

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58758; File No. SR-NYSE-2008-100)

October 8, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend NYSE Rule 123B.30 (Exchange Automated Order Routing System) to Align the Rule Governing Sponsored Access to the Exchange with the Current Industry Standard

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 October 2, 2008, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 NYSE Rule 123B.30 (Exchange Automated Order Routing System) to align its rule governing sponsored access to the Exchange with the current industry standard. The text of the proposed rule change is available at NYSE, the Commission’s Public Reference Room, and www.nyse.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 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 amend NYSE Rule 123B.30 (Exchange Automated Order Routing System) to align its rule governing sponsored access to the Exchange with the current industry standard.

Background and Current NYSE Rule 123B.30

The Exchange recently adopted NYSE Rule 123B.30, which sets forth the requirements for a member or member organization (“Sponsoring Member Organization”) to provide a non-member firm or customer (“Sponsored Participant”) with sponsored access to Exchange systems and facilities.⁵ The Exchange modeled NYSE Rule 123B.30 on the industry standard sponsored access rules of its affiliate exchange, NYSE Arca, Inc. (“NYSE Arca”), and those of other exchanges, including NASDAQ Stock Market LLC, subject to one key distinction.⁶

⁵ See Securities Exchange Release No. 58429 (August 27, 2008), 73 FR 51676 (September 4, 2008) (SR-NYSE-2008-71).

⁶ See Securities Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006) (SR-PCX-2006-24) (adopting NYSE Arca Equities Rules 7.29 and 7.30). See also Securities Exchange Act Release No. 55550 (March 28, 2007), 72 FR 16389 (April 4, 2007) (SR-NASDAQ-2007-010) (amending NASDAQ Rule 4611(d) to conform its requirements to NYSE Arca Rules 7.29 and 7.30).

Unlike other sponsored access rules, NYSE Rule 123B.30 requires agreements between (i) a Sponsoring Member Organization and a Sponsored Participant, and (ii) the Sponsoring Member Organization and the Exchange.⁷ A Sponsored Participant must enter into sponsored access agreement containing specific provisions governing use and access of Exchange systems and facilities that establishes a proper customer relationship and account(s) with a Sponsoring Member Organization through which the Sponsored Participant may trade on the Exchange. The Sponsoring Member Organization must enter into an agreement with the Exchange designating its Sponsored Participant(s) and acknowledging its responsibilities thereto.⁸

Pursuant to the above agreements, the Sponsored Participant and the Sponsoring Member Organization agree to comply with the rules and procedures of the Exchange. In addition, the Sponsoring Member Organization must file a notice of consent and must agree to be responsible for the conduct of the Sponsored Participant and/or any person acting on its behalf, and any and all orders entered by, or executions of, the Sponsored Participant or its employees or agents (including unauthorized transactions) are binding on the Sponsoring Member Organization. The Sponsoring Member must also have adequate procedures and controls to provide oversight of Authorized Traders who enter orders on behalf of Sponsored Participants and to prevent the improper use of or access to Exchange systems or facilities.⁹

⁷ Other sponsored access rules require both the Sponsoring Member Organization and the Sponsored Participant to enter into agreements with the Exchange governing the use of and access to Exchange systems and facilities. See, e.g., NYSE Rules 86(o)(2)(A) and 1500(g)(3)(B)(ii), concerning sponsored access to NYSE Bonds and NYSE MatchPoint, respectively.

⁸ See NYSE Rule 123B.30, paragraphs (c)(1) – (3).

⁹ See NYSE Rule 123B.30(c)(2), (d).

Sponsored Participants are required to establish adequate procedures and controls to monitor the use and access of Exchange systems and facilities by their employees, agents, and customers. The Sponsored Participant must also agree to compensate the Sponsoring Member Organization, the Exchange, or any other third party, for any amounts due arising out of the Sponsored Participant's access to and the use of Exchange systems and facilities.¹⁰

Proposed Amendments

In order to better align its sponsored access rule with the current industry standard the Exchange proposes to amend NYSE Rule 123B.30. First, the Exchange proposes to amend Rule 123B.30(c)(2)(A) to provide for agreements i) between a Sponsoring Member Organization and a Sponsored Participant, and ii) among the Sponsoring Member Organization, the Sponsored Participant and the Exchange.

In addition, the Exchange proposes to amend the language contained in subparagraph (d)(4) to refer to access "to the Exchange", as opposed to Exchange facilities or NYSE systems. Throughout NYSE Rule 123B.30, with the exception of (d)(4), the provisions governing sponsored participation reference access "to the Exchange". NYSE believes that these inconsistent references within Rule 123B.30(d)(4) could cause confusion unless it is amended to track the other provisions of the Rule.

Insofar as the amendments proposed herein have been previously determined by the Commission to be consistent with the protection of investors and the public interest, the Exchange believes that the proposed amendments to NYSE Rule 123B.30 are necessary to further align it with the industry standard for sponsored access.

¹⁰ See NYSE Rule 123B.30(c)(2).

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,¹¹ in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms 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 supports the principles of Section 11A(a)(1)¹² of the Act in that it seeks to ensure economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets. The Exchange believes the proposed amendments to NYSE Rule 123B.30 will provide a procedure for sponsored access to the Exchange consistent with the current industry standard and the Act.

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

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78k-1(a)(1).

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁵ However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

¹⁶ Id.

¹⁷ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2008-100 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2008-100. 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, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2008-100 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Acting Secretary

¹⁸ 17 CFR 200.30-3(a)(12).