

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 also will be available for inspection and copying at the principal office of NASD. 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-NASD-2006-135 and should be submitted on or before January 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54970; File No. SR-NYSE-2006-114]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 123A.30 to Eliminate the Two Tick Rule to Allow for the Execution of CAP-DI Orders at Consecutive Destabilizing Prices Without Floor Official Approval

December 19, 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 December 14, 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 substantially prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule

19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to amend Exchange Rule 123A.30 to allow a CAP-DI order to be executed at consecutive destabilizing prices without Floor Official approval.

The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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 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

Exchange Rules 13 and 123A.30 describe a type of percentage order<sup>5</sup> called a "convert and parity, destabilizing, immediate-or-cancel" (CAP-DI) order and the manner in which such orders are elected or converted and executed.

CAP-DI orders are "elected" into limit orders when a trade on the Exchange occurs at or within a CAP-DI order's limit price. The size and price of such limit order is the same as the electing trade. The election and execution of CAP-DI orders is automatic.

CAP-DI orders may also be "converted" into limit orders to trade with the NYSE bid and offer or to

establish a new NYSE best bid or offer as prescribed by Rule 123A.30. When first adopted, CAP-DI orders were converted by specialists in accordance with the instructions of the Floor broker who entered the order. Today, CAP-DI orders are automatically converted and trade in certain situations—when the specialist trades for its dealer account in an automatic execution.<sup>6</sup> In that situation, CAP-DI orders that have been entered and are capable of trading at that price are automatically converted and trade along with the specialist.<sup>7</sup> This process benefits customers by ensuring that CAP-DI orders are executed in accordance with their expectations—*i.e.* that they participate in NYSE trades at or within their limit and thereby do not lag behind the market.

The "D" designation on CAP-DI orders stands for "destabilizing" and allows the order to be converted to participate in stabilizing or destabilizing transactions<sup>8</sup> or to bid (offer) in a destabilizing manner.<sup>9</sup>

The "I" designation of the CAP-DI order stands for "immediate execution or cancel" and allows for the cancellation of any converted portion of the order that is not executed immediately at the price of the electing transaction or better. Any portion that is not immediately executed reverts to its status as a CAP-DI order, eligible for subsequent election or conversion and execution.

CAP-DI orders are subject to certain restrictions on conversions to trade and quote that were intended to minimize the specialist's ability to move the price direction of a security through the conversion of the CAP-DI orders.<sup>10</sup> Thus, Exchange Rule 123A.30 provides that CAP-DI orders may not be converted "at consecutively higher or lower prices such that consecutive up or down ticks (as the case may be), follow one another in rapid succession, unless [the specialist] obtains the prior

<sup>6</sup> This occurs either because the specialist has algorithmically generated a trading message or is part of a quote that is automatically executed.

<sup>7</sup> By its terms (convert and parity), specialists and CAP-DI orders trade on parity.

<sup>8</sup> A "destabilizing" trade is a trade that follows the direction of the market as, for example, a purchase on a plus tick or a sale on a minus tick. A stabilizing trade is one that counters the direction of the market as, for example, a purchase on a minus tick or a sale on a plus tick.

<sup>9</sup> Rule 123A.30 sets forth certain size and maximum price restrictions on CAP-DI conversions. The Exchange is not proposing to amend these requirements.

<sup>10</sup> See Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (SR-NYSE-85-1) (approving amendment to Rule 123A.30 permitting conversion of percentage orders on destabilizing ticks under certain restrictions).

<sup>16</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> Percentage orders are limited price orders to buy or sell a certain volume of the specified security after a trade occurs at or within the order's limit. As such, all percentage orders, including CAP-DI orders, are referred to as "go along orders" because they generally want to trade at prices established by other market participants and do not want to initiate a significant price change or lag behind the market.

approval of a Floor Governor, Senior Floor Official, or Executive Floor Official" (hereinafter, "two tick rule").

However, as a result of the automatic conversion and execution process described above, it is possible for CAP-DI orders to trade at prices inconsistent with the two tick rule, given the inability to pause the automatic execution of these orders to allow for compliance with a slow, manual Floor Official approval process.

In addition, the two tick rule was adopted at a time when the Exchange traded in "eighths" or increments of twelve and a half cents.<sup>11</sup> As a result, a two tick movement equaled a price change of twenty-five cents. Today, after the move to decimal pricing, stocks trade in one cent increments; a two-tick movement, therefore, is only two cents.

Accordingly, the Exchange seeks to remove the two tick rule and the related requirement for Floor Official approval. The automatic conversion and execution of CAP-DI orders when the specialist trades provides an experience for the customer that is consistent with his or her trading expectations. It also limits the risk to the CAP-DI order of missing the market that is inherent with a manual conversion and execution process in an automatic execution environment. Further, it eliminates the possibility that specialists' permissible trading occurs at prices better than that received by a customer order, when such order was marketable at the price the specialist received.

Further, while the two tick rule made sense when minimum price variations were wide and each tick change covered multiple cents, it is overly restrictive in today's decimalized market. Similarly, the conversion limitation was consistent with specialist stabilization rules that precluded certain proprietary trading without Floor Official approval. Changes in these rules support this proposal.<sup>12</sup> Lastly, Rule 123A.30 will continue to limit the price at which converted shares can participate in a destabilizing transaction.<sup>13</sup>

<sup>11</sup> While other sections of the rule were amended to reflect decimal pricing, this portion was not. See Securities Exchange Act Release No. 43230 (August 30, 2000), 65 FR 54589 (September 8, 2000) (SR-NYSE-00-22).

<sup>12</sup> See Securities and Exchange Act Release No. 54860 (December 1, 2006) 71 FR 71221 (December 8, 2006) (NYSE-2006-76).

<sup>13</sup> Rule 123A.30 allows conversions to effect destabilizing trades where the transaction for which the CAP-DI order is being converted is for: (1) less than 10,000 shares or an amount of stock having a market value less than \$500,000, and the price at which the converted order is to be executed is no more than \$0.10 away from the last sale price, or (2) 10,000 shares or more or valued at \$500,000 or more, and the price at which the trade is to take place is no more than \$0.25 from the last sale.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>14</sup> and furthers the objectives of Section 6(b)(5) of the Act in particular,<sup>15</sup> 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 proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act in that it seeks to assure economically efficient execution of securities transactions.<sup>16</sup>

### 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 foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>19</sup> However, Rule 19b-

Telephone Conversation between Deanna Logan, Director, Office of the General Counsel, NYSE, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on December 19, 2006.

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

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

<sup>16</sup> 15 U.S.C. 78k-1(a)(1).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>19</sup> Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is also required to 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

4(f)(6)(iii)<sup>20</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to immediately implement the proposed rule change. The Exchange believes that waiver of the 30-day delay is appropriate because the proposed rule change seeks to assure the economically efficient execution of securities transactions through the automatic conversion and execution of CAP-DI orders when the specialist trades.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to immediately eliminate the two tick rule so that CAP-DI orders can be converted to trade along with the specialist. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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-2006-114 on the subject line.

### Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

proposed rule change, or such shorter time as designated by the Commission. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five days prior to the date of filing.

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

All submissions should refer to File Number SR-NYSE-2006-114. 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>) 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 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-2006-114 and should be submitted on or before January 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54977; File No. SR-NYSE-2006-116]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendment of Annual Report Timely Filing Requirements

December 20, 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 December 14, 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, 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

The Exchange proposes to amend Section 802.01E of its Listed Company Manual ("Manual") to end as of December 31, 2007 the Exchange's discretion to continue the listing of certain companies that are twelve months late in filing their annual reports with the Commission. The text of the proposed rule change is available on the Exchange's Web site, <http://www.nyse.com>, at the Exchange's Office of the Secretary, 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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Section 802.01E of the Manual to end as of December 31, 2007 the Exchange's discretion to continue the listing of certain companies that are twelve months late in filing their annual reports with the Commission.

Section 802.01E of the Manual provides that if a company fails to timely file a periodic annual report with the Commission, the Exchange will monitor the company and the status of the filing. If the company fails to file the annual report within six months from the filing due date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional six-month trading period depending on the company's

specific circumstances; but in any event if the company does not file its periodic annual report by the end of the one year period ("Initial Twelve-Month Period"), the Exchange will begin suspension and delisting procedures in accordance with the procedures in Section 804.00 of the Manual.

Section 802.01E states that, in certain unique circumstances, a listed company that is delayed in filing its annual report beyond the Initial Twelve-Month Period may have a position in the market (relating to both the nature of its business and its very large publicly-held market capitalization) such that its delisting from the Exchange would be significantly contrary to the national interest and the interests of public investors. In such a case, where the Exchange believes that the company remains suitable for listing given, among other factors,<sup>3</sup> its relative financial health and compliance with the NYSE's quantitative and qualitative listing standards, and where there is a reasonable expectation that the company will be able to resume timely filings in the future, the Exchange may forebear, at its sole discretion, from commencing suspension and delisting, notwithstanding the company's failure to file within the time periods specified in Section 802.01E of the Manual.

After discussions with the Commission staff, the Exchange has determined that it is unnecessary for the Exchange to retain the discretion to allow companies to continue listing beyond the Initial Twelve-Month Period after December 31, 2007. Therefore, under this proposed amendment, the Exchange's discretion to allow a company to continue listing beyond the Initial Twelve-Month Period set forth in Section 802.01E of the Manual shall expire on December 31, 2007. If, prior to December 31, 2007, the Exchange had determined to continue listing a company beyond the Initial Twelve-Month Period under the circumstances specified in Section 802.01E of the Manual as described above, and the company fails to file its periodic annual report by December 31, 2007, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Manual.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section

<sup>3</sup> See Section 802.01E of the Manual for a complete list of the factors which the Exchange must consider when determining whether to continue listing a company beyond the Initial Twelve-Month Period.

<sup>22</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.