, the Exchange proposes to specify in Rule 60(c)(2)(b) that in addition to the two situations described in the preceding paragraph, the NYSE will identify its quotation as non-firm as soon as the report template is opened by the specialist to report a block-sized transaction, and will continue to do so until the trade has been reported. This change is necessary because the quotation that is disseminated when a block-sized transaction is being manually reported may not reflect the current state of the market in the stock, given the temporary suspension of autoquoting of the highest bid/lowest offer that occurs during the reporting of a block-sized transaction. Thus, identifying the quotation as non-firm when autoquote and automatic executions are suspended by a block-sized transaction will provide market participants with more accurate information about the state of the NYSE quotation. Moreover, identifying the NYSE quotation as non-firm will bring the dissemination of the quotation during block-sized transactions more in line with the way in which they are identified during other Exchange manual auction market activities that similarly cause the suspension of autoquote and automatic executions—*i.e.*, gap quotes and LRPs.

The Exchange completed Phase IV of the Hybrid Market<sup>SM</sup> rollout on February 28, 2007. However, the Phase IV software does not contain the coding necessary to properly identify the Exchange quotation as non-firm during the manual report of a block-sized transaction that involves orders in the Display Book. The NYSE has made the software changes required and is currently rolling it out as part of the post-Phase IV software in phases through March 30, 2007, the date by which it currently expects the rollout to be completed.

In addition, the NYSE notes that it has requested from the Commission limited no-action relief from the requirement that the NYSE enforce compliance by its specialist members with NYSE Rule 19 (Locking or Crossing Protected Quotations in NMS Stocks), with respect only to the display of a quotation when a block-sized transaction is being manually reported,

<sup>6</sup> NYSE Rule 127.10 defines a “block” size as at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less.

<sup>7</sup> See NYSE Rule 60(e)(i)(B).

<sup>8</sup> See NYSE Rule 1000(a)(v).

<sup>9</sup> See NYSE Rule 60(e)(ii)(B).

<sup>10</sup> See NYSE Rule 1000(b).

<sup>11</sup> See NYSE Rule 60(e)(i)(A). For a description of gapped quotations, see Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05) (the “Hybrid Market<sup>SM</sup> Approval Order”).

<sup>12</sup> See NYSE Rule 60(e)(i)(C). For a description of LRPs, see Hybrid Market<sup>SM</sup> Approval Order, *supra* note 11.

<sup>13</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. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

beginning on the Trading Phase Date until April 5, 2007.<sup>13</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>14</sup> 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.

### *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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder<sup>16</sup> because the proposal 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 if consistent with the protection of investors and the public interest.<sup>17</sup>

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-

4(f)(6)(iii)<sup>18</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 and designate an operative date of March 30, 2007 for the proposal. In its filing, the Exchange noted that, given the temporary suspension of autoquoting of the highest bid/lowest offer that occurs during the reporting of a block-sized transaction, the quotation that is disseminated when a block-sized transaction is being manually reported may not reflect the current state of the market in the subject stock. Moreover, identifying the NYSE quotation as non-firm during the manual reporting of block transactions will bring the dissemination of the quotation more in line with the way in which quotes are identified during other Exchange manual auction market activities that similarly cause the suspension of autoquote and automatic executions—*i.e.*, gap quotes and LRPs (discussed above). Accordingly, the Exchange believes that this proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will allow the NYSE to accurately identify the status of the NYSE quotation during the manual reporting of block transactions in line with the way in which quotes are identified during other Exchange manual auction market activities that similarly cause the suspension of autoquote and automatic executions—*i.e.*, gap quotes and LRPs.<sup>19</sup> Accordingly, consistent with the protection of investors and the public interest, the Commission designates the proposed rule change to be operative on March 30, 2007, as requested by the Exchange.<sup>20</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 Number SR-NYSE-2007-31 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-2007-31. 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. Copies of the filing will also 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-2007-31 and should be submitted on or before April 24, 2007.

<sup>13</sup> See Letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated March 2, 2007. In the letter, the NYSE requested that the no action relief be granted through April 5, 2007, rather than through March 30, 2007, because at the time of the request it was contemplated that the post-Phase IV rollout would not conclude until April 5, 2007.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> Rule 19b-4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to 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. NYSE has satisfied the pre-filing requirement.

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> The Commission notes that the Exchange must continue to conduct surveillance with respect to manual auction market activities, including the manual reporting of block transactions addressed in this proposed rule change, in order to monitor for abuse.

<sup>20</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).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55545; File No. SR-NYSE-2007-12]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change as Modified by Amendment No. 1 To Amend Section 703.16 of the NYSE Listed Company Manual To Eliminate Requirement Regarding Index Weighting and Calculation Methodology

March 27, 2007.

#### I. Introduction

On February 5, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with 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 proposal to amend Section 703.16 of the NYSE Listed Company Manual ("NYSE Manual"), the Exchange's generic listing standard for investment company units ("ICUs"),<sup>3</sup> to eliminate the requirement that the weighting and calculation methodology for the index underlying a series of ICUs must be one of those specified in Section 703.16(C)(4)(a). On February 15, 2007, the NYSE submitted Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on March 5, 2007 for a 15-day comment period.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposal

The Exchange has proposed to amend its "generic" listing standard pursuant to Rule 19b-4(e) under the Act<sup>5</sup> for ICUs (which include exchange-traded funds) to eliminate the requirement that an eligible index be calculated and weighted according to a specific methodology.

The Exchange currently has listing and trading standards, which permit the Exchange either to list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis, subject to the procedures contained in Rule 19b-4(e) under the Act.<sup>6</sup> The existence of generic listing standards allows qualifying ICUs to list or trade without the need to file a rule change for each security. Section 703.16(C)(4)(a) of the NYSE Manual requires that, if a series of ICUs is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Act,<sup>7</sup> the index underlying the series must follow a market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology, or alternately, a methodology weighting components of the index based on any, some or all of the following: Sales, cash flow, book value and dividends. The proposed rule change would eliminate this standard, and, as a result, the Exchange would no longer consider index methodology in its review of an ICU's eligibility for listing and trading pursuant to Rule 19b-4(e) under the Act.<sup>8</sup>

#### III. Discussion

After careful consideration, 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<sup>9</sup> and, in particular, the requirements of Section 6 of the Act.<sup>10</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

As the market for ICUs has expanded, the variety of weighting and calculation methodologies for underlying indexes has grown, limiting the applicability of NYSE's current generic listing standards for ICUs. The Commission believes that eliminating the index methodology requirement from the Exchange's generic listing standards for ICUs will facilitate bringing ICUs based on indexes with nontraditional weighting techniques to the market, encourage innovation in index construction, reduce costs to issuers and other market participants, and promote competition.

The Commission believes that these goals may be furthered without compromising investor protection. The Commission notes that the numerical criteria in Section 703.16(C) of the NYSE Manual addressing concentration, diversity, and liquidity of an underlying index's components would continue to apply. For example, the generic listing standards for domestic indexes will continue to require, without limitation, that the most heavily weighted component stock of an index not exceed 30% of the weight of the index, and the five most heavily weighted component stocks of an index not exceed 65% of the weight of the index,<sup>12</sup> and that an index include a minimum of 13 component stocks.<sup>13</sup> In addition, component stocks that in the aggregate account for at least 90% of the weight of the index must have a market value of at least \$75 million and minimum monthly trading volume of at least 250,000 shares for each of the last six months.<sup>14</sup> Similarly, the generic listing standards for international or global indexes require, without limitation, that the most heavily weighted component stock of an index not exceed 25% of the weight of the index, and the five most heavily weighted component stocks of an index not exceed 60% of the weight of the index,<sup>15</sup> and that an index include a minimum of 20 component stocks.<sup>16</sup> Component stocks that in the aggregate account for at least 90% of the weight of the index must have a market value of at least \$100 million and minimum monthly trading volume of at least 250,000 shares for each of the last

<sup>21</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> An ICU is defined in Section 703.16 of the NYSE Manual as a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. A registered investment company is registered under the Investment Company Act of 1940, 15 U.S.C. 80a *et seq.*

<sup>4</sup> See Securities Exchange Act Release No. 55343 (February 23, 2007), 72 FR 9814.

<sup>5</sup> 17 CFR 240.19b-4(e).

<sup>6</sup> See Section 703.16 of the NYSE Manual.

<sup>7</sup> 17 CFR 240.19b-4(e).

<sup>8</sup> 17 CFR 240.19b-4(e).

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See Section 703.16(C)(2)(a)(iii) of the NYSE Manual.

<sup>13</sup> See Section 703.16(C)(2)(a)(iv) of the NYSE Manual.

<sup>14</sup> See Section 703.16(C)(2)(a)(i) and (a)(ii) of the NYSE Manual.

<sup>15</sup> See Section 703.16(C)(2)(b)(iii) of the NYSE Manual.

<sup>16</sup> See Section 703.16(C)(2)(b)(iv) of the NYSE Manual.