

All submissions should refer to File Number SR-CBOE-2007-128. 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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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-CBOE-2007-128 and should be submitted on or before December 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56742; File No. SR-FINRA-2007-008]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Definition of Office of Supervisory Jurisdiction in NASD Rule 3010(g)(1) To Exempt Locations That Solely Conduct Final Approval of Research Reports

November 5, 2007.

#### I. Introduction

On August 30, 2007, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a the National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change to amend the definition of Office of Supervisory Jurisdiction ("OSJ") in NASD Rule 3010(g)(1) to exempt locations that solely conduct final approval of research reports. The proposed rule change was published for comment in the **Federal Register** on October 5, 2007.<sup>3</sup> The Commission received two comment letters in support of the proposal.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

NASD Rule 3010(g)(1) currently defines OSJ to mean any office of a member at which any one or more of the following functions takes place: (a) Order execution and/or market making; (b) structuring of public offerings or private placements; (c) maintaining custody of customers' funds and/or securities; (d) final acceptance (approval) of new accounts on behalf of the member; (e) review and endorsement of customer orders, pursuant to paragraph (d) above; (f) final approval of advertising or sales literature for use by persons associated with the member, pursuant to NASD Rule 2210(b)(1); or (g) responsibility for

supervising the activities of persons associated with the member at one or more other branch offices of the member.

In July 2006, amendments to the branch office definition under NASD Rule 3010(g)(2) went into effect ("Uniform Branch Office Definition").<sup>5</sup> The Uniform Branch Office Definition was developed collectively by FINRA (then known as NASD), the New York Stock Exchange LLC ("NYSE") and the North American Securities Administrators Association to establish a national standard. In conjunction with the new Uniform Branch Office Definition, a Form BR was introduced to provide a more efficient, standardized method for members to register branch office locations.

Although FINRA and NYSE sought to adopt consistent interpretations of the new Uniform Branch Office Definition, there were nevertheless different classifications of a location where final approval of research reports by a principal occurs. Under NASD's current rules, final review of advertising or sales literature (which includes research reports) makes a location an OSJ, and therefore a branch office. NYSE's rules, however, do not include an OSJ definition,<sup>6</sup> and NYSE stated in an *Information Memo* that it deems a location where a member stations a qualified supervisory analyst solely to review research reports as a "non-sales location," which is an express exclusion from the Uniform Branch Office Definition.<sup>7</sup>

Due to this inconsistency, NASD published *Notice to Members* 07-12 in February 2007 seeking comment on a rule harmonization proposal to eliminate the definition of OSJ from the NASD manual. After reviewing the twenty comments received on the original proposal set forth in its *Notice to Members* 07-12, FINRA determined not to move forward with the broad proposal to eliminate the definition of OSJ and adopt new classifications for office locations. Instead, consistent with many of its commenters' recommendation, FINRA proposed to amend the definition of OSJ in the NASD rules to exclude locations that solely conduct final approval of research reports, thereby enabling

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 56585 (October 1, 2007), 72 FR 57081.

<sup>4</sup> See letters to Nancy M. Morris, Secretary, Commission, from Marian H. Desilets, President, Association of Registration Management, Inc., dated October 25, 2007, and Jill Ostergaard and Christopher Mahon, Co-Chairs, Securities Industry and Financial Markets Association Self Regulation and Supervisory Practices Committee, dated October 30, 2007.

<sup>5</sup> See Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR-NASD-2003-104) (order approving Uniform Branch Office Definition).

<sup>6</sup> See NYSE Rule 342 (Offices—Approval, Supervision and Control), which contains the Uniform Branch Office Definition.

<sup>7</sup> See NYSE *Information Memo* 06-13 (March 22, 2006) (Joint Interpretive Guidance from NYSE and NASD Relating to the Uniform Branch Office Definition, Question and Answer #5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>9</sup> 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,<sup>10</sup> 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.<sup>11</sup>

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

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## 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)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> 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.

#### 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<sup>SM</sup> ("Hybrid Market")<sup>4</sup> the Exchange permitted specialists to establish electronic connections to the Display Book<sup>®</sup><sup>5</sup> ("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

<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<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.

<sup>4</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05).

<sup>5</sup> 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.