SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59064; File No. SR-NYSE-2008-91)

December 5, 2008

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

I. Introduction

On September 26, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to allow the Exchange to exercise the discretion to append an indicator (an "Aberrant Report Indicator") to a trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market for the security. The proposed rule change was published for comment in the Federal Register on October 10, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Trades in listed securities occasionally occur at prices that deviate significantly from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security.

---

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 58736 (October 6, 2008), 73 FR 60380.

The Exchange proposes to adopt as policies of the Exchange that it will:

i. monitor for trade prices that do not accurately reflect the prevailing market for a security;

ii. append an Aberrant Report Indicator to any trade report with respect to any trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and

iii. discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security.

The Exchange proposes to append retroactively the Aberrant Report Indicator to trades that do not accurately reflect the prevailing market for a security, commencing as of January 1, 2007.

The Exchange intends to urge vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information that they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy. Upon adoption of the Aberrant Report Indicator, the Exchange also will contact all of its listed companies to explain the aberrant trade policy and will notify users of the information that these are still valid trades. The Exchange will inform the affected listed company each time the Exchange or another market[4] appends the Aberrant Report Indicator to a trade in an NYSE-listed stock and will remind the users of the information that

4 The Commission notes that any proposal by another regulatory organization to establish a policy to append an Aberrant Report Indicator to any trade report with respect to any trade executed on its market that it determines to be inconsistent with the prevailing market must be filed with the Commission as a proposed rule change under Section 19(b) of the Act.

these are still valid trades in that they were executed and not broken, such as in the case of clearly erroneous trades.

The NYSE noted that, while the Consolidated Tape Association disseminates its own calculations of high, low and last sale prices, vendors and other data recipients frequently determine their own methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange proposes to explain to those vendors and other data recipients the potential impact of including in those calculations a trade to which the Aberrant Report Indicator has been appended.

In determining whether to append the Aberrant Report Indicator, the Exchange will consider all factors related to a trade, including, but not limited to, the following:

- material news released for the security;
- suspicious trading activity;
- system malfunctions or disruptions;
- locked or crossed markets;
- a recent trading halt or resumption of trading in the security;
- whether the security is in its initial public offering;
- volume and volatility for the security;
- whether the trade price represents a 52-week high or low for the security;
- whether the trade price deviates significantly from recent trading patterns in the security;
- whether the trade price reflects a stock-split, reorganization or other corporate action;
- the validity of consolidated tape trades and quotes in comparison to national best bids and offers; and

- the general volatility of market conditions.

Currently, the Exchange does not trade on an unlisted trading privilege ("UTP") basis any securities listed on other markets. In the event that the Exchange commences UTP trading at some future date, the Exchange proposes that its policy will be to consult with the listing exchange and with other markets (in the case of executions that take place across multiple markets) and to seek a consensus as to whether the trade price is consistent with the prevailing market for the security.

In monitoring trade prices that may be inconsistent with the prevailing market, the Exchange proposes that Exchange policy will be to follow the following general guidelines: The Exchange will review whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (i.e., 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the "Reference Price" by an amount that meets or exceeds the following thresholds:

Trade Price	Numerical Threshold
Between $0 and $15.00	Seven Percent
Between $15.01 and $50.00	Five Percent
In excess of $50.00	Three Percent

The "Reference Price" refers to: (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security; or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If the Exchange determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade's designation as the last sale. The Exchange may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from other markets and market participants.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act[5] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] which requires, among other things, that the rules of a national securities exchange be 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, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[7]

---

5 15 U.S.C. 78f(b).

6 15 U.S.C. 78f(b)(5).

7 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).

The Commission believes that the Exchange's proposal to append an Aberrant Report Indicator to certain trade reports is a reasonable means to alert investors and others that the Exchange believes that the trade price for a trade executed in its market does not accurately reflect the prevailing market for the security. In addition, the Commission notes that the Exchange will use objective numerical thresholds in determining whether a trade report is eligible to have an Aberrant Trade Indicator appended to it. The Commission further notes that the Exchange's appending the Aberrant Trade Indicator to a trade report has no effect on the validity of the underlying trade.

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR-NYSE-2008-91) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon
Acting Secretary

---

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30-3(a)(12).