

Proposed Rule Change by New York Stock Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposal to amend Exchange Rule 62 Variations to establish the minimum price variation of 0.0001 for orders and quotations in equity securities that are priced below 1.00 per share.

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name  Last Name   
 Title   
 E-mail   
 Telephone  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
 By  Corporate Secretary  
 (Name)   
 (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) The New York Stock Exchange (“NYSE” or the “Exchange”) is proposing to amend Exchange Rule 62 (Variations) to establish the minimum price variation of \$0.0001 for orders and quotations in equity securities that are priced below \$1.00 per share, which will enable the Exchange to accept orders in sub-penny increments for those securities.

The text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Deanna G. W. Logan  
Managing Director  
NYSE Regulation Inc.  
Office of the General Counsel  
(212) 656-2389

Donald Siemer  
Consultant  
NYSE Regulation Inc.  
Office of the General Counsel  
(212) 656- 6773

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

- (a) Purpose

The Exchange seeks to amend Exchange Rule 62 (Variations) to establish the minimum price variation of \$0.0001 for orders and quotations in equity securities that are priced below \$1.00 per share, which will enable the Exchange to accept orders in sub-penny increments<sup>1</sup> for those securities.

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<sup>1</sup> The Exchange is currently modifying its systems to enable it to quote and trade in sub-penny increments and will file a separate proposal with the Commission at a later date.

## **Background**

On August 28, 2000, the Exchange began trading in decimals.<sup>2</sup> At that time, the Exchange amended NYSE Rule 62 to provide that bids and offers in securities traded on the NYSE would be at a minimum price variation set by the NYSE.<sup>3</sup> At the initiation of decimal trading, the NYSE announced that the minimum price variation for all stocks trading on the Exchange would be one cent (\$.01).<sup>4</sup> Rule 62 was subsequently amended to establish a minimum price variation of \$.10 (ten cents) for securities trading on the Exchange priced at \$100,000 and above.<sup>5</sup>

On April 6, 2005, the SEC adopted Regulation NMS, which is a series of initiatives designed to modernize and improve the national market system for trading equity securities. Rule 612 of Regulation NMS<sup>6</sup> permits markets to accept, rank and display orders priced less than \$1.00 per share in a minimum pricing increment of \$0.0001.

Currently the Exchange systems do not accept orders in sub-penny increments for securities priced below \$1.00; however, Exchange systems recognize protected quotations with a sub-penny component in its round-lot<sup>7</sup> market and accommodate away market executions in sub-pennies, in compliance with SEC Rules 611 and 612.

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<sup>2</sup> See Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

<sup>3</sup> See Securities Exchange Act Release No. 43230 (August 30, 2000), 65 54589 (September 8, 2000) (SR-NYSE-00-22).

<sup>4</sup> Id.

<sup>5</sup> See Securities Exchange Act Release No. 49374 (March 8, 2004), 69 FR 11923 (March 12, 2004)(SR-NYSE-2004-10).

<sup>6</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) 17 CFR 242.612.

<sup>7</sup> The Exchange system enhancements that will enable recognition of sub-penny quotations for pricing of odd-lots in the odd-lot system are contained in the technology associated with Phase 2 implementation of the New Market Model. See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008)(SR-NYSE-2008-46). Until the conclusion of the second Phase of implementation, which is scheduled to be completed no longer than ten weeks after October 24, 2008, those odd-lot orders that would receive an execution price based on the NBBO as set forth in NYSE Rule 124 will be priced at the last NBBO that did not contain a sub-penny price.

**Proposed Amendment to NYSE Rule 62**

The Exchange proposes to amend its Rule 62 to conform to the provisions of SEC Rule 612 by establishing that the minimum price variation for orders and quotations in equity securities on the Exchange below a \$1.00 will be \$0.0001. Specifically, the Exchange proposes to amend .10 under Supplementary Material of Rule 62 to provide the following table:

<u>Price of Orders or Interest</u>	<u>Minimum Price Variation</u>
<u>Less than \$1.00</u>	<u>\$.0001</u>
<u>\$1.00 – 99,999.99</u>	<u>\$.01</u>
<u>\$100,000 and greater</u>	<u>\$.10</u>

When an order is received on the NYSE that contains a sub-penny component, the Exchange will round down any bid price down to the next round penny and round any offer price up to the next round penny. The order will be sent to NYSE trading systems and the Consolidated Quotation System<sup>8</sup> with the rounded price. The Exchange therefore proposes to replace .20 under Supplementary Material with language to indicate that for securities whose MPV is \$.0001, the Exchange will round the bid price down to the next whole penny or round the offer price up to the next whole penny when transmitting the bid or offer to the Consolidated Quotation System. The rounded price assigned to the order or quotation is used for all order handling purposes including routing and execution.

The Exchange intends to initiate the systemic operation related to the above rule change on November 28, 2008. Commencing operation on that date will enable the Exchange, on a traditionally moderate trading day, to ensure the optimal efficiency of its software prior to resumption of normal trading on December 1, 2008.

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<sup>8</sup> This practice is currently done on NYSE Arca Exchange. Commentary .04 NYSE Arca Rule 7.6(a) provides:

The minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001, *provided, however, that the Corporation shall round the bid down to the next whole penny or the offer up to the next whole penny and display the rounded bid or offer in the consolidated quotation system.*

(b) Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")<sup>9</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>10</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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)<sup>11</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that the instant proposal is in keeping with these principles in that it seeks to amend NYSE Rule 62 to conform to the provisions of SEC Rule 612 by establishing that the minimum price variation for securities trading on the Exchange below a \$1.00 will be \$0.0001.

4. 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.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

None.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of the time period specified in Section 19(b)(2)<sup>12</sup> of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)


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<sup>9</sup> 15 U.S.C. 78a.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78k-1(a)(1).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act.<sup>13</sup> The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, at least five business days prior to the instant filing, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change.

The Exchange submits that the instant filing is non-controversial in that it serves to amend its Rule 62 to conform to the provisions of SEC Rule 612 by establishing that the minimum price variation for securities trading on the Exchange below a \$1.00 will be \$0.0001.

The Exchange requests that the Commission waive the 5 business day notice of the NYSE's intent to file this proposed rule change, as well as the 30-day delayed operative date, so that the proposed rule change may become immediately operative with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder. The Exchange believes that waiver of these periods is reasonable in that it will allow the Exchange to be consistent with the provision of SEC Rule 612. Moreover, waiver of this period is consistent with the protection of investors and the public interest in that it immediately provides another competitive venue for market participants to submit orders priced less than \$1.00 per share in a minimum pricing increment of \$0.0001 for execution.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on the rules of the Commission, specifically Rule 612 of Regulation NMS and NYSE Arca Rule 7.6(a).

9. Exhibits

Exhibit 1 - Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Rule Text

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4.

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSE-2008-123)

[Date]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Exchange Rule 62 (Variations) to Establish the Minimum Price Variation of \$0.0001 for Orders and Quotations in Equity Securities that are Priced Below \$1.00 Per Share, Which Will Enable the Exchange to Accept Orders in Sub-Penny Increments

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 26, 2008, 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 amend Exchange Rule 62 (Variations) to establish the minimum price variation of \$0.0001 for orders and quotations in equity securities that are priced below \$1.00 per share, which will enable the Exchange to accept orders in sub-penny increments for those securities.

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

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<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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Exchange Rule 62 (Variations) to establish the minimum price variation of \$0.0001 for orders and quotations in equity securities that are priced below \$1.00 per share, which will enable the Exchange to accept orders in sub-penny increments<sup>4</sup> for those securities.

**Background**

On August 28, 2000, the Exchange began trading in decimals.<sup>5</sup> At that time, the Exchange amended NYSE Rule 62 to provide that bids and offers in securities traded on the NYSE would be at a minimum price variation set by the NYSE.<sup>6</sup> At the initiation of decimal trading, the NYSE announced that the minimum price variation for all stocks

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<sup>4</sup> The Exchange is currently modifying its systems to enable it to quote and trade in sub-penny increments and will file a separate proposal with the Commission at a later date.

<sup>5</sup> See Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

<sup>6</sup> See Securities Exchange Act Release No. 43230 (August 30, 2000), 65 54589 (September 8, 2000)(SR-NYSE-00-22).

trading on the Exchange would be one cent (\$.01).<sup>7</sup> Rule 62 was subsequently amended to establish a minimum price variation of \$.10 (ten cents) for securities trading on the Exchange priced at \$100,000 and above.<sup>8</sup>

On April 6, 2005, the SEC adopted Regulation NMS, which is a series of initiatives designed to modernize and improve the national market system for trading equity securities. Rule 612 of Regulation NMS<sup>9</sup> permits markets to accept, rank and display orders priced less than \$1.00 per share in a minimum pricing increment of \$0.0001.

Currently the Exchange systems do not accept orders in sub-penny increments for securities priced below \$1.00; however, Exchange systems recognize protected quotations with a sub-penny component in its round-lot<sup>10</sup> market and accommodate away market executions in sub-pennies, in compliance with SEC Rules 611 and 612.

### **Proposed Amendment to NYSE Rule 62**

The Exchange proposes to amend its Rule 62 to conform to the provisions of SEC Rule 612 by establishing that the minimum price variation for orders and quotations in

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<sup>7</sup> Id.

<sup>8</sup> See Securities Exchange Act Release No. 49374 (March 8, 2004), 69 FR 11923 (March 12, 2004)(SR-NYSE-2004-10).

<sup>9</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) 17 CFR 242.612.

<sup>10</sup> The Exchange system enhancements that will enable recognition of sub-penny quotations for pricing of odd-lots in the odd-lot system are contained in the technology associated with Phase 2 implementation of the New Market Model. See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008)(SR-NYSE-2008-46). Until the conclusion of the second Phase of implementation, which is scheduled to be completed no longer than ten weeks after October 24, 2008, those odd-lot orders that would receive an execution price based on the NBBO as set forth in NYSE Rule 124 will be priced at the last NBBO that did not contain a sub-penny price.

equity securities on the Exchange below a \$1.00 will be \$0.0001. Specifically, the Exchange proposes to amend .10 under Supplementary Material of Rule 62 to provide the following table:

<u>Price of Order or Interest</u>	<u>Minimum Price Variation</u>
<u>Less than \$1.00</u>	<u>\$.0001</u>
<u>\$1.00 – 99,999.99</u>	<u>\$.01</u>
<u>\$100,000 and greater</u>	<u>\$.10</u>

When an order is received on the NYSE that contains a sub-penny component, the Exchange will round down any bid price down to the next round penny and round any offer price up to the next round penny. The order will be sent to NYSE trading systems and the Consolidated Quotation System<sup>11</sup> with the rounded price. The Exchange therefore proposes to replace .20 under Supplementary Material with language to indicate that for securities whose MPV is \$.0001, the Exchange will round the bid price down to the next whole penny or round the offer price up to the next whole penny when transmitting the bid or offer to the Consolidated Quotation System. The rounded price assigned to the order or quotation is used for all order handling purposes including routing and execution.

The Exchange intends to initiate the systemic operation related to the above rule change on November 28, 2008. Commencing operation on that date will enable the

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<sup>11</sup> This practice is currently done on NYSE Arca Exchange. Commentary .04 NYSE Arca Rule 7.6(a) provides:

The minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001, *provided, however, that the Corporation shall round the bid down to the next whole penny or the offer up to the next whole penny and display the rounded bid or offer in the consolidated quotation system.*

Exchange, on a traditionally moderate trading day, to ensure the optimal efficiency of its software prior to resumption of normal trading on December 1, 2008.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")<sup>12</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>13</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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)<sup>14</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that the instant proposal is in keeping with these principles in that it seeks to amend NYSE Rule 62 to conform to the provisions of SEC Rule 612 by establishing that the minimum price variation for securities trading on the Exchange below a \$1.00 will be \$0.0001.

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<sup>12</sup> 15 U.S.C. 78a.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78k-1(a)(1).

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act.<sup>15</sup> The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, at least five business days prior to the instant filing, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change.

The Exchange submits that the instant filing is non-controversial in that it serves to amend its Rule 62 to conform to the provisions of SEC Rule 612 by establishing that the minimum price variation for securities trading on the Exchange below a \$1.00 will be \$0.0001.

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

The Exchange requests that the Commission waive the 5 business day notice of the NYSE's intent to file this proposed rule change, as well as the 30-day delayed operative date, so that the proposed rule change may become immediately operative with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder. The Exchange believes that waiver of these periods is reasonable in that it will allow the Exchange to be consistent with the provision of SEC Rule 612. Moreover, waiver of this period is consistent with the protection of investors and the public interest in that it immediately provides another competitive venue for market participants to submit orders priced less than \$1.00 per share in a minimum pricing increment of \$0.0001 for execution..

#### 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-2008-123 on the subject line.

##### Paper comments:

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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

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

All submissions should refer to File Number SR-NYSE-2008-123. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-2008-123 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Florence E. Harmon  
Acting Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

Additions underscoring

Deletions in [brackets]

**Rule 62. Variations**

Bids or offers in securities admitted to trading on the Exchange may be made in such variations as the Exchange shall from time to time determine and make known to its membership.

••• *Supplementary Material:* -----

**.10** [Notwithstanding the provision for changing the minimum price variation in Rule 62, above, with respect to equity securities trading on the Exchange in decimal price variations pursuant to the phase-in of decimal pricing under the "Decimal Implementation Plan for the Equities and Options Markets," filed with the Securities and Exchange Commission on July 24, 2000, the minimum price variation shall be one cent (0.01).]

The minimum price variation (MPV) for quoting and entry of orders in equity securities admitted to dealings on the Exchange shall be as follows:

<u>Price of Order or Interest</u>	<u>Minimum Price Variation</u>
<u>Less than \$1.00</u>	<u>\$.0001</u>
<u>\$1.00 – 99,999.99</u>	<u>\$.01</u>
<u>\$100,000 and greater</u>	<u>\$.10</u>

**.20** [With respect to equity securities trading on the Exchange at a price of \$100,000 or greater, the minimum price variation shall be ten cents (\$.10).] An order or quotation whose MPV is \$.0001 will be rounded down to the next whole penny, in the case of an order to buy, and rounded up to the next whole penny, in the case of an order to sell, for purposes of executing the order on the Exchange and transmission to the Consolidated Quotation System. The rounded price assigned to the order or quotation is used for all order handling purposes including routing and execution.