

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60608; File No. SR-NYSE-2009-85)

September 1, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Adding Language to Several NYSE Rules to Clarify That Transactions That Occur Solely Within NYSE MatchPoint<sup>SM</sup> Will Be Treated Differently Than Executions That Occur in the NYSE Display Book<sup>®</sup> for Certain Order Processing Purposes

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 August 18, 2009, 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 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 add language to several NYSE rules to clarify that transactions that occur solely within NYSE MatchPoint<sup>SM</sup> (“MatchPoint” or the “facility”) will be treated differently than executions that occur in the NYSE Display Book<sup>®</sup> (“NYSE Display Book” or “DBK”) for certain order processing purposes. The Exchange is seeking to amend NYSE Rules 13, 15, 79A, 100, 104, 116, 123B, 123C, 123D, 124 and 1000. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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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.

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 parts of such statements.

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

1. Purpose

The purpose of the proposed rule filing is to add language to several NYSE rules to clarify that transactions that occur solely within the MatchPoint facility will be treated differently than executions that occur in the DBK for certain order processing purposes. The proposed additional text will not change the core purpose of the subject rules or the functionality of MatchPoint or other NYSE trading systems and facilities. Specifically, the Exchange is seeking to amend NYSE Rules 13, 15, 79A, 100, 104, 116, 123B, 123C, 123D, 124 and 1000.

The Exchange launched MatchPoint in January 2008 following approval of its rule filing by the Securities and Exchange Commission (the "SEC" or the "Commission"). MatchPoint is an anonymous point-in-time electronic trading facility of the NYSE that matches aggregated orders at predetermined sessions throughout regular hours and after hours of the Exchange. MatchPoint trades securities listed on all major and regional U.S. stock exchanges.

MatchPoint is a “stand alone” facility of the Exchange in that orders entered into MatchPoint do not interact with any other Exchange facilities or other automated trading centers. Rather, it matches aggregated buy and sell orders within the facility during predetermined one-minute matching sessions during regular hours of the Exchange (at 9:45 a.m., 10 a.m., 11 a.m., 12 noon, 1 p.m., 2 p.m., and 3 p.m.) as well as an after hours match (at 4:45 p.m.) at a Reference Price determined pursuant to NYSE Rule 1500.

The MatchPoint system reports trade execution information to the applicable Securities Information Processors (“SIPs”) for each MatchPoint eligible security. Trades are reported as one print for each security irrespective of the number of individual buyers and sellers with the total volume of the transaction reported with the price. Trades that occur in MatchPoint are distinguished from other Tape A prints by a print modifier that is appended to the trades reported.

Trades that occur on MatchPoint have always been designated with a print modifier of “N.X.” Since January 2009, this same print modifier has also been used to designate trades that occur solely within the New York Block Exchange facility (“NYBX”) (see Rule 1600). However, all trades that occur in the DBK are identified with an “N” print modifier, including NYBX orders that match with DBK liquidity.

NYBX is an anonymous electronic facility of the Exchange that is not connected to MatchPoint. As more fully described in Rule 1600 and related rule filings<sup>4</sup> NYBX provides for the continuous matching and execution of orders in the NYBX facility (all of which are non-displayed) with the aggregate of all displayed and non-displayed orders in

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<sup>4</sup> See Securities Exchange Act Release No. 59282 (January 22, 2009) 74 FR 5009 (January 28, 2009) (SR-NYSE-2008-119) (Rule 1600. New York Block Exchange). See also SR-NYSE-2009-82, which was filed with the Commission on August 12, 2009.

the NYSE DBK (subject to routing to away markets in compliance with Regulation NMS). Therefore, NYBX orders can execute with marketable non-displayed contra side liquidity in the NYBX facility, with marketable contra side liquidity (displayed and/or non-displayed) in the DBK and with any available marketable contra side liquidity in the Capital Commitment Schedule (“CCS”) of the Designated Market Makers (“DMMs”) (see Rule 1000(d)).

Executions that occur within the NYBX facility (i.e., that execute solely with orders within NYBX) or on MatchPoint are treated differently than executions that occur in the DBK (including executions resulting from NYBX orders matching with DBK liquidity and CCS interest) for certain order processing purposes. Specifically, Exchange systems do not include either MatchPoint or NYBX-only executions when calculating the triggers applicable to the following DBK executions and/or requirements: 1) pre-opening indications; 2) last sale trades; 3) odd lot trades; 4) Designated Market Maker (“DMMs”) obligations to re-enter the market; and 5) stop orders. These triggers are referenced in the following NYSE Rules: 13, 15, 79A, 100, 104, 116, 123B, 123C, 123D, 124 and 1000.

Applicable NYSE rules were previously amended to clarify that NYBX-only executions are not included in the above described calculations.<sup>5</sup> The Exchange is seeking to amend many of the same NYSE Rules in this filing in order to provide appropriate consistency and clarity to the related NYSE Rules. Therefore, with this rule filing, the Exchange proposes to amend the following NYSE Rules: 13, 15, 79A, 100, 104, 116, 123B, 123C, 123D, 124 and 1000. The proposed amendments will clarify that

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<sup>5</sup> See Securities Exchange Act Release No. 59282 (January 22, 2009) 74 FR 5009 (January 28, 2009) (SR-NYSE-2008-119).

MatchPoint executions are also excluded from the aforementioned calculations.

Therefore, the Exchange seeks to amend the following rules:

1) Rule 13 (Definitions) “Sell “Plus” – Buy “Minus” Order” and “Stop Order”

The Exchange is proposing to amend these definitions to indicate that a transaction that occurs in NYSE MatchPoint shall not be considered in the operation of these orders.

2) Rule 15. “Pre-Opening Indications”

The Exchange is proposing to add to section (d) of the rule that an execution that occurs in NYSE MatchPoint shall not be considered in the operation of this rule.

3) Rule 79A. “Miscellaneous Requirements on Stock Market Procedures”

The Exchange is proposing to add to subsection (C)(7) of .15 of the Supplementary Material section of the Miscellaneous Requirements on Stock Market Procedures section of the rule that the term “last sale” shall not include any transaction that occurs in NYSE MatchPoint. Additionally, the Exchange is proposing to add to section .20(c) of the Supplementary Material that a transaction that occurs in NYSE MatchPoint shall not be considered the “last sale,” the “current sale,” or the “last previous sale.”

4) Rule 100. “Round-Lot Transactions of Odd-Lot Dealer or Broker Affecting Odd-Lot Orders”

The Exchange is proposing to add to subsection (d) that the “last different round lot price” shall not include prices of transactions that occur in NYSE MatchPoint.

5) Rule 104. “Dealings and Responsibilities of DMMs”

The Exchange is proposing to add to the Supplementary Material section of Rule 104, under section .10 that the terms “price,” “high price,” “low price” and “last differently-priced trade” shall not include the price of any transaction that occurs in NYSE MatchPoint.

6) Rule 116. “‘Stop’ Constitutes Guarantee”

The Exchange is proposing to add to the Supplementary Material section of Rule 116, under subsection .40 (“Stopping” stock on market-at-the-close orders”) subparagraph (C) that for purposes of this section .40, the “price of the last sale” shall not include any transaction that occurs in NYSE MatchPoint.

7) Rule 123B. “Exchange Automated Order Routing System”

The Exchange is proposing to add to Rule 123B in subsection (b)(3)(“Booth Support System”) that for purposes of this section (3), the term “last sale” shall not include any transaction that occurs in NYSE MatchPoint.

8) Rule 123C. “Market On The Close Policy And Expiration Procedures”

The Exchange is proposing to add to Supplementary Material .10 that for purposes of Rule 123C, the terms “last sale” and “last sales” shall not include any transaction that occurs in NYSE MatchPoint.

9) Rule 123D. “Openings and Halts in Trading”

The Exchange is proposing to add to Rule 123D in the Supplementary Material Section .25 that for purposes of this rule, a transaction that occurs in NYSE

MatchPoint shall not affect the calculation of the “last sale,” “prior close,” “previous close” or any similar term.

10) Rule 124. “Odd-Lot Orders”

The Exchange is proposing to add to Rule 124.70 in the Supplementary Material section that references to “round-lot transaction,” “round-lot Exchange transaction,” “opening transaction,” “closing transaction,” “reopening price,” “re-opening transaction,” “price” and “sale” shall not include any transaction that occurs in NYSE MatchPoint.

11) Rule 1000. “Automatic Execution of Limit Orders Against Order Reflected in NYSE Published Quotation”

The Exchange is proposing to add to Rule 1000.11 in the Supplementary Material section that with respect to “sale,” “sale price,” “last sale price,” “closing price” and similar terms shall not include any transaction that occurs in NYSE MatchPoint.

In each of the rule changes described above, the Exchange also proposes to add a reference to Rule 1500 (“NYSE MatchPoint<sup>SM</sup>”).

Market data for NYSE-listed securities that trade on MatchPoint is disseminated via the consolidated tape pursuant to the Consolidated Tape Association Plan (“CTA Plan”). Trade reports of securities that are governed by the Unlisted Trade Privileges Plan (“UTP Plan”) are disseminated pursuant to the UTP Plan. Because MatchPoint and NYBX are facilities of the Exchange, and notwithstanding the exclusions described

above, all trades executed in either MatchPoint or NYBX indicate the market of execution as the NYSE for CTA and UTP purposes.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Act”) for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed 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 and, in general, to protect investors and the public interest. The Exchange believes the proposed rule changes support these principles in that they will clarify that certain NYSE rules do not apply to executions that occur on MatchPoint.

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 proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if

consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative. The Exchange believes that waiving the operative delay, by immediately clarifying how trades executed in NYSE MatchPoint will be treated for purposes of the application of certain other Exchange rules, will eliminate potential confusion by granting market participants a better understanding of the effect that MatchPoint trades have on the market. The Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>8</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the 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.

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to 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 satisfied this requirement.

<sup>8</sup> For purposes only of waiving the 30-day operative delay of this proposal, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-85 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2009-85. 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 a.m. and 3:00 p.m. Copies of such 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-2009-85 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.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).