

15B(b)(2)(C) of the Act,<sup>7</sup> which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change will facilitate transactions in municipal securities and protect investors and the public interest by clarifying that the requirements of Rule G-27 apply solely in connection with the municipal securities activities of dealers and their associated persons.

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

The Board 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 since it does not modify existing rule obligations and applies equally to all brokers, dealers and municipal securities dealers.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The MSRB has received four letters requesting guidance on or amendments to the new supervisory requirements in Rule G-27, as well as a delay in the effectiveness of the new supervisory requirements. In summary, these commentators sought to understand the circumstances under which individuals must be qualified as either municipal securities principals or municipal fund securities limited principals in dealers' offices in which supervisory responsibilities are undertaken. The clarification provided by the proposed rule change that the new supervisory requirements of the rule apply solely in connection with the municipal securities activities of dealers and their associated persons, as the MSRB had previously enunciated in the original filing of the new supervisory requirements, should resolve these and other ambiguities regarding the operation of these new provisions.

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

Because the proposed rule change: (i) Does not significantly affect the

protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from November 8, 2007, the date on which it was filed, and the MSRB provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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.<sup>10</sup>

#### **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-MSRB-2007-05 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-MSRB-2007-05. 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 MSRB. 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-MSRB-2007-05 and should be submitted on or before December 14, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-22780 Filed 11-21-07; 8:45 am]  
BILLING CODE 8011-01-P

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56798; File No. SR-NYSE-2007-102]

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to NYSE Rule 1500 (NYSE MatchPoint<sup>SM</sup>)**

November 15, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 8, 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, II, and III below, which Items have been substantially prepared by the Exchange. 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 adopt NYSE Rule 1500 to establish NYSE MatchPoint<sup>SM</sup> ("MatchPoint"), an electronic facility

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>11</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>7</sup> 15 U.S.C. 78o-4(b)(2)(C).

that matches aggregated orders at predetermined, one-minute sessions throughout regular hours and after hours of the Exchange. MatchPoint will trade securities listed on all major exchanges.<sup>3</sup> The text of the proposed rule change 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 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange seeks to establish the MatchPoint matching system to provide its customers with an ability to execute securities at a predetermined, externally derived, single trading price in accordance with algorithmic calculations during one-minute matching sessions at predetermined times during the regular hours (9:30 a.m. Eastern Time ("ET") to 4 p.m. ET) and after hours of the Exchange.<sup>4</sup> MatchPoint participants ("users") transmit their market and limit orders,

<sup>3</sup> The major exchanges include the NYSE (including securities otherwise admitted to dealing on the NYSE pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on an Unlisted Trading Privilege Basis ("UTP Plan")), the NYSE Arca, Inc. Stock Exchange LLC ("NYSE Arca"), the NASDAQ Stock Market, Inc. ("Nasdaq"), the American Stock Exchange ("Amex") and regional stock exchanges. The Exchange is a participant in the UTP Plan, a National Market System Plan that accommodates trading on participant exchanges of non-NYSE-listed securities on an unlisted trading privileges ("UTP") basis. See Securities Exchange Act Release No. 55192 (January 29, 2007), 72 FR 5456 (February 6, 2007) (File No. S7-24-89) (Plan amendment admitting the Exchange as a Plan Participant). The Exchange is proposing to permit UTP trading of non-NYSE-listed securities in MatchPoint matching sessions during the regular hours and after hours of the Exchange.

<sup>4</sup> NYSE MatchPoint will operate on an Eastern Time basis. All references to time herein and in the MatchPoint rules will mean Eastern Time.

which are undisplayed, by means of an electronic interface. MatchPoint matches aggregated, anonymous orders of securities listed on the primary exchanges such as the NYSE, as well as securities admitted to trading on the NYSE pursuant to the UTP Plan that are listed on NYSE Arca, Nasdaq, Amex and regional stock exchanges.

The Exchange believes that MatchPoint will provide its customers a greater ability to execute single, block and portfolio (*i.e.*, basket, list, etc.) orders efficiently and reduce the trading risks and costs associated with market volatility. MatchPoint customers who enter single orders, block orders and portfolio orders will reap the benefits of this centralized, neutral matching environment.<sup>5</sup> Additionally, the Exchange believes that customers that rely on index-based or model-driven trading and investment strategies will find MatchPoint to be a very effective trading tool.

Because MatchPoint is an anonymous trading platform, no order information will be displayed and clearance and settlement of executions will be anonymous. Trade reports will be disseminated after each matching session.

All NYSE Members, Member Organizations and Sponsored Participants of Sponsoring Member Organizations are automatically eligible for access to MatchPoint. Before access is granted to MatchPoint users, all users must go through a connectivity authorization process.<sup>6</sup> After NYSE Members, Member Organizations and Sponsored Participants of Sponsoring Member Organizations obtain connectivity authorization they may access MatchPoint.

#### NYSE MatchPoint Matching Sessions

The first MatchPoint matching session of the trading day will commence at 9:45 a.m. Thereafter, during the trading day of the Exchange, there will be a matching session at 10 a.m., 11 a.m., 12 p.m., 1 p.m., 2 p.m. and 3 p.m. A

<sup>5</sup> The Exchange notes that portfolio matches have been in existence for over twenty years. Instinet's crossing network has been matching portfolios since December 1986 and Investment Technology Group Inc.'s Portfolio System for Institutional Trading (POSIT) has been matching portfolios since July 1987.

<sup>6</sup> MatchPoint can only be accessed through an electronic Financial Information eXchange ("FIX") application and/or an internet based password-protected order entry application. Users must fill out an application for connectivity through either of these two electronic connectivity capabilities. Once granted connectivity through the authorization process, eligible users may access MatchPoint.

MatchPoint after hours matching session will occur at 4:45 p.m.<sup>7</sup>

MatchPoint matching sessions are predetermined one-minute trading periods that occur through an automated matching mechanism. During the matching sessions, the Matchpoint Reference Price ("Reference Price") is determined and eligible orders are executed at the designated hour, as stated in the rule, at the randomly selected time during the predetermined one-minute trading session. The matching and execution of orders occurs immediately after the algorithm selects a Reference Price. No user can be assured of a match unless they enter an eligible portfolio or single order with an internal match designation that corresponds with contra side eligible portfolio or single orders with internal match designations from the same user. No user knows precisely when the match will occur. If an order is not executed in a particular matching session it will be immediately cancelled back to the user upon completion of the matching session. The user may resubmit the order in any one of the subsequent matching sessions.

#### NYSE MatchPoint Reference Prices

The Reference Price is the single trading price at which MatchPoint orders will execute during a predetermined one-minute "matching session." MatchPoint employs a passive pricing system. The Reference Price is derived from external market data of the Exchange and other primary securities markets. There is no price discovery as orders are not displayed and all trades occur in accordance with a predetermined algorithm.

The Reference Price is calculated differently for regular hour matching sessions and the after hours matching session. During the regular hours of the Exchange, the Reference Price shall be the midpoint of the national best bid and offer ("NBBO") which is randomly selected during a predetermined one-minute pricing period. For the after hours MatchPoint matching session, the Reference Price is the official closing price of the primary market (*i.e.*, the listing market) for securities listed on the NYSE, NYSE Arca, Amex, Nasdaq and regional stock exchanges. If, however, there is no official closing price for a particular security, the Reference Price will be the last sale

<sup>7</sup> Because transactions from the MatchPoint after hours matching session, which occurs at 4:45 p.m., occur outside of regular trading hours, they cannot fall within the definition of trade-throughs and will not be subject to the provisions of Rule 611 of Regulation NMS. See 17 CFR 242.600(b)(64) and (77).

price of the primary market for a particular security.

#### *Half Penny Increments*

The MatchPoint Reference Price for the matching sessions that occur during the regular hours (*i.e.*, the midpoint of the NBBO), may be calculated to three (3) decimal places when the NBBO is an odd penny spread (*i.e.*, one (1) penny, three (3) pennies, five (5) pennies, etc.). For example, if the NBBO of Stock XYZ is \$23.01 to \$23.02, the Reference Price is \$23.015. As a consequence, executions at the midpoint of the NBBO may be in half penny increments, requiring the use of three decimal places, as demonstrated in the example.<sup>8</sup>

#### *Securities Priced Below One Dollar*

As discussed above, MatchPoint orders in securities are not subject to auction-market price discovery procedures, as Reference Prices of securities are not determined until a matching session commences and the algorithm calculates the price of the securities. If the MatchPoint algorithm prices a security (*i.e.*, the Reference Price) below one dollar (\$1.00), MatchPoint will not execute orders in these securities but will cancel these orders back to the user immediately upon completion of the matching session.

#### *Entry and Processing of NYSE MatchPoint Orders*

##### *MatchPoint Orders*

MatchPoint users may enter, correct or cancel orders beginning at 3:30 a.m. until 4:45 p.m. The MatchPoint system will not accept any orders before 3:30 a.m. or after 4:45 p.m. MatchPoint will accept and execute single orders and NYSE MatchPoint Portfolios ("portfolios"). Orders may be either market or limit orders and must have a minimum size of one round lot. As discussed in more detail below, MatchPoint will permit odd lot and partial round lot orders to be entered into the system. Odd lot orders and the

odd lot portion of partial round lot orders will be reported as unexecuted.

Orders may not be cancelled or replaced while a matching session is in progress or when trading in the applicable security is halted in the MatchPoint system. MatchPoint orders shall not be available for execution until the next eligible matching session. All orders must be available for automatic execution. MatchPoint has no order delivery capability and will not route to other market centers. Users, however, would be able to enter eligible orders into MatchPoint through a FIX<sup>9</sup> application and/or an internet based order entry system provided the orders are available for automatic execution. MatchPoint orders will not trade through a Protected Bid or Protected Offer as defined in Regulation NMS.<sup>10</sup>

##### *MatchPoint Order Parameters*

All MatchPoint orders, single and portfolio, must have the following parameters: (1) List name;<sup>11</sup> (2) matching session (if a user fails to designate a specific matching session, the system will provide a default function and direct the order to the next eligible matching session); (3) side of the market (*i.e.*, buy, sell or short side); (4) symbol; and (5) minimum and maximum amount of shares available for execution. Additionally, a user may include an optional constraint (*i.e.*, net cash and internal match constraints) for a MatchPoint order.

##### *MatchPoint Order Designation*

MatchPoint orders must be designated for only one of the matching sessions during regular hours of the Exchange or for the single after hours matching session. If a MatchPoint order does not execute in the designated matching session, it will be cancelled back to the user immediately upon completion of the matching session. If a user fails to designate a particular matching session for a MatchPoint order, the order, by default, shall be available for execution in the next scheduled matching session. If an undesignated order does not execute in the next scheduled regular hours matching session it will be cancelled back to the user immediately upon completion of such matching

session. If a user fails to designate an order and enters the order after 3 p.m., which is the last regular hours matching session, the order will participate in the after hours matching session at 4:45 p.m. If the order does not execute in the after hours matching session it will be cancelled back to the user immediately upon completion of the after hours matching session.

As discussed above, a user must designate an order for only one matching session at a time. For example, if a user wishes to have an order available for execution in the 11 a.m. matching session, the user must designate the order for the 11 a.m. matching session and must enter the order into the MatchPoint system anytime between 3:30 a.m., when the system opens to receive orders, and 11 a.m., when the designated matching session commences. If the order does not execute in the 11 a.m. matching session, such order will be immediately cancelled back to the User upon completion of the matching session. Thereafter, the user must submit a new order for execution in another matching session, *e.g.*, the 12 p.m. matching session. The user must submit the subsequent order with a designation for the 12 p.m. matching session. Such order must then be entered into the system before commencement of the 12 p.m. matching session. Again, if the order does not execute in the 12 p.m. matching session, such order will be immediately cancelled back to the user upon completion of the 12 p.m. matching session.

##### *Round Lot Orders*

MatchPoint will execute orders only in round lots. The MatchPoint system will accept odd lot orders but not execute them. Odd lot orders entered into the MatchPoint system will be reported to the user as unexecuted. Similarly, orders containing partial round lots (*i.e.*, "mixed lots") may be entered into MatchPoint in the form of a portfolio but the odd lot portion of the order will not be executed and will be reported to the user as unexecuted. The system will permit the entry of odd lot and partial round lot orders to accommodate portfolio orders. The Exchange believes that to require the portfolio-based users to first strip their orders of odd lots and partial round lots before entering their orders into MatchPoint would introduce operational risk into the administration of the portfolios and, for example, disturb the tracking of the portfolios that follow the underlying index. Additionally, the Exchange believes that excluding odd lot and partial round lot

<sup>8</sup>MatchPoint will not display, rank or execute orders in any NMS stock priced below one dollar (\$1.00). In addition, MatchPoint will not display, rank or execute orders in increments smaller than a penny. However, when there is an odd penny spread, as described above, MatchPoint will execute it in a half penny increment. The Exchange notes that, in response to public comments to the Regulation NMS Proposing Release, the Commission wrote, "Executions occurring at a sub-penny price resulting from a midpoint, VWAP, or similar volume-weighted pricing algorithm are not prohibited by Rule 612 [of Regulation NMS]." See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Release") at note 831.

<sup>9</sup>FIX Protocol is a messaging standard developed specifically for the real-time electronic exchange of securities transactions.

<sup>10</sup>See Regulation NMS Release, *supra* note 8. Because the MatchPoint Reference Price during the regular hours of the Exchange is calculated to be the midpoint of the NBBO, no trade-through executions will occur and, therefore, Rule 611 of Regulation NMS ("Order Protection Rule") will not be violated.

<sup>11</sup>A portfolio must have a unique portfolio name that is distinct from the names of other portfolios of the same user.

orders from MatchPoint will discourage portfolio trading and significantly reduce liquidity in the MatchPoint market.

The following example demonstrates how odd lot and partial round lot orders are processed through MatchPoint:

A portfolio of buy orders is entered into MatchPoint:

- Stock A: 12,300 shares.
- Stock B: 5,650 shares.
- Stock C: 35 shares.
- Stock D: 17,099 shares.

Depending upon available contra side interest, the following portfolio executions could occur: Order A could execute up to 12,300 shares. Order B could execute up to 5,600 shares with at least 50 shares immediately cancelled

back to the user upon completion of the matching session. Order C will result in all 35 shares being immediately cancelled back to the user upon completion of the matching session. Order D will execute up to 17,000 shares and at least 99 shares will be immediately cancelled back to the user upon completion of the matching session.

*NYSE MatchPoint Order Allocation*

MatchPoint orders will be allocated on a *pro rata* basis, such that shares will be allocated *pro rata* in round lots (rounded down to the nearest 100 shares) to eligible orders based on the original size of the order. In this process MatchPoint will honor all user-directed

constraints. If the allocation to an eligible order is less than the minimum acceptable execution quantity for that order, the order shall not be eligible for execution in that matching session. If additional shares remain after the initial *pro rata* allocation, those shares will continue to be allocated *pro rata* to eligible orders. If additional shares remain thereafter that are the same size or are unexecuted because of rounding or minimum trade size constraints, the remaining shares will be allocated in 100 share lots to the oldest eligible orders.

The example below demonstrates how MatchPoint will allocate shares on a *pro rata* basis:

User	Side	Shares entered	Price	Shares executed
User A .....	Buy .....	100,000	MKT .....	100,000
User B .....	Buy .....	100,000	MKT .....	100,000
User C .....	Sell .....	100,000	MKT .....	*74,100
User D .....	Sell .....	75,000	MKT .....	*55,600
User E .....	Sell .....	50,000	MKT .....	37,000
User F .....	Sell .....	25,000	MKT .....	18,500
User G .....	Sell .....	10,000	MKT .....	7,400
User H .....	Sell .....	5,000	MKT .....	3,700
User I .....	Sell .....	5,000	MKT .....	3,700

In this example the total amount of buy orders is 200,000 shares. The total amount of sell orders is 270,000 shares. There are 70,000 more shares to sell than to buy. The greatest number of shares that may execute in the MatchPoint system is 200,000 shares. 200,000 shares is 74.074% (rounded percentage) of 270,000. Therefore, the *pro rata* percentage that will be allocated to each of the seven sell orders is 74.074%. Based on the order size of each order, MatchPoint will prorate the available liquidity (200,000 shares) accordingly (see "Shares Executed" in the example above). (\* Users C and D each receive an additional 100 shares because C and D are the oldest eligible orders after the *pro rata* share allocations.)

The second example (below) will illustrate the allocation of MatchPoint shares when all orders are equal in size. Under these circumstances, MatchPoint will allocate shares based on order entry sequence. The oldest order will get the larger fill if residual shares remain after the initial *pro rata* allocation. In the example below, assume the following orders are received in the following sequence:

*MatchPoint Orders:*

1. Broker-dealer A: Buy 10,000 @ mkt
2. Broker-dealer B: Sell 10,000 @ mkt
3. Broker-dealer C: Sell 10,000 @ mkt
4. Broker-dealer D: Sell 10,000 @ mkt

*MatchPoint Executions:*

1. 10,000 fully allocated order
2. 3,300 shares + 100 residual shares = 3,400 (oldest sell order)
3. 3,300 shares executed
4. 3,300 shares executed

The results of the matching session are as follows: Broker-dealer A's order is allocated 9,900 shares from a *pro rata* fill from each of the three sell orders from broker-dealers B, C and D in the amount of 3,300 shares. Each sell order has an equal residual of 6,700 shares, but because broker-dealer B has the oldest order of the three sell orders, B's residual 100 shares of stock will be allocated to A's buy order resulting in a fully allocated order of 10,000 shares.

*Portfolio Trading*

A MatchPoint user may submit NYSE MatchPoint Portfolios into the MatchPoint system for execution. An NYSE MatchPoint Portfolio is a group of linked orders with user-directed parameters and a unique, user-defined portfolio name. The portfolio orders may represent separate and distinct broker dealer-customer orders and separate and distinct proprietary broker dealer orders. A user may enter one portfolio of buy and sell/short orders or many portfolios of buy and sell/short orders.

*Internal Match Constraints*

MatchPoint portfolio users may effectuate internal matches and simultaneously match residual shares against orders from other users within a single matching session when using an optional internal match constraint. This type of constraint enables the user to execute trades between the same user's portfolios first before trading with other available orders in a particular matching session. If, after an internal match occurs and residual orders remain, the residual portfolios will trade with all other orders. Single orders may be designated for internal matches as well.

Internal matches have priority over other executions. MatchPoint will first process internal matches and then process all other orders in the matching session. All user-directed constraints will be honored in the internal match. An internal match constraint, like a MatchPoint order, is active only for a single matching session. A user may resubmit a new internal match constraint when resubmitting an order for a different matching session.

All orders that are designated with an internal match designation, single or portfolio orders, and entered by the same user are eligible for matching with all such orders. For example, single orders that have internal match designation are capable of matching

with all other orders that have internal match designations entered by the same user. Portfolio orders within a portfolio that are designated for internal matches are also capable of matching with one another when entered by the same user. Such orders are allocated on a *pro rata* basis as described above.

An internal match is illustrated in the following example:

Broker-dealer A enters one order in a portfolio to buy 20,000 shares of XYZ stock and in another portfolio Broker-dealer A enters an order to sell 10,000 shares of XYZ stock. Broker-dealer B enters an order to sell 10,000 shares of XYZ stock, and broker-dealer C enters an order to sell 10,000 shares of XYZ stock. The internal match will result in the following executions: Broker-dealer A's buy order for 20,000 shares of XYZ stock will trade with broker-dealer A's sell order of 10,000 and 5,000 shares of XYZ stock from broker dealer B and 5,000 shares of XYZ stock from broker dealer C respectively, leaving broker-dealers B and C with residual amounts of 5,000 shares each of XYZ stock. The unexecuted shares of XYZ stock for broker-dealers B and C (5,000 shares each) will be immediately cancelled back to broker-dealers B and C upon completion of the matching session.

*Net Cash Constraints*

An optional "net cash" constraint provides valuable risk and cash management tools for portfolio users. A

user entering a single order may also place a net cash constraint on that order. To execute a net cash constraint, a user must enter a specific net buy dollar amount and a specific net sell dollar amount for a portfolio. A net cash constraint is active only for a single matching session. A user may resubmit a new net cash constraint when resubmitting an order for a different matching session. MatchPoint users may utilize such net cash constraints as the primary vehicle for controlling how much a user may spend or raise in an individual portfolio. This functionality enables users to keep their purchases and sales in line with each other and to fund additional purchases.

When calculating a customer's net cash constraint position, the matching algorithm takes into account the eligible portfolio order shares in a specific security, the reference price of the security and the customer's net cash constraint. MatchPoint first processes the stock with the largest orders in the largest portfolios. In order to honor all cash constraints, the matching algorithm processes all single and portfolio orders in a particular security that have net cash constraints and calculates share allocation by applying a percentage of the original order size to contra side shares that are available to fill the order. The algorithm takes this percentage calculation and multiplies it by the Reference Price. This calculation is then compared to the order's net cash

constraint and determines if the allocation of the available contra side shares will violate the order's net cash constraint. If the calculation violates the net cash constraint, these shares will not be allocated to the contra side order but may be allocated to other eligible orders. This algorithmic process continues until all eligible orders are executed. There is no priority given to orders with a net cash constraint.

The example below demonstrates how portfolios, with and without a net cash constraint, execute in MatchPoint. Specifically, the example illustrates the portfolios of users A, B and C in three different scenarios: The pre-match scenario, the post-match scenario with no net cash constraint and a post match scenario with a net cash constraint. In that third scenario, user B has a net cash constraint of plus or minus \$1,000,000 (+/- \$1,000,000). In the matching session, user B's portfolio cannot sell (raise) \$1 million more than it buys (spends) and it cannot buy (spend) \$1 million more than it sells (raises). Users A and C have no net cash constraints on their portfolios. Users A and B are on the same side of the market and user C represents the contra side interest in the matching session. User B entered orders first and would therefore receive any residual shares to be allocated. As previously mentioned, allocated shares are rounded down to the nearest 100 shares.

Side	Symbol	Shares entered	Price
<b>PRE-MATCH</b>			
<b>User A Portfolio:</b>			
Buy .....	ABC .....	67,600	MKT
Buy .....	QRS .....	82,500	MKT
Sell .....	XYZ .....	86,300	MKT
Sell .....	DEF .....	41,200	MKT
<b>User B Portfolio:</b>			
Buy .....	ABC .....	47,600	MKT
Buy .....	QRS .....	98,600	MKT
Sell .....	XYZ .....	61,800	MKT
Sell .....	DEF .....	62,200	MKT
<b>User C Portfolio:</b>			
Buy .....	XYZ .....	139,200	MKT
Buy .....	DEF .....	88,800	MKT
Sell .....	ABC .....	146,400	MKT
Sell .....	QRS .....	258,300	MKT
<b>POST MATCH WITH NO NET CASH CONSTRAINTS</b>			
<b>User A Portfolio:</b>			
Buy .....	ABC .....	67,600	32.66
Buy .....	QRS .....	82,500	23.55
Sell .....	XYZ .....	81,100	38.71
Sell .....	DEF .....	35,300	72.03
<b>User B Portfolio:</b>			
Buy .....	ABC .....	47,600	32.66
Buy .....	QRS .....	98,600	23.55
Sell .....	XYZ .....	58,100	38.71
Sell .....	DEF .....	53,500	72.03
<b>User C Portfolio:</b>			

Side	Symbol	Shares entered	Price
Buy .....	XYZ .....	139,200	38.71
Buy .....	DEF .....	88,800	72.03
Sell .....	ABC .....	115,200	32.66
Sell .....	QRS .....	181,100	23.55

**POST MATCH WITH NET CASH CONSTRAINT**

<b>User A Portfolio:</b>			
Buy .....	ABC .....	67,600	32.66
Buy .....	QRS .....	82,500	23.55
Sell .....	XYZ .....	86,300	38.71
Sell .....	DEF .....	41,200	72.03
<b>User B Portfolio:</b>			
+/- \$1 Million Cash Constraint			
Buy .....	ABC .....	47,600	32.66
Buy .....	QRS .....	98,600	23.55
Sell .....	XYZ .....	45,500	38.71
Sell .....	DEF .....	43,100	72.03
<b>User C Portfolio:</b>			
Buy .....	XYZ .....	131,800	38.71
Buy .....	DEF .....	84,300	72.03
Sell .....	ABC .....	115,200	32.66
Sell .....	QRS .....	181,100	23.55

As the example shows, the allocation of shares may vary significantly with and without the net cash constraint. User B's portfolio executes fewer shares with a net cash constraint than without

the constraint. Users A and C, with no net cash constraints, are able to obtain more executions and have a more competitive position than user B when user B has a net cash constraint in place.

Below is a chart comparing the post match customer net cash position results (i.e., total dollars raised and total dollars spent) from the example above.

	Post match 1 Net cash position	Post match 2 Net cash position	Post match 1 and 2 Cash difference
Customer A .....	\$1,535,220	\$2,157,618	\$622,398
Customer B .....	\$2,222,139	\$989,152	<sup>12</sup> (\$1,232,987)
Customer C .....	(\$3,757,359)	(\$3,146,770)	(\$610,589)

Post Match 1 reflects the net cash position for Customers A, B and C when their portfolios match with one another and when Customer B has no net cash constraint. Customer A raised \$1,535,220 more than he spent; Customer B raised \$2,222,139 more than he spent and Customer C spent \$3,757,359 more than she raised.

Post Match 2 reflects the net cash position for Customers A, B and C when they match with one another and Customer B has a net cash constraint of plus or minus \$1,000,000 (+/- \$1,000,000). Customer B raised \$989,152 more than he spent, which is within his net cash constraint of \$1,000,000, but is \$1,232,987 less than what he raised in Post Match 1 (when he had no net cash constraint). This shows the effect of Customer B's net cash constraint on his eligible portfolio orders, which limits the dollar amount that he can raise (or spend). The matching algorithm honors Customer

B's net cash constraint before allocating shares.

Customer B has an additional \$10,848 that he could raise up to the \$1 million constraint, but because the algorithmically calculated percentage of the available shares would violate his constraint if allocated, the available shares are not allocated to Customer B and he stops raising cash. The example demonstrates how the matching algorithm honors Customer B's net cash constraint before allocating shares.

Further, in Post Match 2, Customer A raised \$2,157,618 more than he spent and \$622,398 more than he raised in Post Match 1. Customer A was able to match more shares because of Customer B's net cash constraint, which restricted Customer B's ability to raise or spend more than \$1,000,000. Customer C spent \$3,146,770 more than she raised and spent \$610,589 less than she spent in Post Match 1. This reflects Customer A's ability to increase the number of his executions and Customer B's ability to limit the number of his executions through his net cash constraint.

The above example also illustrates the following MatchPoint principles for net cash constraints: (1) A net cash constraint placed on a portfolio may affect the execution of other orders in the matching session by generally allowing additional shares for such other orders to be executed, and (2) net cash constraints will generally result in fewer executions of a portfolio and may inhibit the maximum order execution potential of a particular security in a particular matching session.

*Price Collar Threshold in the After Hours Matching Session*

In the after hours matching session, the Exchange will place parameters on the prices of all MatchPoint eligible securities in order to dampen volatility and provide accurate pricing for executions. Such parameters will be referred to as a "Price Collar Threshold." A Price Collar Threshold is an after hours market price beyond which a MatchPoint order will not be executed. The Price Collar Threshold will protect against unusual occurrences when the market has moved

<sup>12</sup> Numbers that appear in parentheses represent expenditures.

significantly from the official closing price of the primary market based on information that becomes available after the market close. In this situation, the Exchange will cancel the after hours MatchPoint matching session rather than execute the matching session at a price that no longer reflects the market accurately. All unexecuted orders will be immediately cancelled back to the user upon completion of the matching session.

The Price Collar Threshold will be set at a predetermined percentage of the MatchPoint after hours Reference Price. Initially, the Price Collar Threshold will be set at two percent (2%). Therefore, if the difference between the Price Collar Threshold and the consolidated last sale price of the security is two percent or more, the matching session in that particular security will not occur. All unexecuted orders will be cancelled back to the user upon completion of the scheduled matching session. For example, if the Reference Price of XYZ stock is \$100, and at 4:45 p.m. the consolidated last sale price for XYZ stock is either \$98 or less or \$102 or more, the Price Collar Threshold will cause the stock to be halted in the after hours matching session.

In the future, if the Exchange determines that the Price Collar Threshold should be adjusted in order to protect users and provide more accurate trades, the Exchange may make such adjustments, up to and including five percent (5%) of the MatchPoint after hours Reference Price. The Exchange will inform its users of such an adjustment via the NYSE MatchPoint Web site at <http://www.nyse.com/MatchPoint> and the Member Firm Notice, and notice of such adjustments will be provided to all users reasonably in advance of any such adjustments.

#### *Locked and Crossed Markets*

If the NBBO for a particular security is locked at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session shall execute orders at the locked price. Unexecuted MatchPoint orders in that security shall be cancelled back to the user immediately upon completion of the matching session.

If the NBBO for a particular security is crossed at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session in that particular security shall not occur. Unexecuted MatchPoint orders in that security shall be cancelled back to the user immediately upon completion of the matching session.

#### *Trading Ahead of Customer Orders*

In the event a MatchPoint Order executes at the midpoint of the NBBO resulting in a Member or Member Organization's trading ahead of a held customer order at the same price, the Exchange believes that NYSE Rule 92 (Limitations on Member's Trading Because of Customers' Orders) may be implicated. NYSE Rule 92(a) generally restricts a Member or Member Organization from entering a proprietary order while in possession of a customer order. NYSE Rule 92(b) through (d) provides several exceptions to the general restrictions of Rule 92(a). When trading on the MatchPoint system, all users will be expected to comply with Rule 92(a) unless such trading falls within an applicable exception in NYSE Rule 92(b) through (d).

#### *Halting, Suspending and Closing of NYSE MatchPoint Trading on the Exchange*

Trading on MatchPoint will be halted, suspended or closed<sup>13</sup> when necessary in order to maintain a fair and orderly market, and in certain other conditions, as described below. If trading in a particular security is halted, suspended or closed due to regulatory or unusual market conditions at the time a matching session commences, the matching session will not occur in that security and all unexecuted orders will be immediately cancelled back to the user upon completion of the matching session.

MatchPoint trading may be halted, suspended or closed when: (1) In the exercise of its regulatory capacity, the Exchange determines such action is necessary or appropriate to maintain a fair and orderly market, to protect investors, or otherwise is in the public interest due to extraordinary circumstances or unusual market conditions; (2) in the case of a particular security whenever, for regulatory purposes, trading in the related security has been halted, suspended or closed on the Exchange or the primary listing exchange; (3) in the case of a particular security trading on the Exchange pursuant to unlisted trading privileges, whenever, for regulatory purposes, trading in that security has been halted, suspended or closed on the primary listing exchange; (4) with respect to a particular security trading on the Exchange pursuant to unlisted trading

<sup>13</sup> The use of the word "close" in the context of this rule refers to the intentional closing of the market due to regulatory or other unusual circumstances as described above, and does not refer to the predetermined "close" or end of the regular trading day at 4 p.m.

privileges, if the authority under which a security trades on the Exchange or its primary market is revoked (*i.e.*, because it is delisted); or (5) in the after hours matching session, news reports and/or corporate actions are disclosed after the close of the regular hours of the market that have a material impact on a particular security, which may include the following situations: (a) New corporate earnings; (b) major market index company deletions or additions; (c) corporate takeovers; (d) other significant corporate actions; (e) court decisions and injunctions; and (f) governmental announcements. No terms or conditions specified in this rule shall be interpreted to be inconsistent with any other rules of the Exchange.

#### **Clearance and Settlement of MatchPoint Executions**

Details of each MatchPoint trade will be automatically matched and compared by the Exchange and will be submitted to a registered clearing agency for clearing and settlement on a locked-in basis.<sup>14</sup> All executions effected by a Member or Member Organization will be cleared and settled using the Member's and Member Organization's account, and all executions effected by a Sponsored Participant will be cleared and settled using the relevant Sponsoring Member Organization's account.

Because MatchPoint is an anonymous trading facility, the proposed rule will require MatchPoint transaction reports to indicate the details of the transaction, but not to reveal contra party and clearing firm identities,<sup>15</sup> except under the following circumstances: (1) In the event the National Securities Clearing Corporation ("NSCC")<sup>16</sup> ceases to act for a Member or Member Organization, which is the unidentified contra side of any such trade processing, and/or the relevant clearing firm, the NYSE shall have the responsibility to identify to

<sup>14</sup> MatchPoint executions will be compared through the Regional Interface Organization Online process ("RIO Online"). RIO Online is NYSE Arca's internal processing interface that sends order execution information to the Depository Trust & Clearing Corporation (DTCC). RIO Online gathers the trades that are executed on any given day, places the trades into the appropriate message format and sends them to DTCC. RIO Online provides a record of all trades that were sent to DTCC. RIO Online is also used to manage any approved trade corrections.

<sup>15</sup> Post-trade anonymity described herein has been previously approved by the Commission for other exchanges. See, *e.g.*, Securities Exchange Act Release Nos. 48527 (September 23, 2003), 68 FR 56361 (September 30, 2003) (SR-NASD-2003-85); and 49786 (May 28, 2004), 69 FR 32087 (June 8, 2004) (SR-PCX-2004-40).

<sup>16</sup> The Exchange will submit completed MatchPoint trades for clearance and settlement to NSCC, which is a subsidiary of DTCC.

Members or Member Organizations the trades included in reports produced by the NSCC which are with the affected Member or Member Organization, and (2) for regulatory purposes or to comply with an order of a court or arbitrator.

The trade reports that the NSCC will receive from MatchPoint for anonymous trades will contain the identities of the parties to the trade. This measure will enable the NSCC to conduct its risk management functions and settle anonymous trades. The trade report sent to the NSCC will contain an indicator noting that the trade is anonymous. On the contract sheets the NSCC issues to its participants, the NSCC will substitute "ANON" for the acronym of the contra-party. The purpose of this masking is to preserve anonymity through settlement.

The Exchange states that it will be able to maintain anonymity with respect to disputed or erroneous trades because the Exchange resolves disputes through a centralized process and conducts the process on behalf of its Members and Member Organizations.

#### *Dissemination of Trading Information*

The MatchPoint system will report trade information to the Securities Information Processors for all MatchPoint eligible securities. Trades will be reported as one print for each security with the total volume of the transaction reported with the price. Market data for NYSE-listed securities will be disseminated via the consolidated tape pursuant to the Consolidated Tape Association Plan ("CTA Plan"). Trade reports of securities that are governed by the UTP Plan will be disseminated pursuant to the UTP Plan. All trades will indicate the market of execution as the NYSE for CTA and UTP purposes.

#### *Member Organization and Non-Member Access to the NYSE MatchPoint System*

Members and Member Organizations of the Exchange are automatically eligible for access to MatchPoint by their membership on the Exchange. A non-member who wishes to trade securities on MatchPoint may do so as a "Sponsored Participant" of a Member Organization, *i.e.*, "Sponsoring Member Organization," and must enter into a written agreement with the Sponsoring Member Organization and with the Exchange. As previously explained, all Members, Member Organizations and Sponsored Participants of Sponsoring Member Organizations must first obtain connectivity authorization before they can access MatchPoint.

The proposed rule requires the Sponsoring Member Organization and

the Sponsored Participant to enter into a sponsorship arrangement and maintain a written "sponsorship agreement." The sponsorship agreement must be agreed to by both the Sponsoring Member Organization and the Sponsored Participant and include provisions for Authorized Traders. Such written agreement must include the Sponsoring Member's consent to sponsor the Sponsored Participant. The proposed sponsorship agreement must also include the following provisions:

#### *Sponsorship Provisions*

(A) Sponsored Participant and its Sponsoring Member Organization must have entered into and maintained a written agreement with the Exchange. The Sponsoring Member Organization must designate the Sponsored Participant by name in its written agreement as such.

(B) Sponsoring Member Organization acknowledges and agrees that:

(i) All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring Member Organization and

(ii) Sponsoring Member Organization is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.

(C) Sponsoring Member Organization shall comply with the rules of the Exchange, the rules and procedures with regard to MatchPoint and Sponsored Participant shall comply with the rules of the Exchange and the rules and procedures with regard to MatchPoint, as if Sponsored Participant were a Sponsoring Member Organization.

(D) Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member Organization a list of Authorized Traders who may obtain access to the MatchPoint on behalf of the Sponsored Participant.

(E) Sponsored Participant shall familiarize its Authorized Traders with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to MatchPoint.

(F) Sponsored Participant may not permit anyone other than Authorized Traders to use or obtain access to MatchPoint.

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to MatchPoint, including unauthorized entry of information into MatchPoint, or

the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.

(H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees, agents and customers' use and access to MatchPoint for compliance with the terms of this agreement.

(I) Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member Organization, MatchPoint or any other third parties that arise from the Sponsored Participants access to and use of MatchPoint. Such amounts include, but are not limited to applicable exchange and regulatory fees.

(J) Sponsored Participant shall maintain and keep current all records and documents relating to its trading activities on MatchPoint, and shall provide all such records and documents to the Sponsoring Member Organization upon request.

#### *Notice of Consent to the Exchange*

(A) The Sponsoring Member Organization must provide the Exchange with a notice of consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue prior to providing the Sponsored Participant with authorized access to MatchPoint.

#### *Authorized Traders*

(A) Sponsoring Member Organization shall maintain a list of Authorized Traders who may obtain access to MatchPoint on behalf of the Sponsoring Member Organization or the Sponsoring Member Organization's Sponsored Participants. The Sponsoring Member Organization shall update the list of Authorized Traders as necessary. Sponsoring Member Organizations must provide the list of Authorized Traders to the Exchange upon request.

(B) A Sponsoring Member Organization must have reasonable procedures to ensure that all Authorized Traders comply with the trading rules and procedures related to MatchPoint and all other rules of the Exchange.

(C) A Sponsoring Member Organization must suspend or withdraw a person's status as an Authorized Trader if the Exchange has determined that the person has caused the

Sponsoring Member Organization to fail to comply with the rules of the Exchange and the Exchange has directed the Sponsoring Member Organization to suspend or withdraw the person's status as an Authorized Trader.

(D) A Sponsoring Member Organization must have reasonable procedures to ensure that an Authorized Trader maintain the physical security of the equipment for accessing the facilities of MatchPoint to prevent the improper use or access to the system, including unauthorized entry of information into the system.

#### *Limitations on the Use of MatchPoint*

(A) Specialists on the Floor of the Exchange are not authorized to access MatchPoint. The off-Floor operations of specialist firms may obtain authorized access to MatchPoint provided they have policies and procedures and barriers in place that preclude improper information sharing between the specialist firm and the firm's specialist on the Floor of the Exchange.<sup>17</sup>

(B) Members who have authorized access to MatchPoint are not permitted to enter orders into the MatchPoint system from the Floor of the Exchange when such orders are for their own accounts, the accounts of associated persons, or accounts over which it or an associated person exercises investment discretion. Similarly, Members on the Floor may not have such orders entered into MatchPoint by sending them to an off-Floor facility for entry. Members with authorized access to MatchPoint may only enter customer orders into MatchPoint from the Floor of the Exchange. Members that have authorized access to MatchPoint may enter proprietary and customer orders into MatchPoint from off the Floor of the Exchange.

#### *Applicability of Section 11(a) and (b) of the Act*

Section 11(a) of the Act prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion, unless an exception applies. The "Effect versus Execute Rule," as Rule 11a2-2(T) under the Act is known, permits an

<sup>17</sup> Currently, all specialist organizations on the Exchange utilize information barrier procedures pursuant to NYSE Rule 98 (Restrictions on Approved Person Associated with a Specialist's Member Organization). Information barrier procedures that would be utilized to block access by a specialist to any MatchPoint trading information generated by the off-Floor personnel of the specialist organization would be similar in design and utilization.

exchange member, subject to certain conditions, to effect a transaction for such accounts, utilizing an unaffiliated member to execute transactions on the exchange floor. The Rule requires that: (1) The order must be transmitted from off-floor; (2) once the order has been transmitted, the member may not participate in the execution; (3) the transmitting member may not be affiliated with the executing member; and (4) neither the member or associated person may retain any compensation in connection with effecting such transaction, respecting accounts over which either has investment discretion, without the express written consent of the person authorized to transact business for the account. The Exchange requests interpretation that MatchPoint orders entered from off-floor comply with the following provisions of the Rule:

1. *Off-Floor Transmissions:* Orders are electronically entered into the MatchPoint system from on and off the Floor of the Exchange; however, Members are not permitted to enter orders into the MatchPoint system from the Floor of the Exchange when such orders are for their own accounts, the accounts of associated persons, or accounts over which it or an associated person exercises investment discretion. Also, specialists on the Floor are not permitted to enter any orders into the MatchPoint system and they do not have access to the MatchPoint system from the Floor, as described in more detail below. However, "upstairs" specialist firms are permitted to be MatchPoint users and may enter orders from off the Floor provided such firms have adequate policies, procedures and "barriers" in place between the upstairs firm and the Floor specialists, which will preclude improper sharing of trading information.

2. *Non-Participation in Order Execution:* In accordance with Rule 11a2-2(T), once orders are entered into the MatchPoint system, a member may not participate in, guide or influence the execution of such orders. MatchPoint orders are sent by electronic means (*i.e.*, FIX application or an internet-based application) to the MatchPoint trading platform. Users may enter, correct or cancel MatchPoint orders any time prior to the commencement of a matching session. However, once the matching session has commenced, the system will not permit a user to affect the order or its execution in any way. Thus, when the matching session commences, the member relinquishes all control of MatchPoint orders. Users have no special or unique order handling or

trading advantages when trading on MatchPoint.

3. *Affiliated Executing Members:* Rule 11a2-2(T) provides that the transmitting member may not be affiliated with the executing member. The Commission has previously recognized that this requirement may be satisfied when automated exchange facilities are used.<sup>18</sup> MatchPoint is a fully automated, electronic trading facility. As described above, MatchPoint orders are sent by electronic means to the MatchPoint trading platform. Matching sessions commence automatically at a predetermined time. Matching, trading and pricing of orders is effectuated through an algorithm, which does not permit entry, correction or cancellation of orders during the matching session. At the completion of a matching session, transaction reports, including order cancellation reports for orders that were not executed, are sent back to the user. Reference Prices are derived from outside sources. The intra-day Reference price is the midpoint of the NBBO, and the after hours Reference Price is the official closing price or last sale price of a particular security.

The Exchange believes that MatchPoint complies with the "Affiliated Executing Member" provision of Rule 11a2-2(T) because the automatic execution function of MatchPoint ensures that all authorized MatchPoint users have the same abilities with respect to entering orders, and no users can effect an order once the matching session has commenced. The design of the MatchPoint system ensures that members do not possess any special or unique trading advantages in the handling of orders. Thus, the Rule's provision respecting the use of affiliated members to execute orders is not implicated by the MatchPoint system.

4. *Non-Retention of Compensation:* The Exchange represents that members that rely on Rule 11a2-2(T) for a managed account transaction must comply with the limitations on compensation set forth in the rule.

Section 11(b) of the Act and Rule 11b-1 thereunder, which pertains to

<sup>18</sup> In considering the operation of automated execution systems by an exchange, the Commission has noted in the past that the execution of an order is automatic once it has been transmitted into a system, and therefore satisfies the independent execution requirement of rule 11a2-2(T). *See, e.g.*, Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); and 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131).

specialists, are not applicable to the operation of the MatchPoint system for several reasons. First, as stated above, specialists on the Floor of the Exchange are not able to access MatchPoint. MatchPoint can only be accessed through an electronic FIX application and/or an internet based, password-protected order entry application, which are not available to individual specialists on the Floor. Although the upstairs firms that employ specialists are able to access MatchPoint through these two applications, such firms must be authorized to access MatchPoint, and the firms must have policies and procedures and information barriers in place to preclude the improper sharing of trading information between the specialists on the Floor and in the upstairs firm. Further, the specialist firms will be subject to examinations by the Financial Industry Regulatory Authority, Inc. ("FINRA") as agent for NYSE Group pursuant to a Regulatory Services Agreement dated July 30, 2007, to ensure that such policies and procedures and information barriers are in place and are adequate to preclude improper sharing of trading information.

Specifically, FINRA examiners will perform an on-site review of the combined specialist firm's written policies and procedures and determine if they are adequate in relation to trading on MatchPoint. In addition, FINRA will interview appropriate individuals both within the affected departments as well as other areas of the specialist firm to determine whether firm policies have been appropriately disseminated and appear to be followed in relation to MatchPoint trading. The examination will also determine whether there have been any apparent breaches of the information barriers.

Second, the MatchPoint system is independent of all other electronic trading platforms, including the specialists' API ("Application Programmed Interface") which is also known as the specialists' "algorithm." As a consequence, the specialists' algorithm cannot interface with the MatchPoint system and has no access to order entry information or MatchPoint market data. Similarly, the individual specialist on the Floor has no MatchPoint order entry information or MatchPoint market data. Without access to MatchPoint and without access to MatchPoint order entry information and market data, specialists will not be able to manipulate MatchPoint trading.

Third, the Exchange has an internal authorization process that authorizes MatchPoint users to access MatchPoint through the FIX application and internet by providing an authorized user name

and protected password. Individual specialists on the Floor will not be authorized through the internal process. Upstairs firms that employ specialists may be authorized to access MatchPoint through MatchPoint's internal authorization process, provided, as noted above, FINRA, as agent for NYSE Group, examines such firms to ensure that policies, procedures and barriers are in place and are adequate to preclude improper sharing of trading information.

Therefore, because specialists on the Floor do not have access to the MatchPoint system or MatchPoint order information, and because the specialist firms are subject to regulatory examinations to ensure the integrity of information barriers between the firms and their specialists on the Floor, the Exchange believes that section 11(b) of the Act and Rule 11b-1 thereunder, which pertains to specialists, is not applicable to the operation of the MatchPoint system.

#### *Regulation of the MatchPoint System*

The Exchange notes that NYSE Regulation represents that it has appropriate policies and procedures in place to adequately and effectively regulate the MatchPoint system. A surveillance plan describing the various surveillances that will be in place to monitor the operation of MatchPoint has been submitted to the Commission under separate cover, and will be implemented prior to any trading on the MatchPoint system. Also, FINRA, as agent for NYSE Group, will perform examinations of specialist firms that trade on MatchPoint as described above.

#### 2. Statutory Basis

The Exchange states that the statutory basis for proposed rule change is the requirement under section 6(b)(5)<sup>19</sup> 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.

#### *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**

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 (ii) as to which the NYSE 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 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-2007-102 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-2007-102. 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

<sup>19</sup> 15 U.S.C. 78f(b)(5).

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 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-2007-102 and should be submitted on or before December 14, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-22782 Filed 11-21-07; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56790; File No. SR-NYSEArca-2007-113]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Mid-Point Passive Liquidity Order

November 15, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act 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 proposes to amend NYSE Arca Rule 7.31(h)(5) in order to reduce the Mid-Point Passive Liquidity Order's ("MPL Order") minimum order entry size and minimum executable size from 1000 to 100.

#### 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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has substantially 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

As part of its continuing efforts to provide additional flexibility and increased functionality to its system and its Users,<sup>5</sup> the Exchange proposes to amend Rule 7.31(h)(5) in order to reduce the MPL Order's minimum order entry size and minimum executable size from 1000 to 100. The MPL Order<sup>6</sup> is a version of the NYSE Arca Passive Liquidity Order,<sup>7</sup> except that it is executable only at the midpoint of the Protected Best Bid and Offer ("PBBO").

Presently, the MPL Order's minimum order entry and execution size is 1000. The Exchange represents that this MPL Order type was initially designed to accommodate larger customer transactions. However, since its inception, it has become clear that Users with a typical order flow less than this threshold are frequently unable to use it. This proposed reduction of the order entry and execution size from 1000 to 100 will allow all Users the same flexibility in using this order type.

The Exchange is not proposing any other changes or amendments to the

MPL order. The Exchange intends to offer this functionality in concert with other planned technological upgrades presently scheduled to be implemented on November 19, 2007, or such later date as communicated to its Users through a customer notice.

The Exchange believes that reducing the minimum order entry size and the minimum execution size will further enhance order entry and execution opportunities on the Exchange. Retail customers, whose orders are typically smaller than 1000, will particularly benefit from this reduction and thus the proposed rule change will allow those Users the same opportunities as larger institutional customers.

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

##### 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

Because the 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 after the date of 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

<sup>20</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 NYSE Arca Rule 1.1(yy) for the definition of "User."

<sup>6</sup> See Securities Exchange Act Release No. 56072 (July 13, 2007), 72 FR 39867 (July 20, 2007) (SR-NYSEArca-2007-61).

<sup>7</sup> See NYSE Arca Rule 7.31(h)(4).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).