

**Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-NSCC-2006-09 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-NSCC-2006-09. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nsc.com/legal>. 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-NSCC-2006-09 and should be submitted on or before October 16, 2006.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54520; File No. SR-NYSE-2006-65]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Exchange Rules Governing Certain Definitions, Systemic Processing of Certain Orders, and the Implementation Schedule of the NYSE HYBRID MARKET<sup>SM</sup>

September 27, 2006.

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 August 23, 2006 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, II, and III below, which Items have been prepared by the Exchange. On September 11, 2006, September 15, 2006, and September 26, 2006 the Exchange filed Amendment Nos. 1,<sup>3</sup> 2,<sup>4</sup> and 3<sup>5</sup> respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Amendment No. 1 ("Amendment No. 1") replaced the original filing in its entirety.

<sup>4</sup> Partial Amendment No. 2 ("Amendment No. 2") added proposed rule language to NYSE Rule 1000 governing the maximum order size of automatic executions.

<sup>5</sup> Partial Amendment No. 3 ("Amendment No. 3") removed proposed changes to NYSE Rule 13 related to At the Opening or At the Opening Only Orders and Regulation NMS-compliant Immediate or Cancel Orders.

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

NYSE proposes to amend Exchange Rules to clarify certain definitions and systemic processes in the NYSE HYBRID MARKET<sup>SM</sup> ("Hybrid Market"). The proposed amendment further serves to differentiate between certain definitions in NYSE Rule 13 and terms in NYSE Rule 1000 (Direct +<sup>®</sup>). It also adds in the rule text a chart containing the Exchange's calculated liquidity replenishment points ("LRPs"). In addition, this filing updates the Hybrid Market implementation schedule.<sup>6</sup>

The text of the proposed rule change, as amended, is available on NYSE's Web site at (<http://www.nyse.com>), at the principal office of NYSE, 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, as amended. 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 is submitting this proposed rule change to amend certain rules governing the Hybrid Market in order to clarify definitions and the operation of certain systemic processes.

The Commission approved the Hybrid Market on March 22, 2006.<sup>7</sup> The approved rules did not become effective immediately; rather they are being implemented in a series of phases over a period of time.

Implementation of Phase 1 of the Hybrid Market, which focused primarily on the ability of Floor brokers to electronically represent their customers' interest ("e-Quote") was substantially completed on April 5, 2006.

The installation of software necessary to implement Phase 2 of the Hybrid

<sup>6</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006), (SR-NYSE-2004-05) ("Hybrid Order").

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

Market, which focuses primarily on the ability of specialists to algorithmically quote and trade, has been installed Floor-wide. Specialist firms are in the process of readying their algorithmic systems so that they can begin operating the systems as permitted in Phase 2.

In addition, on May 12, 2006, the Exchange implemented a Hybrid Market Pilot ("Pilot") that increased the availability of automatic executions in the securities participating in the Pilot by: (i) Raising the maximum size of an auto ex order to one million shares (with the ability to increase the maximum size to three million shares); (ii) eliminating the prohibition against entry of orders for the account of the same beneficial owner in less than 30-second intervals; (iii) treating all market orders in Pilot securities as auto ex orders; and (iv) implementing the approved change to NYSE Rules 13 and 1000 regarding auto execution of marketable limit orders.<sup>8</sup> Currently, the Pilot applies to one security—Lucent Technologies, Inc.

Similarly, starting June 21, 2006, specialists were permitted to algorithmically quote ("s-Quote") in their specialty securities, without the receipt of order information as such orders are entering Exchange systems.<sup>9</sup> Starting August 15, 2006, specialists were permitted to send algorithmically-generated trading messages to interact with the Exchange quotation ("hit bid/take offer"), also without receipt of order information as such orders are entering Exchange systems.<sup>10</sup>

Phase 3 of the Hybrid Market which includes, among other things, Floor broker discretionary orders, if approved by the Commission,<sup>11</sup> implementation of sweeps, auto-routing of orders to markets displaying better bids and offers, and elimination of restrictions on Direct+® availability, is scheduled to begin in or about early October 2006.

Since the approval of the Hybrid Market, the Exchange has continued to discuss Hybrid Market features with its members and advisory committees. Based on these discussions, the Exchange has decided to propose changes to certain aspects of the Hybrid Market to produce a trading venue that

best addresses the various needs of our customers and members. In addition, in order to accomplish the implementation of Phase 3 with the functionalities noted above within a similar time frame as that originally proposed, certain amendments to the approved Hybrid Market rules are necessary.

#### *Amendments to the Definitions of Orders Types—Exchange Rule 13 and Conforming Changes to Related Rules Auto Ex Order*

##### Definition

The definition of an "auto ex" order in NYSE Rule 13 originally encompassed only orders that were specifically entered for automatic execution. In other words, an "auto ex" order was one specifically designated for automatic execution and thereby immediately initiates an automatic execution upon entry. In the original definition, an order that merely participated in an automatic execution was not an "auto ex" order simply by virtue of such participation. As such, the definition focused on the order's designation when entered, not how the order was executed.

The Hybrid Market filings amended this definition by listing various types of orders that initiate or participate in automatic executions. By so doing, the concept that an "auto ex" order is one that immediately initiates an automatic execution upon entry was lost. However, the amended rule didn't include all order types that are capable of participating in an automatic execution. For example, it omitted auction limit orders which, while primarily an order type that offers an opportunity for price improvement through manual handling, may participate in or initiate automatic executions.

In addition, Exchange systems retain the concept that an "auto ex" order is one that initiates an automatic execution immediately upon entry, systemically applying the designation in those cases where the order omits it. For example, a marketable limit order entered on the Exchange will initiate an automatic execution immediately upon entry on the Exchange. Such order no longer needs to be specifically designated for automatic execution by the person entering the order; Exchange systems apply the appropriate designation.

As a result, the definition of "auto ex" order as approved in the Hybrid Market filings is not complete nor is it consistent with Exchange systems. The Exchange proposes to clarify that an "auto ex" order is an order that initiates

an automatic execution immediately upon arrival. Accordingly, reference to elected stop, stop limit orders, and CAP-DI orders will be eliminated from the rule as they do not initiate an automatic execution upon their entry on the Exchange. In addition, to assist people who may look to this definition in connection with the general topic of automatic executions, the Exchange proposes to add a section that clarifies that "non-auto-ex" orders (*i.e.*, elected stop orders, percentage orders, etc.) participate in or initiate automatic executions in accordance with the rules governing their operation.

Further, the Exchange proposes to amend NYSE Rules 1000–1004 to replace the term "auto ex" with the words "automatically executing" to reflect that these rules govern all automatic executions, not just those involving an auto ex order.

##### Market Orders

The definition of an "auto ex" order in NYSE Rule 13, as amended by the Hybrid Market filings, included a "market order designated for automatic execution." The Exchange proposes to amend this definition to include all market orders. In other words, a market order no longer needs to be designated for automatic execution to be treated as an auto ex order. The Exchange believes this change will benefit customers by simplifying order entry requirements for market orders, treating them in the same fashion as marketable limit orders. Conforming changes to NYSE Rules 104(c)(vii), 104(e)(i), 123(e)(7), 123F(b), 132B(a)(9), and 132B(b)(9) are also proposed.

##### Buy Minus—Sell Plus Orders

The reference in the definition of an "auto ex" order to a "sell 'plus'—'buy' 'minus'" order has been rephrased to "buy minus—sell plus" to track the way that order type is referred to in other places in Exchange rules.

##### Maximum Size

The maximum size of automatic executions, which had been included in NYSE Rule 13's definition of an "auto ex" order, was eliminated in the Hybrid Market filings.<sup>12</sup> However, there is a maximum order size that Exchange systems can handle, currently 3,000,000 shares. Additionally, the Exchange proposes to gradually increase the size of automatic executions, rather than start with a maximum size of 3 million shares. Accordingly, the Exchange proposes to add a rule that reflects this. The Exchange proposes to phase-in the

<sup>8</sup> See Securities Exchange Act Release No. 53791 (May 11, 2006), 71 FR 28732 (May 17, 2006). This Pilot expires on October 31, 2006.

<sup>9</sup> See Securities Exchange Act Release No. 54024 (June 21, 2006), 71 FR 36849 (June 28, 2006). This is effective until Phase 2 is fully implemented.

<sup>10</sup> See Securities Exchange Act Release No. 54316 (August 15, 2006), 71 FR 48569 (August 21, 2006). This is effective until Phase 2 is fully implemented.

<sup>11</sup> Floor broker discretionary orders are the subject of a separate filing. See Securities Exchange Release No. 54150 (July 14, 2006), 71 FR 41496 (July 21, 2006) (Notice of SR-NYSE-2006-36).

<sup>12</sup> See Hybrid Order, *supra* note 6.

maximum order size eligibility for automatic executions, beginning with a maximum size of 1,000,000 shares.

Given the change to the definition of an "auto ex" order, discussed above, NYSE Rule 13's "auto ex" definition no longer appears to be the appropriate location for this provision. Accordingly, the Exchange proposes to move it to the Direct+ rules, as the first provision under NYSE Rule 1000.<sup>13</sup>

#### Auction Market Orders

As a result of the change in the way market orders will be handled, discussed above, the Exchange proposes to add a definition for "Auction Market Order" to NYSE Rule 13. Conforming changes to NYSE Rules 104(c)(vii), 104(e)(i), 123(e)(7), 123F(b), 132B(a)(9) and 132B(b)(9) are also proposed.

#### Immediate or Cancel ("IOC") Orders

In the Hybrid Market Filings, the Exchange created two types of IOC orders which are defined in NYSE Rule 13. The first type is an IOC order that complies with the SEC's Regulation NMS ("Reg. NMS").<sup>14</sup> A Reg. NMS IOC order would not be routed during an Exchange sweep, if any, to satisfy better priced protected bids or offers<sup>15</sup> displayed by other market centers; rather, a Reg. NMS IOC order would be cancelled and the Exchange sweep would end.

The second type of IOC order is a "NYSE IOC" order. Unlike a Reg. NMS IOC order, a NYSE IOC order permits portions to be routed during a sweep, if any, to other markets to satisfy better priced protected bids or offers and cancels only when once it is no longer able to receive an execution.

In this filing, the Exchange proposes to amend NYSE Rule 13 to reflect that IOC orders discussed in NYSE Rule 13 paragraph (a) are now identified as Regulation NMS-compliant Immediate or Cancel orders.

The Exchange also seeks to amend the definition of a NYSE IOC order to clarify

<sup>13</sup> NYSE Rule 13's definition of "auto ex" order currently has a provision regarding the maximum size of an "auto ex" order applicable only to the Lucent Pilot. See Securities Exchange Act Release No. 53791, *supra* note 8. This part of the rule is designated with a "P." This rule is virtually identical to the proposed rule regarding maximum size, discussed above. However, given the limited applicability of the Lucent Pilot rule and the fact that it has been in place since mid-May, the Exchange does not propose changing its designation.

<sup>14</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04) (17 CFR parts 200, 201, 230, 240, 242, 249 and 270).

<sup>15</sup> A protected bid and offer is one that meets the definition set forth in Section 242.600(b)(57) of Regulation NMS, 17 CFR 242.600(b)(57).

that Exchange systems will accept NYSE IOC orders for participation in the re-opening trade after a trading halt.

Specifically, NYSE IOC orders received during a trading halt will be systemically maintained in their order of receipt for execution upon the re-opening of the halted security. If a NYSE IOC order is not executed as part of the re-opening trade, the order will be cancelled. This is similar to the way in which IOC orders are handled currently on the Exchange.

#### Stop Orders and Stop Limit Orders

Several changes are proposed to the definition and operation of stop orders, and references to stop limit orders is proposed to be deleted from Exchange rules, including NYSE Rule 13. These changes are discussed in detail below.

#### Modifications to Systemic Processing Stop Orders and Stop Limit Orders

The Exchange is proposing to amend its rules relating to the processing of Stop ("STP") orders and Stop Limit ("STL") orders. These order types require that the stock in question trade at a specified price ("the electing price") before the order becomes capable of execution. Once a transaction is executed on the Exchange at the electing price, the STP or STL order becomes a market order or a limit order, respectively. The proposed amendment seeks to modify the way in which STP orders are handled and processed. It further seeks to eliminate STL orders, which represent a very small percentage of the orders entered on the Exchange.

#### Elimination of Stop Limit Orders

Under the proposed amendments, the Exchange would eliminate STL orders as an acceptable order type, given their infrequent use. Currently STL orders represent a very small percentage of total order flow on the Exchange. For example, on trade dates between March 20, 2006 and March 28, 2006, STL orders represented approximately .028% of the total number of orders entered on the Exchange. Given the relatively small customer demand for this order type, the Exchange proposes to eliminate it in its entirety. Exchange systems would be programmed to reject all STL orders. Existing GTC STL orders would be purged after notice to the entering firm.

Accordingly, the definition of a STL is proposed to be deleted from NYSE Rule 13 and conforming changes eliminating references to STLs are proposed with respect to other definitions within NYSE Rule 13 and NYSE Rules 76, 118(2), 123(e)(7), 124(f),

132B(a)(9) and (b)(9), 750.91 and .92, 476A, and 1004.

#### New Processing of Stop Orders

Today, STP orders are entered primarily through SuperDOT<sup>®</sup><sup>16</sup> and are routed directly to the Display Book ("Book"),<sup>17</sup> where they reside awaiting election. The specialist assigned to each security has the ability to view the prices at which STP orders would be elected and the sizes of such orders. As a result of the specialist's ability to view information that is not available to other market participants, NYSE Rule 123A.40 requires that, in certain circumstances described below, the specialist guarantees the price that elected STP orders receive.

The Exchange proposes to migrate the processing of STP orders away from the Book so that STP orders will no longer be visible to the specialist or available to the specialist's system employing algorithms. Rather, STP orders will be maintained in a "blind file" in order of the time received. The rule has been amended to remove references to STP orders being routed to the Book because, under the proposed STP order processing, Exchange Systems will handle STP orders so that the STP order is not visible to the part of the Book the specialist "sees." When a transaction on the Exchange results in the election of a STP order that had been received prior to such transaction, the elected STP order will be sent as a market order to the Book and the specialist's system employing algorithms and will be handled in the same way as any other market order. This change removes the specialist's ability to view the electing price and size of STP orders. As a result, the specialist will no longer have any unique information regarding STP orders.

In order to maintain the integrity of the blind file, NYSE Rule 115A is being added and NYSE Rule 116.50 amended to prohibit specialists, trading assistants, and anyone on their behalf from using the opening and closing process, proposed below, in a manner designed to inappropriately discover information about unelected STP

<sup>16</sup> SuperDot<sup>®</sup> is an electronic order-routing system used by NYSE member firms to send market and limit orders to the NYSE.

<sup>17</sup> The Book is an order management and execution facility. It receives and displays orders to specialists and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. In addition, the Book is connected to a variety of other NYSE systems for purposes of comparison, surveillance, and reporting information to customers and market data and National Market Systems, such as the Intermarket Trading System, Consolidated Tape and Consolidated Quote.

orders.<sup>18</sup> Accordingly, while it is appropriate and expected that specialists and trading assistants will effect multiple searches to determine appropriate opening and closing prices, to the extent that such prices have been identified, further searches outside the identified prices for the purpose of identifying the election prices and sizes of STP orders would be inappropriate.

Opening and closing procedures on the Exchange will be modified to accommodate the fact that the specialists will no longer be able to determine and account for STP order volume that would be elected by the opening or closing execution. Currently, the specialist calculates the opening price based in part on the STP order volume that will be elected by the opening trade. The opening trade executed by the specialist is reflected in the first print. The STP order volume elected by the opening execution trades at the same price as the open, and is reflected in the second print. Similarly, on the close, the specialist calculates the closing price based in part on the STP order volume that will be elected and the volume of buy and sell market-on-close/limit-on-close (MOC/LOC)<sup>19</sup> orders that will be executed as a result of the closing price.

In order for the specialist to continue to effectively price the opening and the close, the specialist must have an accurate understanding of the total volume of shares available for purchase and sale at the opening price and at the closing price.

On the open, this will be accomplished by the specialist or trading assistant indicating to the system the price at which the specialist contemplates opening the stock. The system will then calculate the volume of shares available for execution on the open at that price, including STP order volume that would be elected by an execution at that price. There will be no indication what, if any, portion of the total volume accounts for STP orders. As a result there will only be one

opening print, and it will include STP orders that are elected by the opening trade.

Similarly, prior to the close, the specialist or trading assistant will indicate to the system the price at which the specialist is contemplating closing the stock. In turn, the system will calculate the volume of shares executable on the close at that price, including STP order volume that would be elected by an execution at that price. Once again, there will be no indication what, if any, portion of the total volume accounts for STP orders. The unelected STP orders will only be included in the total volume of shares available to trade on the close five minutes prior to the close.

The definition of a STP order in NYSE Rule 13 will be amended to reflect these changes and similar conforming changes will be made to NYSE Rules 116.40 and 123C(3)(A).

#### Elimination of Specialist's Guarantee

NYSE Rule 123A.40 requires the specialist to guarantee that elected STP orders receive the same price as the electing sale under certain conditions: Specifically, if the specialist was party to the election of such STP order and his or her bid (offer) had the effect of bettering the market or was part of an electing transaction that was more than 0.10 cents away from the prior transaction price. This rule addressed the fact that specialists have the ability to view the electing prices and sizes of all STP orders present on his or her Book, information that is not generally available to the rest of the market. Requiring the specialist to guarantee the price at which these orders are executed in the circumstances prescribed by NYSE Rule 123A.40 removes any incentive on the part of the specialist to effect proprietary trades that would cause the election of the STP orders inappropriately.

Under the Exchange proposal, the specialists will no longer have access to the electing price and size information for STP orders. Thus, the reason for the price guarantee required by current NYSE Rule 123A.40 will no longer exist and the Exchange proposes its elimination. Conforming changes to NYSE Rules 104.10(5)(ii), 115(iii), and 476A are similarly proposed.

#### Elimination of Floor Official Approval

NYSE Rule 13.30(v) currently requires a specialist to obtain Floor Official approval prior to the execution of a transaction under the circumstances outlined in sections (i), (ii), (iii) and (iv) of the rule, if the bid or offer that would elect the STP order was more than 0.10

point away from the last sale and was being made for the specialist dealer account. Similar to the price guarantee required by NYSE Rule 123A.40, this rule addresses the fact that specialists have information about STP orders that is not generally available to the rest of the market; that is, specialists have the ability to view the electing prices and sizes of all STP orders present on the Book. Requiring the specialist to obtain Floor Official approval prior to the execution of the transaction removes any incentive on the part of the specialist to effect proprietary trades that would cause the election of the STP orders inappropriately.

However, as stated above, under the Exchange proposal, specialists will no longer have access to the electing price and size information for STP orders. Accordingly, their proprietary trading decisions would not be made with knowledge that it would elect STP orders. Therefore, the reason for the Floor Official approval required by current NYSE Rule 13.30(v) will no longer exist, and the Exchange proposes its elimination.

#### Floor Broker STP Order Processing

Under the proposed amendments, a Floor broker will still be permitted to receive and execute STP orders. A Floor broker in receipt of a STP order may transmit the STP order to SuperDOT<sup>®</sup> and that order will be processed and executed as outlined above. Additionally, a Floor broker may choose to manually represent the STP order in the Crowd. However, the Floor broker would be responsible for monitoring for the election of the STP order (*i.e.*, there would be no systemic support for STP orders handled by a Floor broker in the Crowd). As explained above, once the STP order is elected, it becomes a market order, and the Floor broker would be required to appropriately execute such market order. Given the increased pace of order executions, a Floor broker who represents a STP order in the Crowd is at risk of missing the market upon election of such manually-handled STP order.<sup>20</sup> Moreover, STP orders represented by Floor brokers in the Crowd may not be included in a Floor Broker Agency Interest File ("e-Quote"). NYSE Rule 70.20 is proposed to be amended to reflect this.

#### Redefinition of Sweep

NYSE Rule 1000(d) describes the manner in which automatically

<sup>18</sup> The proposed opening and closing processes for STP order handling are not available intraday; therefore, during the trading day, it is not possible for these processes to be employed in a manner designed to inappropriately discover information about unelected STP orders.

<sup>19</sup> A MOC order is a market order, which is to be executed in its entirety at the closing price, on the Exchange, of the stock named in the order, and if not so executed, is to be treated as cancelled. A LOC order is a limit order, which may or may not receive execution on the close depending on the closing price and depth of contra side interest. The term "at the close order" also includes a limit order that is entered for execution at the closing price, on the Exchange, of the stock named in the order, pursuant to such procedures as the Exchange may from time to time establish.

<sup>20</sup> A member or member organization is deemed to have "missed the market" when it has accepted an order for execution and by reason of neglect or otherwise fails to execute an executable order in the prevailing market.

executing orders will trade. Section (iii) of that rule provides that the residual of an automatically executing order will “sweep,” trading with orders on the Book and any broker agency interest files (also referred to as “e-Quotes”) and specialist interest (also referred to as “s-Quotes”) capable of execution in accordance with Exchange rules, at a single price, such price being the best price at which such orders and files can trade with the residual to the extent possible (“clean-up price”).

The Exchange proposes to amend NYSE Rule 1000(d)(iii) to provide that during a sweep, the residual shall trade with all interest at each price capable of trading, before moving to the next price point. Accordingly, instead of a two-price execution (at the Exchange best bid or offer and the sweep clean-up price), a sweeping order may trade at multiple prices. The sweep will be automatic and uninterrupted and will only stop when the sweeping order is filled, its limit price, if any, is reached, a LRP is reached, or, in the case of a Reg. NMS IOC order, trading at a particular price on the Exchange would require cancellation because the order cannot be routed to another market center. At each execution price during the sweep, Floor broker e-Quotes and limit orders on the Book trade on parity. Elected CAP–DI orders will have an opportunity to trade prior to the sweep moving to the next price. Specialist s-Quotes yield to limit orders on the Book at each execution price and thereafter trade on parity with e-Quotes.

The Exchange is proposing this change in response to customers who, while lauding the Exchange’s initial

sweep functionality, which rewards liquidity providers—orders on the Book and in interest files—with price improvement, candidly asserted that they would manage their orders so as not to cause a sweep. Rather, they would send in orders in a manner so that they obtained the benefit of trading at each price available on the Exchange.

Accordingly, the Exchange is proposing to amend NYSE Rules 70.20(d)(i) and (ii), 123A.30(a), and 1000(d)(iii) to reflect the redefined sweep functionality.

Further, NYSE Rule 123A.30(a) has been reworded in order to clarify how and when CAP–DI orders participate in sweeps. Specifically, when an automatically executing order is sweeping the Book on the same side of CAP–DI orders, the orders will be elected at each execution price that is part of the sweep. To the extent that the order sweeping the book has additional volume, the elected same-side CAP–DI orders will not participate in a transaction at the executing price; rather, Exchange Systems will automatically and systemically unelect the CAP–DI orders in accordance with its terms. If, at the last execution price that is part of the sweep, the sweeping order is filled or unable to continue executing, and there is volume remaining on the Book or from contra-side elected CAP–DI orders, then the same-side CAP–DI orders may participate in the final transaction.

CAP–DI orders on the contra-side of an automatically executing order sweeping the Book are also elected at each execution price that is part of the sweep and participate at each of the

execution prices if there is volume available on the Book or from CAP–DI orders on the same side of the market as the sweeping order.

In addition, the Exchange is proposing a technical change to delete a repetitious sentence in NYSE Rule 1000(d)(v) and move the remaining rule text into NYSE Rule 1000(d)(iv).

**Redefinition of Liquidity Replenishment Points (LRPs)**

NYSE Rule 1000(a)(iv) provides that automatic execution is not available when a LRP has been reached, and the order triggering the LRP has been executed to the extent possible at the LRP price. LRP’s may be triggered by a sweep (*i.e.*, the sweep LRP) or automatic executions that result in rapid price movement over a short period (*i.e.*, the momentum LRP).

Given the changes to the sweep functionality described above, and in recognition that LRP’s as originally defined are complex and not easily understood, the Exchange is proposing to modify NYSE Rule 1000(a)(iv) to provide a single, simpler LRP. LRP’s will be calculated by adding and subtracting a value to the security’s last sale price. The LRP values are based on an examination of trading data and vary based on the security’s NYSE average daily volume (“ADV”), price, and volatility. A range of values for each ADV and price category are available to provide the Exchange with sufficient flexibility to ensure that the goal of a LRP is met, without unduly impacting the availability of automatic executions in such security. The proposed LRP ranges are as follows:

Price per share	<\$5	\$5–9.99	\$10–24.99	\$25–49.99	\$50–99.99	\$100–149.99	\$150–199.99	\$200–249.99	\$250–1000.00
ADV:									
< 500,000 shares	0.05 0.10	0.05 0.10	0.10 0.25	0.15 0.35	0.35 0.75	0.60 1.25	1.00 2.00	1.00 2.00	1.00 2.00
500,000–3,999,999 .....	0.05 0.10	0.05 0.10	0.10 0.20	0.10 0.25	0.25 0.50	0.50 1.00	1.00 2.00	1.00 2.00	1.00 2.00
≥ 4,000,000 shares .....	0.05 0.10	0.05 0.10	0.10 0.20	0.10 0.25	0.25 0.50	0.50 1.00	1.00 2.00	1.00 2.00	1.00 2.00

Initially, the lower values in each of the ranges will be used to calculate the LRP’s. For example, for securities with an ADV of 500,000–3,999,999 shares, the LRP values will be as follows: 0.05 for securities priced through \$9.99; 0.10 for securities priced from \$10.00 through 49.99; 0.25, for securities priced from \$50.00 through \$99.99; 0.50 for securities priced from \$100.00 through 149.99; and 1.00 for securities priced

\$150.00 or more. As the Exchange gains more experience in how these securities trade in the Hybrid Market, the higher value in a particular price category may be used instead. The values used to calculate LRP’s and LRP’s themselves will be disseminated by the Exchange.

The value used to calculate the LRP’s range will not change. LRP’s for a security will not be calculated until there is a trade on the Exchange;

accordingly, if the security opens on a quote and there are no trades on the NYSE, LRP’s will not be set.

LRP’s are volatility controls and, as such, are meant to be triggered infrequently, when there has been a large price movement (based on a security’s typical trading characteristics) over a short period of time. If the price of the security stays within the LRP range, the LRP will not be triggered. If

the price moves to the LRP in a short period of time, automatic executions will pause for one manual trade, and will then resume, with a newly calculated LRP range.

LRPs will be calculated automatically throughout the day, as follows:

- At specified time intervals (e.g., every few minutes throughout the day), as the Exchange shall determine from time to time;
- After a manual trade by the specialist; and
- When automatic executions resume after an LRP has been reached.<sup>21</sup>

Initially, LRPs will be calculated every thirty seconds during the trading day.

Further, the Exchange proposes to amend the time in which automatic executions and autoquote resume after an LRP is triggered, when the NYSE market is not locked or crossed. Currently, NYSE Rule 60(e)(ii)(C) provides that after an LRP is triggered, autoquote will resume as soon as possible or in no more than five seconds, provided the NYSE market is not locked or crossed. The Exchange proposes to amend this rule to provide that autoquote will resume in five to ten seconds. Initially, the ten second period will be used; as the Exchange gains experience in the effect of LRPs on the market in Hybrid, the time will be reduced to five seconds.

In addition to NYSE Rules 1000(a)(iv) and 60(e)(ii)(C), the following rules have also been amended to reflect the changes discussed above: NYSE Rules 60(e)(iii) and (iv), 72(j)(i) and (ii), and 1000(c).

#### Miscellaneous

##### NYSE Rule 60(e)

Currently, NYSE Rule 60(e)(iv)(c) provides, among other things, that when autoquote is suspended pursuant to a gap quote (NYSE Rule 60(e)(i)(A)), it will nevertheless continue to update the quote as specified therein. The Exchange is proposing to delete the reference to NYSE Rule 60(e)(i)(A) to correct this provision, as autoquote does not continue to update the quote when it has been gapped in accordance with Exchange procedures. Rather, in gap quote situations, autoquote is suspended on both sides of the market and resumes with a manual transaction or the publication of a non-gapped quote.

<sup>21</sup> Automatic executions resume after an LRP has been reached: (i) Automatically in 5 seconds where the NYSE is not locked or crossed; (ii) by a manual trade; or (iii) by manually resuming autoquote.

##### NYSE Rule 72

NYSE Rule 72 has been amended to remove the discussion of the priority and parity of residual interest at the momentum liquidity replenishment point to conform to the redefinition of LRPs as previously discussed herein.

##### NYSE Rule 76

NYSE Rule 76 has been amended to provide that the crossing requirement does not apply to automatic executions. This rule was designed originally to provide an opportunity for price improvement to buy and sell orders represented by the same member. Under the current rule, the member is required to clearly announce his or her offer at a price higher by the minimum variation than his or her bid before crossing such orders, to enable the Crowd to trade with the order at such bid or offer price, thereby providing price improvement to the order. NYSE Rule 76 does not apply to bonds traded in ABS<sup>®</sup>,<sup>22</sup> the Exchange's automated execution facility for bond trading, as there is no verbal Crowd participation with respect to bond trading. Similarly, automatic executions via Direct +<sup>®</sup> do not allow for verbal Crowd participation. The rule will continue to apply to auction market transactions.

“High-Priced Securities”—NYSE Rules 1000(a)(vi) and 60(e)(iv)(b)(i)

The Exchange is proposing to redefine “high-priced” securities from those trading above \$300.00 to those trading above \$1,000.00. Exchange rules provide that automatic executions will be unavailable in securities trading at \$300.00 or more. However, a \$300.00 threshold encompasses securities with sufficient trading volume where automatic executions would be appropriate, such as Chicago Mercantile Exchange (“CME”).

#### Implementation Schedule

As noted above, the implementation of the Hybrid Market is underway. The next phase—Phase 3—is scheduled to be implemented in or about early October 2006. Approval of this filing and the changes discussed herein is necessary for the implementation of Phase 3. Phase 3 will include the features previously approved by the Hybrid Market implementation schedule<sup>23</sup> and the following additional changes:

- Elimination of Direct+ suspension when a better bid or offer is displayed by another market center

<sup>22</sup> ABS<sup>®</sup> is being renamed “NYSE Bonds<sup>SM</sup>”

<sup>23</sup> See Hybrid Order, supra note 6.

- Implementation of sweeps (as redefined herein);
- Implementation of LRP (as redefined herein);
- Implementation of new stop order processing (as discussed herein);
- Exchange Rule 1002 (“Availability of Automatic Execution Feature”) will be available for all stocks through the close upon implementation of Phase 3 of the Hybrid Market.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>25</sup> in particular, in that it is 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. The Exchange believes the proposed rule change, as amended, is also designed to support the principles of Section 11A(a)(1) of the Act,<sup>26</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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

The Exchange does not believe that the proposed rule change, as amended, 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, as amended.<sup>27</sup>

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78k-1(a)(1).

<sup>27</sup> The Commission notes that it has received one comment letter. See letter from George Rutherford daed September 10, 2006.

(ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-65 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-2006-65. 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 such 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-2006-65 and should be submitted on or before October 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

Nancy M. Morris,

Secretary.

[FR Doc. 06-8397 Filed 9-27-06; 12:12 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54480; File No. SR-NYSE-2006-72]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, as Amended, Relating to Exchange to Exchange Billing Under the Linkage Plan

September 21, 2006.

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 August 25, 2006, 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 prepared by the Exchange. On September 7, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is approving the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to permit the Exchange to bill directly, and to accept direct billing from, other participants in the proposed "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934" ("Linkage Plan") that are unable to implement Sponsoring Member billing, as described herein, on October 1, 2006.

This proposal does not require changes to the Exchange's rule text.

<sup>28</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> See Amendment No. 1 which replaced the original filing in its entirety.

#### 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 III below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.<sup>4</sup>

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On July 17, 2006, the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the Chicago Stock Exchange, Inc., The NASDAQ Stock Market LLC, the National Stock Exchange, the New York Stock Exchange LLC, and the NYSE Arca, Inc., executed and filed with the Commission the Linkage Plan. The Philadelphia Stock Exchange, Inc. ("Phlx") subsequently executed the Linkage Plan on August 1, 2006.<sup>5</sup> The Linkage Plan was filed with the Commission pursuant to Rule 608 of Regulation NMS under the Act.<sup>6</sup> The purpose of the proposed Linkage Plan is to enable the Linkage Plan participants to act jointly in planning, developing, operating and regulating the NMS Linkage System ("Linkage") that will electronically link the Linkage Plan Participant Markets to one another, as described in the Linkage Plan. The Linkage Plan participants have requested that the Commission approve the Linkage Plan by October 1, 2006. The Plan would run concurrently with the ITS Plan from October 1, 2006 until February 5, 2007.<sup>7</sup> The Linkage Plan by its terms ends on June 30, 2007;

<sup>4</sup> The staff has made minor changes to the Exchange's summaries pursuant to the telephone conversation between Karen Lorentz, Managing Director, Competitive Analysis, NYSE, and Nataliya Cowen, Special Counsel, Division of Market Regulation, Commission, on September 15, 2006.

<sup>5</sup> See Securities Exchange Act Release No. 54239 (July 28, 2006); 71 FR 44328 (August 4, 2006). A Linkage Plan, dated August 1, 2006, reflecting Phlx's inclusion as a Linkage Plan participant, was sent to the Commission on August 8, 2006.

<sup>6</sup> 17 CFR 242.608.

<sup>7</sup> The Linkage Plan participants have requested that the Commission grant appropriate exemptions from the ITS Plan to accommodate this result. See letter to Nancy Morris, Secretary, Commission, from Robert Hill, Chairman, ITS Operating Committee, dated September 18, 2006.