FINRA to deem such locations to be ''non-sales locations.''

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will resolve the conflicting provisions in NASD and NYSE rules over the classification of locations that solely conduct final approval of research reports, and promote greater consistency in the application of the Uniform Branch Office Definition. The Commission also believes that providing an exemption from the definition of OSJs to such locations will reduce regulatory inefficiencies and eliminate unnecessary costs to member firms.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–FINRA–2007–008), be, and hereby is, approved. FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be the date of publication of the *Regulatory Notice* announcing Commission approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

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[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56747; File No. SR–NYSE–2006–99]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 2 and 3 Thereto Relating to Rule 104 (Dealings by Specialists)

November 5, 2007.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 9, 2006, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed and withdrew Amendment No. 1 to the proposal on October 24, 2007 and October 29, 2007, respectively. The Exchange filed Amendment Nos. 2 and 3 on October 29, 2007 and November 5, 2007, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The NYSE is proposing an amendment to Exchange Rule 104 (Dealings by Specialists) to allow the specialist's algorithm systems to generate trading messages that provide supplemental specialist volume to partially or completely fill an order at a sweep price. The text of the proposed rule change is available at the NYSE, the Commission's Public Reference Room, and *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. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to allow the specialist proprietary algorithm (''Specialist Algorithm'') to generate trading messages that provide supplemental specialist volume to partially or completely fill an order at a sweep price. Through the NYSE HYBRID MARKET℠ (''Hybrid Market'')[4] the Exchange permitted specialists to establish electronic connections to the Display Book®[5] (''Display Book''). Specifically, the Specialist Algorithm generates quote and trade messages based on predetermined parameters to electronically participate in the Hybrid Market. The Specialist Algorithm is designed to communicate with the Display Book system via an Exchange-owned external Application Program Interface (''API'').

In the Hybrid Market, the Specialist Algorithm is permitted to send messages to the Display Book via the API to quote or trade on behalf of the specialist's proprietary interest. The Specialist Algorithm may generate these quoting or trading messages in reaction to specific types of information. This information includes specialist dealer position, existing quotes, publicly available information the specialist chooses to supply to the algorithm, incoming orders as they are entering Exchange systems, and information about orders on the Display Book, which include limit orders, and percentage orders. This latter information stream is known as ''state of the book'' information.

Based on discussions of Hybrid Market features with members and advisory committees the Exchange has effected selective changes to certain aspects of the Hybrid Market to produce a trading venue that best addresses the various needs of our members and customers.

The Exchange seeks to amend Rule 104(b)(i)(F) to allow the Specialist Algorithm to provide supplemental specialist volume to partially or completely fill an order at a sweep price

[4] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05).

[5] The Display Book is an order management and execution facility. It receives and displays orders to the specialist, contains the orders received by the specialist (the ''Book''), and provides a mechanism to execute and report transactions to the Consolidated Tape.

as described further below.[6] Currently, Rule 104(b)(i)(F) permits the Specialist Algorithm to generate a trading message to provide supplemental specialist volume at the Exchange published best bid or offer (''BBO''). This supplemental specialist volume is not displayed and is not part of the specialist reserve interest. With respect to priority and parity, supplemental specialist volume yields to displayed and reserve interest (*i.e.,* supplemental specialist volume will not trade before customer limit orders, Floor broker agency interest and specialist interest). However, supplemental specialist volume are on parity with member organizations' off-Floor proprietary orders entered by Floor brokers pursuant to Section 11(a)(1)(G) of the Act,[7] and Rule 11a1–1(T) [8] thereunder (''G'' orders). Additionally, Exchange systems do not permit a trading message to provide supplemental specialist volume that would trade-through a protected quotation in violation of the Regulation National Market System's Order Protection Rule.[9]

This trading message enables specialists, through the use of their algorithms, to provide more volume where, technically, there is no other interest available to trade with the customer order. For example, if 5,000 shares of an automatically executing market order to sell remain unfilled after trading with the displayed volume at the Exchange best bid and any reserve interest at that price, the Specialist Algorithm can send a trading message to buy all or some of the remaining 5,000 shares at the same price (*i.e.*, the Exchange best bid). If the specialist buys less than the full size remaining, the order will sweep the orders on the Display Book including customer limit orders, Floor broker agency and specialist interest files to the extent permitted, until filled, its limit, if any, is reached or a Liquidity Replenishment Point (''LRP'') is triggered, whichever comes first.

The Exchange seeks to further provide its customers with additional opportunities for a better priced execution by allowing the specialist to also partially or completely fill an order beyond the Exchange published best bid or offer at a sweep price. The Specialist Algorithm will generate this trading message in reaction to one order at a time and only as that order is entering Exchange systems. Additionally, this trading message will only be able to interact with the targeted order to add volume at one place, either at the Exchange best bid or offer or at a particular sweep price. In other words, the specialist will not have two opportunities to provide supplemental specialist volume to the incoming order at the Exchange best bid or offer and also at a particular price point should the order sweep the Display Book. There will be no change with respect to priority and parity. The supplemental specialist volume will continue to yield to displayed and reserve interest at each price point and will be on parity with G orders. The specialist's algorithm will make a determination about where and how much supplemental specialist volume to provide based on the state of the book information when the order is received by Exchange systems. An example of the proposed amendment to permit a trading message to provide supplemental specialist volume to partially or completely fill an order at a sweep price is set forth below:

The Exchange best bid is $5.05 and 4,000 shares (2,000 shares displayed and 2,000 shares of non-displayed reserved interest) are available. The Exchange best offer is $5.10 and 2,000 shares (1,000 shares displayed and 1,000 shares of non-displayed reserve interest) are available.

Supplemental specialist volume	Reserve interest	Buy LMT	100ths	Sell LMT	Reserve interest
			5.12		
			5.11		
			5.10	1,000	1,000
	2,000	2,000	5.05		
	1,000	1,000	5.04		
1,000	2,000		5.03		
	1,000		5.02		

1. An automatically executing market order to sell for 9,000 shares is received by Exchange systems.

2. Based on the state of the book, the Specialist Algorithm has determined based on the state of the book, *not* to provide supplemental specialist volume at the bid (i.e., buy all or some of the 5,000 shares at the same price, $5.05). However, the Specialist Algorithm determines to provide supplemental volume at the price of $5.03 and accordingly sends a trading message to provide 1,000 shares of supplemental specialist volume to interact with the sell order at $5.03.

3. 4,000 shares of the automatically executing sell order will execute against the Exchange best bid at a price of $5.05 leaving 5,000 shares of the sell order unfilled after trading with the 2,000 shares of displayed volume at the Exchange best bid and the 2,000 shares of reserve interest at that price.

4. In the absence of any other available interest at the Exchange bid, the order will start to sweep the orders on the Display Book and Floor broker agency and specialist interest files at each price point beyond the Exchange best bid.

5. At the price point of $5.04, there is another 1,000 shares of displayed and 1,000 shares of reserve buy interest. The sell order executes first against the displayed buy interest and then against the reserve buy interest. Therefore, 2,000 shares are executed, leaving 3,000 shares of the sell order unfilled.

6. At the price point of $5.03, there is another 2,000 shares of reserve buy interest. The sell order executes against that buy interest. Therefore, 2,000 shares of the sell order are filled leaving a balance of 1,000 shares unfilled. No other customer interest exists at this price point.

7. At the price point of $5.03, the Specialist Algorithm has previously determined to provide supplemental volume and sent a trading message to provide 1,000 shares of supplemental specialist volume to interact with the sell order at the same price point.

8. Having exhausted all the available displayed and reserve buy interest at the price point of $5.03; the sell order now interacts with the specialist's trading message to buy the remaining 1,000 shares of the sell order completing the execution.

In this example, the supplemental specialist volume provided the sell order with an opportunity for a better priced execution and also aided in dampening volatility by limiting how far the order swept down to lower price

[6] The instant filing was initially filed with the Commission on November 9, 2006. The Exchange states that the proposed functionality inadvertently became operational in Exchange systems without Commission approval on or about January 24, 2007. The proposed rule change, as amended, is intended to codify the current Exchange system functionality.

[7] 15 U.S.C. 78k(a)(1)(G).

[8] 17 CFR 240.11a–1(T).

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005), 17 CFR 242.611.

points before it was fully executed. Thus, if the Specialist Algorithm had not determined to provide supplemental specialist volume at the price point of $5.03, the sell order would have continued its sweep down the Display Book and interacted with the available interest at the next price point of $5.02 completing the execution. If the specialist trading message did not provide enough supplemental volume to complete the order it would have continued to sweep the orders on the Display Book to the extent permitted until: (a) Filled; (b) its limit, if any was reached; or (c) an LRP was triggered, whichever occurred first.

It should be noted that the specialist is not required to buy the full size remaining of the sell order at the particular sweep price. The Exchange states that there is no disadvantage to the customer in allowing the specialists to partially fill an order at a particular sweep price especially when applicable rules only allow the supplemental specialist volume to interact with the order when no other interest exists. Under these circumstances, the order is afforded a better priced execution that it otherwise would not have.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [10] 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 proposed rule change is consistent with these objectives in that it provides additional trading messages to the Specialist Algorithm, which will further enable the specialist to meet its obligation of maintaining a fair and orderly 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

[10] 15 U.S.C. 78f(b)(5).

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 Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–99 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.

All submissions should refer to File Number SR–NYSE–2006–99. 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 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–2006–99 and should be submitted on or before December 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22066 Filed 11–9–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56753; File No. SR–NYSE–2007–97]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify That a Member Organization May Still Use the Express Consent Procedure for Obtaining Consent From a Customer To Trade Along on an Order-By-Order Basis Under Rule 92(b)

November 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 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 NYSE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).