

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62964; File No. SR-NYSE-2010-53)

September 21, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 36

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 14, 2010, the 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 and II below, which Items have been prepared by the Exchange. 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 36 (“Communications Between Exchange and Members’ Offices”) to incorporate the provisions of its current Wireless Policy. 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).

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

1. Purpose

NYSE proposes to amend NYSE Rule 36 (“Communications Between Exchange and Members’ Offices”) to incorporate the provisions of its current Wireless Policy into Supplementary Material .70 of the Rule.<sup>3</sup> The Wireless Policy was previously approved by the Commission.<sup>4</sup>

Background

Current NYSE rules permit a Floor broker to communicate information to a customer using a wired telephone line,<sup>5</sup> NYSE approved portable telephones,<sup>6</sup> or through a written electronic communication from the Floor brokers’ hand-held device as permitted by the NYSE’s “Wireless Data Communications Initiatives.” Wireless communications can be sent and received directly to and from a Floor broker’s hand-held device and orders entered from off the Floor may be transmitted directly to a hand-held device, bypassing the booth. Floor brokers may send order-related messages and information (e.g., cancellations and administrative messages, as well as market probes and market looks) back to the customer directly through the hand-held device.

Pursuant to the Exchange’s Wireless Policy, a record must be established and maintained for transmissions that are sent: 1) from a member’s off-Floor location to a booth terminal and

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<sup>3</sup> The Exchange notes that parallel changes are proposed to the rules of its affiliate, NYSE Amex LLC. See SR-NYSEAmex-2010-71.

<sup>4</sup> See Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR-NYSE-95-22). The Wireless Policy was attached as an exhibit to the proposed rule change that most recently amended the Wireless Policy. See Securities Exchange Act Release No. 59626 (March 25, 2009), 74 FR 14831 (April 1, 2009) (SR-NYSE-2009-33).

<sup>5</sup> NYSE Rule 36.20.

<sup>6</sup> NYSE Rule 36.21.

then retransmitted from the booth terminal to a member's hand-held device; or 2) directly to the hand-held device, bypassing the booth. Orders sent from off-Floor to the booth or the hand-held device are first sent through a secured network and routed to an Exchange-wired database that captures and records the orders. Likewise, order-related messages or information generated from the Floor broker's booth or hand-held device are transmitted back to the Exchange-wired databases via the secured wireless network, where the information is captured and recorded, and then sent off-Floor to the customer via the Exchange's secured network. The Exchange records all of the information sent to and transmitted from the hand-held devices.

#### Proposed Amendments to NYSE Rule 36

The Exchange proposes to revise NYSE Rule 36 to incorporate the provisions of its Wireless Policy, previously approved by the Commission, in Supplementary Material .70 of the Rule. In addition, the Exchange is making certain clarifying changes as part of the incorporation of the Wireless Policy into the Rule.

First, the Exchange proposes to clarify the language in Supplementary Material .70 and the Wireless Policy by using consistent terminology when referring to the hand-held devices in the proposed rule change. Thus, for example, references in paragraph (a) of the current Supplementary Material to "wireless trading devices" would be changed to "wireless hand-held devices." The use of consistent terminology would make clear that the Exchange is referencing the same type of device in both paragraphs of the proposed rule.

Second, the Exchange is clarifying that Floor brokers may send order-related messages outside their member organizations only to customers. In this regard, the Exchange is clarifying the rule text to provide that order-related messages and information include market looks. The

Exchange also notes that a customer must be specifically enabled by the Floor broker to receive communications from the Floor broker's hand-held device.

For purposes of this proposed rule change, the term "customer" means a person who the Floor broker reasonably believes is receiving the order-related message(s) in consideration of a securities transaction or potential securities transaction with the Floor broker. Whether such a belief is reasonable is based on the relevant facts and circumstances including, without limitation: whether the customer is a bona fide market participant; any prior history of the customer entering orders with the Floor broker for execution on the Exchange; and acknowledgement by the customer (including by negative consent) that the customer is receiving order-related messages in consideration of a securities transaction or potential securities transaction with the Floor broker. A Floor broker may provide order-related messages to a customer pursuant to proposed Supplementary Material .70 notwithstanding the fact that the customer's receipt of particular messages does not lead to an order with the Floor broker.

Third, the Exchange is clarifying that the Wireless Policy does not allow Floor brokers to retransmit datafeeds received on hand-held devices or send orders to another hand-held device.<sup>7</sup>

Fourth, the Exchange is clarifying that Floor brokers may send trade reports on their hand-held devices.

Finally, the Exchange is clarifying that the Wireless Policy applies not only to member organizations but also to employees of member organizations.

As proposed, Supplementary Material .70 is substantially similar to the Exchange's Wireless Policy as previously filed with and approved by the Commission.

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<sup>7</sup> However, Floor brokers are permitted to provide their customers with specific data points from datafeeds made available on the hand-held devices.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> 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 instant proposal is in keeping with these principles because the incorporation of the Wireless Policy in the Exchange's rules promotes transparency and makes clear what type of information may be communicated to and from hand-held devices.

### 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 does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule change codifies into rule text an existing policy and provides certain other clarifications. For this reason, the Commission believes that waiving the 30-day operative delay<sup>13</sup> is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.

At any time within the 60-day period beginning on the date of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.

#### 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:

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or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For 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).

- 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-2010-53 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-2010-53. 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,<sup>14</sup> 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 website viewing and printing 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 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

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<sup>14</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

make available publicly. All submissions should refer to File Number SR-NYSE-2010-53 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).