

execute in options classes to which it is not appointed will be based on volume that is executed in those options classes in which a CMM maintains continuous quotes in fulfillment of its obligations as a market maker.

Finally, the Commission believes that it is appropriate to impose a higher continuous quoting requirement on CMMs who receive preferenced order flow because such CMMs receive the benefit of enhanced allocation rights and therefore should assume an increased obligation to provide continuous quotations. The Commission notes that a similar quotation standard for preferred market makers was previously adopted on another exchange.<sup>9</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-ISE-2008-78) be, and hereby is, approved.

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

Florence E. Harmon,

Acting Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59069; File No. SR-NYSE-2008-124]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending for Three Months to March 31, 2009 the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers Pursuant to NYSE Rule 107A and Competitive Traders Pursuant to NYSE Rule 110

December 8, 2008.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that, on December 2, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange

<sup>9</sup> See CBOE Rule 8.13(b)(iii) (requiring a preferred market-maker to provide continuous electronic quotes in at least 90% of the series of each class for which it receives preferred market-maker orders).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to extend for three months to March 31, 2009 the moratorium related to the qualification and registration of Registered Competitive Market Makers ("RCMMs") pursuant to NYSE Rule 107A and Competitive Traders ("CTs") pursuant to NYSE Rule 110. The text of the proposed rule change is available at [www.nyse.com](http://www.nyse.com), the NYSE, and the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to extend for three months to March 31, 2009 the moratorium related to the qualification and registration of RCMMs pursuant to NYSE Rule 107A and CTs pursuant to NYSE Rule 110.

On September 22, 2005, the Exchange filed SR-NYSE-2005-63 <sup>4</sup> with the Securities and Exchange Commission ("Commission") proposing to implement a moratorium on the qualification and registration of new RCMMs and CTs ("Moratorium"). The purpose of the Moratorium was to allow the Exchange an opportunity to review the viability of RCMMs and CTs in the

<sup>4</sup> See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

NYSE HYBRID MARKET<sup>SM</sup> ("Hybrid Market").<sup>5</sup>

During each phase of the Hybrid Market, the NYSE implemented new system functionality that generated additional data to review. As a result, the Exchange was unable to make an informed decision as to the viability of RCMMs and CTs in the Hybrid Market. The phasing in implementation of the Hybrid Market required the Exchange to extend the Moratorium an additional six times over a twenty-four (24) month period.<sup>6</sup>

On October 24, 2008, the Commission approved the Exchange's new market model filing ("New Model").<sup>7</sup> The New Model filing: (i) Provided market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) created a Designated Market Maker ("DMM"), and phased out the NYSE specialist; and (iii) enhanced the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs. In light of the implementation of the New Model, the Exchange requested an extension of the Moratorium to evaluate the viability of the RCMMs and CTs in the proposed New Model two times over a six (6) month period.<sup>8</sup>

The Exchange is currently implementing the second phase ("Phase 2") of technology required for the operation of the New Model. Upon completion of the installation of the Phase 2 technology,<sup>9</sup> the New Model will operate as a pilot scheduled to end on October 1, 2009. Accordingly, the Exchange seeks to have the ability to review data that will be generated as a

<sup>5</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05) (establishing the NYSE HYBRID MARKET<sup>SM</sup>).

<sup>6</sup> See e-mail from Jennifer Kim, Counsel, NYSE to Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, dated December 4, 2008; See Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR-NYSE-2006-48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR-NYSE-2006-113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR-NYSE-2007-57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR-NYSE-2007-86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR-NYSE-2007-125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR-NYSE-2008-22).

<sup>7</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

<sup>8</sup> See e-mail from Jennifer Kim, Counsel, NYSE to Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, dated December 4, 2008; See Securities Exchange Act Release Numbers 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR-NYSE-2008-49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR-NYSE-2008-96).

<sup>9</sup> Phase 2 is scheduled to be completed no later than January 2, 2009.

part of the complete operation of the New Model related to RCMM and CT trading. Once Phase 2 implementation is complete, the NYSE will have the fuller data set to decide what roles, if any, RCMMs and CTs should perform at the NYSE. Thereafter, the Exchange will formally submit a proposal to the Commission outlining the roles, if any, these classes of traders have in the Exchange's New Model market. The Exchange is therefore proposing to extend the Moratorium as amended<sup>10</sup> for an additional three (3) months to March 31, 2009 in order to finalize its determination as to the roles of RCMMs and CTs at the NYSE.

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

## 2. Statutory Basis

The basis under the Act<sup>11</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>12</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles in that the review of data associated with RCMM and CT trading in light of the significant developments in its technology and New Model will allow the Exchange to make an informed decision as to the viability of RCMMs and CTs in this evolving marketplace and may potentially remove impediments to and better improve the mechanism of a free and open market.

### *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*

No written comments were solicited or received with respect to the proposed rule change.

<sup>10</sup> See Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR-NYSE-2006-11) (making certain amendments to the Moratorium).

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

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

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act.<sup>13</sup> The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the requirement that it give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-124 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-124. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2008-124 and should be submitted on or before January 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59064; File No. SR-NYSE-2008-91]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Adopt a Policy Relating to Its Treatment of Trade Reports That It Determines To Be Inconsistent With the Prevailing Market**

December 5, 2008.

## I. Introduction

On September 26, 2008, the New York Stock Exchange LLC ("NYSE" or

<sup>14</sup> 17 CFR 200.30-3(a)(12).