

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59746; File No. SR-NYSE-2009-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Rescinding NYSE Rule 110 Which Establishes the Role of Competitive Traders and Exchange Rule 107A Which Establishes the Role of the Registered Competitive Market Makers

April 10, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 6, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 rescind NYSE Rule 110 which establishes the role of Competitive Traders ("CTs") and Exchange Rule 107A which establishes the role of the Registered Competitive Market Makers ("RCMMs"). The Exchange also proposes to make conforming amendments to NYSE Rules 36, 98, 123, 111, 476A, 800, 900 and 1600 to eliminate references to RCMMs and CTs. The text of the proposed rule change is available at the Exchange, 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 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 rescind NYSE Rule 110 which sets forth the role of CTs and NYSE Rule 107A which sets forth the role of RCMMs. With the rescission of NYSE Rule 110 and NYSE Rule 107A, CTs and RCMMs will no longer be recognized classes of Floor Traders on the NYSE Floor.

The Exchange also proposes to make conforming amendments to NYSE Rules 36, 98, 476A, 111, 800, 900 and 1600 to eliminate references to RCMMs and CTs.

I. Background of CTs and RCMMs

The rules establishing CTs and RCMMs were enacted to create classes of Floor Traders that would commit capital to trade in a manner that would provide additional liquidity, contribute to mitigating price fluctuations and enhance competition. CTs were the class of Floor Traders that the Exchange established first in 1964.⁴ CTs were Floor Traders registered with and approved by the Exchange to trade for an account for which the CT had an interest.

Section 11(a) of the Securities and Exchange Act of 1934 (the "Act"),⁵ as amended by the 1975 Amendments, makes it unlawful, in part, for Exchange members to effect any transaction on the Floor for their own accounts. Section 11(a)(1)(A) stated that it would exempt from this general prohibition transactions made by a dealer acting in the capacity of a market maker ("market maker exception").⁶ A market maker is defined in Section 3(a)(38) of the Act as "any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis."⁷

In order to maintain a class of trader that could be called in to add depth and liquidity to the markets in listed stocks, the Exchange established the RCMM class of Floor trader in 1978.⁸ RCMMs functioned as proprietary traders that serve as supplemental market makers on the Floor. Historically, RCMMs were called upon to narrow the spread between bids and offers, improve the depth of the market in a given security and enter a bid or offer on the side of the market when called upon to do so by a Floor official. In their capacity as dealers, RCMMs were expected to provide a degree of competition to the specialists on the NYSE.

On February 24, 1981, the Commission adopted Rule 11a1-5⁹ to exempt from the proprietary trading prohibition of Section 11(a)(1) certain transactions by RCMMs registered on the Exchange. The Commission determined that RCMMs had the potential to provide sufficient benefits to their markets to warrant an exemption from the statutory prohibition pursuant to Section 11(a)(1)(H).¹⁰ Rule 11a1-5 set forth that "any transaction by a New York Stock Exchange registered competitive market maker * * * effected in compliance with their respective governing rules shall be deemed to be of a kind which is consistent with the purposes of Section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets."¹¹

II. Functions and Obligations of the RCMMs and CTs

CTs and RCMMs are classes of Floor traders that commit capital to trade in a manner that provides additional liquidity, contribute to mitigating price fluctuations and enhance competition. A member registered as an RCMM is permitted, with certain limitations, to act as both a Floor Broker and RCMM in the same trading session. However, an RCMM may not act as both Floor Broker and RCMM in the same security in the same trading session.

As a Floor Broker, the RCMM executes orders as agent for his customers, including other Floor Brokers. In his capacity as a Floor Broker, the RCMM acts solely as agent for his customer and does not commit capital or initiate on-Floor orders,

⁸ See Securities Exchange Act Release No. 14718 (May 1, 1978), 43 FR 19738 (May 8, 1978) (SR-NYSE-78-24).

⁹ 17 CFR 240.11a1-5.

¹⁰ This provision has since been changed to Section 11(a)(1)(I).

¹¹ See Securities Exchange Act Release No. 17569, 46 FR 14888 (March 3, 1981).

⁴ NYSE Rule 110 (Amended May 21, 1964 and July 16, 1964, effective August 3, 1964).

⁵ 15 U.S.C. 78k(a).

⁶ 15 U.S.C. 78k(a)(1)(A).

⁷ 15 U.S.C. 78c(a)(38).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

except in the case of a trade for his error account.

As an RCMM, the RCMM may initiate on-Floor orders to commit capital on his firm's behalf, subject to certain conditions. While acting in an RCMM capacity, and subject to its dealings, an RCMM provides additional liquidity in situations in which the RCMM is requested to do so by a Floor Official, DMM, or other Floor Broker. Additionally, an RCMM may, subject to certain limitations on its dealings, provide liquidity in instances in which the dealings are reasonably calculated to contribute to maintenance of price continuity with reasonable depth, and to minimize temporary disparities between supply and demand.

RCMMs have both affirmative and negative obligations pursuant to NYSE Rule 107A(b). The RCMM's affirmative obligations require the RCMM to: (i) Make a bid or offer in a stock that contributes to the maintenance of a fair and orderly market whenever called upon; and (ii) effect all purchases and sales for the RCMM's proprietary account in a manner that contributes to the maintenance of price continuity with reasonable depth and minimizes the effects of a temporary disparity between supply and demand. The negative obligations of the RCMM require the RCMM to avoid participation as a dealer during the opening of the stock in a manner that would disrupt the public balance of supply and demand. Furthermore, RCMMs may not effect transactions for its own account or the account of its member organization that are not a part of a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to the minimizing of the effects of any temporary disparity between supply and demand. RCMMs must be ready to enter the market with one round lot if called upon by a Floor Official or broker to narrow the quotation spread or add liquidity to the market.

CTs likewise have these same affirmative and negative obligations pursuant to NYSE Rule 110. In addition, members acting as CTs that desire to purchase or sell stock for accounts in which they have an interest shall not congregate in a particular stock, and individually or as a group, intentionally or unintentionally, dominate the market in that stock, and shall not effect such purchases or sales except in a reasonable and orderly manner. CTs are also subject to meeting certain stabilization tests which are computed on a monthly basis. Specifically, CT

trading is required to be 75% stabilizing.

NYSE Regulation Inc. is responsible for reviewing RCMM and CT trading activity in order to determine that RCMMs and CTs are complying with their negative and affirmative obligations.

III. Viability of CTs and RCMMs in Today's NYSE Market

The volume and speed of the securities markets has increased dramatically since the inception of the CTs and RCMMs. Significant changes have occurred with respect to market dynamics such as quotations, order entry and order executions. The majority of trades on the Exchange are executed electronically. When the Exchange introduced its Hybrid Market,¹² the Exchange determined that a review of the viability of RCMMs and CTs to trade in the more electronic trading environment was warranted. The Exchange undertook to assess the contributions of RCMMs and CTs to the liquidity available to the NYSE in its more electronic market model.

In October 2005, the Exchange implemented a Moratorium on the qualification and registration of new CTs and RCMMs while the Exchange conducted a study on the future viability of CTs and RCMMs.¹³ At the time the Moratorium was first imposed, there were 11 registered RCMMs and one registered but inactive CT. In December 2006, the largest RCMM firm ceased its RCMM business and left the Floor, eliminating 6 RCMMs from the Floor. This reduced the number of RCMMs operating on the Exchange to five.¹⁴ These remaining five RCMMs are associated with two member organizations.

In its study of the CT and RCMM trading in the more electronic environment, the Exchange reviewed the trading data associated with the CT and RCMM order execution. The review found that the CT class of Floor Trader had not executed any transactions on the Floor as a result of the non-usage of the CT license and therefore provided no contribution to the quality of the NYSE Market.

From May 2004 to December 2004, RCMM trading volume comprised only

¹² See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05) (establishing the Hybrid Market).

¹³ See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

¹⁴ Registration as an RCMM is applicable only to individual members, not member organizations. See NYSE Rule 107A(1). Accordingly, RCMM trading licenses are issued to individual members.

.018% of the total NYSE trading volume for that time period. In 2005, the year that the Moratorium was implemented, RCMM trading volume comprised only .017% of the total NYSE trading volume for the year. In 2006, the RCMM trading volume comprised .008% of the total NYSE trading volume for the year. After the largest RCMM firm ceased its business in December 2006, RCMM trading volume in 2007 and 2008 comprised only .001% of the NYSE total trading volume for each of those years.

From August 2005 through February 2008, RCMM's monthly average trading volume for that time period never exceeded .021% of the Exchange's total trading volume for that time period. On average during this time period, RCMMs comprised only .006% of the NYSE's trading volume. The Moratorium was then extended six times¹⁵ while the Exchange continued its evaluation of CT and RCMM trading. A review of the trading volume prior to and during the Moratorium indicates that RCMM/CT trading volume was minimally impacted by the Moratorium.

On October 24, 2008, the Commission approved the Exchange's new market model filing ("Next Generation NYSE").¹⁶ The Next Generation NYSE rule and technology changes: (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 Next Generation NYSE, the Exchange requested an extension of the Moratorium to evaluate the viability of the RCMMs and CTs in the proposed New Generation NYSE.¹⁷

¹⁵ 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). The Moratorium was also amended to grant RCMM firms the ability to replace a RCMM who relinquishes his or her registration and ceases to conduct business as a RCMM during the moratorium, with a newly qualified and registered RCMM. See Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR-NYSE-2006-11).

¹⁶ See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

¹⁷ See Securities Exchange Act Release Numbers 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008)

The Next Generation NYSE is currently operating as a pilot scheduled to end on October 1, 2009. For the time period of July 2008 to December 2008, RCMM and CT average trading volume did not exceed .0011% of the Exchange's total trading volume per month for that time period. On average over these six months, RCMMs comprised only .001% of the NYSE's trading volume. The review found that the CT class of Floor Trader still had not executed any transactions on the Floor as a result of the non-usage of the CT license and therefore provided no contribution to the market quality on the NYSE. In 2009, RCMM trading is reported to comprise approximately .001% of the total NYSE trading volume to date.

In light of these statistics, the Exchange has concluded that the level of participation of the RCMMs and CTs no longer serve as viable supplemental market makers because they no longer contribute significantly to the overall liquidity available on the NYSE.

In addition to reviewing the trading statistics of the RCMMs and the sole inactive CT, NYSE Market and NYSE Regulation reviewed the technology, operational and regulatory costs required to adequately support and surveil RCMM and CT trading activity in a predominantly electronic trading environment. The review included the projected costs for trading system enhancements for RCMM and CT trading, the cost of continued development of surveillance technology and procedures, and staff training and hours spent in these efforts. The NYSE's trading systems, including the hand-held devices used by Floor brokers on the NYSE, were not designed to facilitate trading by RCMMs and CTs under special supplemental market-making rules enacted when the NYSE was a manual trading center in which RCMMs and CTs traded on paper. To develop technology specifically designed to comport with the RCMM and CT trading rules in the context of Next Generation NYSE would not be cost effective in view of the minimal current trading volume of the five RCMMs and the nonexistent trading volume of the one registered CT. The fundamental changes in the securities markets generally and in the NYSE trading model in particular since the RCMM and CT rules were first enacted in the late 1970s and early 1980s have resulted in much higher trading

volumes and message traffic through NYSE systems. The RCMM and CT rules were enacted for a marketplace that functioned much differently than today's high speed and high volume trading environment.

There are now new opportunities for market participants to efficiently access the NYSE market. The NYSE has developed a new class of electronic liquidity providers, Supplemental Liquidity Providers ("SLPs")¹⁸ that has largely supplanted the role once filled by RCMMs and CTs. SLPs are off-Floor entities that quote and trade on the NYSE electronically. The operation of SLPs is intended to provide incentives for quoting and to add competition to the existing group of Floor-based liquidity providers, the DMMS. An SLP is required to quote at the National Best Bid ("NBB") or the National Best Offer ("NBO") at least 5% of the trading day for each assigned security in round lots to maintain its status as an SLP. If an SLP posts liquidity in its assigned securities that results in an execution, the Exchange will pay the SLP a financial rebate per share for such executions provided that the SLP meets its monthly quoting requirement for rebates averaging 3% at the NBB or NBO in its assigned securities in round lots. The Exchange believes that this rebate program will encourage SLPs to aggressively provide liquidity to the NYSE market and will also provide customers with the premier venue for price discovery, competitive quote and price improvement.

Because of the electronic nature of SLP trading, the regulatory and technology considerations that exist with maintaining CTs and RCMMs as classes of Floor Traders on the NYSE are not present. The intent behind establishing the CT and RCMM classes of trading, *i.e.*, providing additional liquidity in the NYSE market, is now best fulfilled through the SLP process. Given all of the above, the Exchange seeks to rescind CTs and RCMMs as valid classes of Floor Traders.

The Exchange notes that while it is proposing the rescission of RCMMs and CTs as classes of traders, it is not rescinding membership to the Exchange. Those RCMMs and CTs currently trading on the Exchange will continue to be Exchange members but will not be permitted to trade for their proprietary accounts in their roles as RCMMs and CTs. RCMMs and CTs will continue to have electronic access to the market and are permitted to continue trading as a

different class of trader subject to regulatory requirements to change their respective business models.

IV. Conforming Changes to NYSE Rules 36, 98, 111, 123, 476A, 800, 900 and 1600

The Exchange seeks to make conforming amendments to NYSE Rules 36, 98, 111, 123, 476A, 800, 900 and 1600 to delete references to RCMMs and CTs throughout the rule text.

V. Conclusion

RCMMs and CTs are no longer viable classes of Floor Traders due to the significant evolution of the NYSE marketplace since the enactment of the original rules establishing these classes of members. The existing RCMMs and sole CT no longer meet the objectives of adding depth and liquidity to the NYSE market and providing a degree of competition to the NYSE DMMS. The Exchange concludes that these classes of Floor Traders should be rescinded given the trading volumes associated with CTs and RCMMs and the considerable costs to regulate these classes of traders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, 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

No written comments were solicited or received with respect to 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

(SR-NYSE-2008-49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR-NYSE-2008-96); 59069 (December 8, 2008), 73 FR 76081 (December 15, 2008) (SR-NYSE-2008-124).

¹⁸ See Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108). See also NYSE Rule 1600.

¹⁹ 15 U.S.C. 78f(b)(5).

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 self-regulatory organization 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 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. Please include File Number SR-NYSE-2009-08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-08. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-08 and should be submitted on or before May 7, 2009.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59745; File No. SR-FINRA-2009-017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt Incorporated NYSE Rule 406 (Designation of Accounts) as a FINRA Rule in the Consolidated FINRA Rulebook

April 10, 2009.

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 March 26, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. 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

FINRA is proposing to adopt Incorporated NYSE Rule 406 (Designation of Accounts) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber Incorporated NYSE Rule 406 as FINRA Rule 3250 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, FINRA 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. FINRA 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt Incorporated NYSE Rule 406 into the Consolidated FINRA Rulebook with minor changes, discussed below. The proposed rule change would renumber Incorporated NYSE Rule 406 as FINRA Rule 3250. Incorporated NYSE Rule 406 provides that no member organization shall carry an account on its books in the name of a person other than that of the customer, except that an account may be designated by a number or symbol, provided the member has on file a written statement signed by the customer attesting the ownership of such account. In effect, this rule establishes a general requirement that a member must hold each customer account in the customer's name, except that a member may identify a customer's account with a number or symbol, as long as the member maintains documentation identifying the customer.⁴

Currently, Incorporated NYSE Rule 406 applies only to Dual Members (i.e.,

³ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

⁴ Members are subject to additional requirements regarding customer accounts. See, e.g., Rule 17a-3(a)(9) under the Act (requiring records indicating the name and address of the beneficial owner of each cash and margin customer account). 17 CFR 240.17a-3(a)(9).