

# Information Memo

Nyse Regulation, Inc



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Number 07-110  
December 14, 2007

**TO:** ALL MEMBERS AND MEMBER ORGANIZATIONS

**SUBJECT:** NEW NYSE RULE 48 (EXEMPTIVE RELIEF AT THE OPENING FOR EXTREME MARKET VOLATILITY CONDITION)

## **I. Purpose**

The purpose of this Information Memo is to advise members and member organizations that the NYSE has filed with the Securities and Exchange Commission for immediate effectiveness to adopt new NYSE Rule 48. The new rule authorizes the NYSE to suspend certain rule requirements relating to the opening of securities on the NYSE in the event of extreme market volatility or market-wide price dislocation that may cause Floor-wide delays in the opening of securities on the NYSE. The text of the new rule, which took effect on Monday, December 10, 2007, is attached.

## **II. Background**

Over the past several months, the equities markets world-wide have experienced unprecedented levels of volatility, which has caused extremely high levels of pre-opening interest and volatility in the United States markets around the opening of the markets. When these extreme levels of volatility occur Floor-wide on the NYSE, the NYSE's pre-opening requirements (described below), which are intended to facilitate the fair and orderly operation of the markets, can have the paradoxical effect of impeding the fair and orderly operation of the market. On days when the Exchange experiences extremely high Floor-wide market volatility that would stress the Exchange's staffing resources, the Exchange wants to ensure that openings are not unduly delayed due to difficulties in timely publishing the mandatory indications.

Similarly, in unusual market situations, Floor Officials, and in certain circumstances, Senior Floor Officials, Floor Governors, and Executive Floor Governors, need to be involved on a security-by-security basis before a stock can open at the Exchange. In the event of an extreme, Floor-wide market volatility condition, the Exchange is concerned that Floor Officials would not be able to timely review each security that experiences an unusual market condition. In such case, the operation of the Exchange could be significantly impaired and investors adversely impacted because securities cannot be opened on a timely basis.

### III. New Rule 48

In the event of extremely high market volatility that would have a Floor-wide impact on the ability of specialists to arrange for the timely opening of trading at the Exchange under the normal rules, NYSE Rule 48 permits a qualified Exchange officer to declare an extreme market volatility condition. For purposes of the rule, a “qualified Exchange officer” means the Chief Executive Officer of NYSE Euronext, Inc. or his or her designee, or the Chief Executive Officer of NYSE Regulation, Inc., or his or her designee.

The rule is intended to be invoked only in those situations where the potential for extreme market volatility would likely impair Floor-wide operations at the Exchange by impeding the timely, fair and orderly opening of securities. Accordingly, the rule sets forth a number of factors that the qualified Exchange officer would have to consider before declaring such a condition, including:

- volatility during the previous day’s trading session;
- trading in foreign markets before the open;
- substantial activity in the futures market before the open;
- the volume of pre-opening indications of interest;
- evidence of significant pre-opening order imbalances across the market;
- government announcements;
- news and corporate events; and
- any such other market conditions that could impact Floor-wide trading conditions.

Because the declaration of an extreme market volatility condition concerns the opening of securities at the Exchange, such condition would be declared before the scheduled opening of securities at the Exchange, and that information will be disseminated to Floor personnel and the upstairs community.

A declaration of an extreme market volatility condition would remain in effect only for the opening of that trading session. Should market conditions that led to the declaration continue on subsequent days, the Exchange will review on a day-by-day basis the factors necessitating such a declaration.

A declaration of an extreme market volatility condition would affect the following NYSE Rules:

- NYSE Rule 123D(1), which provides that a specialist should consult with a Floor Governor in unusual market situations, or if it is anticipated that the opening price may be at a significant disparity from the prior close. The rule also provides that in the event of a large pre-opening order imbalance or before a stock opens at a large price change, specialists must publicly disseminate a price indication at least once (and possibly more than once, depending on pre-opening interest) before opening a security. These requirements would be suspended for any opening with respect to which the NYSE has invoked new Rule 48.

Rule 123D(1) also provides that delayed openings must be approved by a Floor Official. This requirement would be suspended for any opening where the delay is solely attributable to the extreme market volatility condition.

- NYSE Rule 79A.30, which requires a specialist to obtain prior Floor Official approval if a security is going to open at one or more dollars away from the closing price at the Exchange when the closing price was under \$20 a share, or two dollars or more away from the closing price at the Exchange when the closing price was \$20 per share or more. This requirement would be suspended for any opening with respect to which the NYSE has invoked new Rule 48. Specialists should note that notwithstanding the invocation of Rule 48, the provisions of NYSE Rule 79A.30(c) would continue to apply.

Accordingly, opening trades that are outside the parameters of Rule 79A.30 should, when published on the tape, be accompanied by the symbol “OPD”.

- NYSE Rule 15, which requires a specialist to publish a pre-opening price indication whenever the specialist, in arranging the opening transaction in a subject security, anticipates that the price of the opening transaction will be at a price which is different from the previous day’s consolidated closing price by more than the “applicable price change”. This requirement would be suspended for any opening with respect to which the NYSE has invoked new Rule 48.

Members and member organizations are advised that even when the dissemination and Floor Official (including Senior Floor Official and above) approval requirements are suspended, specialists continue to be responsible for the fair and orderly opening of securities. Accordingly, even in the absence of price indications and a Floor Official’s independent, impartial review of the opening, specialists will still be responsible for ensuring that an opening price reflects market conditions and all participants have had a reasonable opportunity to participate. Specialists should note in this regard that invocation of the rule does not preclude a specialist from disseminating a price indication or pre-opening indication if the specialist deems it desirable.<sup>1</sup> In the event of an extreme market volatility condition, the NYSE will review actions by the specialist at the opening to ensure that they have met their affirmative market maintenance obligations with respect to arranging a fair and orderly opening of securities at the Exchange.

Members and member organizations are further advised that even if Rule 48 is invoked, such invocation does not affect situations where the opening of a security is delayed for reasons unrelated to extreme market volatility, such as where there is material news pending that justifies a regulatory halt under NYSE Rule 123D. In such cases, notwithstanding the invocation of Rule 48, the specialist in the affected security will be expected to follow regular procedures for opening the security (that is, as if Rule 48 had not been invoked). Failure to comply with applicable requirements in this situation may result in the imposition of formal or informal discipline.

#### **IV. Supervision**

Specialist member organizations are reminded that they must have adequate written policies, procedures, and supervisory controls reasonably designed to detect and deter potential violations of the rule as described in this Memorandum. In particular, specialist member organizations must ensure that when Rule 48 is invoked, specialists continue to follow the established pre-opening procedures for any security in which the delay in opening the security or the anticipated dislocation in opening pricing is for reasons unrelated to the extreme market volatility condition.

In addition, specialist member organizations should review with their floor supervisors and all registered personnel the factors to consider when deciding whether to disseminate price indications or pre-opening indications on days when Rule 48 has been invoked.

Failure to have adequate written policies and procedures in place or to have an adequate supervisory system in place may result in disciplinary action.

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<sup>1</sup> This may include situations in which the pre-opening interest in a particular security diverges significantly from the larger market trend or where there is an extraordinary imbalance that is likely to affect the pricing of the security out of proportion to the price that would otherwise be expected in view of the larger market trend.

## **V. NYSE Staff Contacts**

Questions regarding NYSE Rule 48 should be directed to NYSE staff as follows. Operational questions should be directed to

Paul Bauccio, Director of Floor Operations, at (212) 656-2929

Regulatory questions or concerns should be directed to

Daniel Labovitz, Managing Director, Office of General Counsel, at (212) 656-2081

Questions may also be directed to the On-Floor Surveillance Unit via the White Phone or in person at their Booth adjacent to the Main Room. Questions that are not time sensitive may also be submitted to Ask Market Surveillance. (For information about the Ask Market Surveillance system, refer to Information Memo 2006-3, which was issued on January 30, 2006, if you or your firm is not already a subscriber.)

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Richard Ketchum  
Chief Executive Officer

Attachments