

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-62923; File Nos. SR-NYSE-2010-20 and SR-NYSEAmex-2010-25)

September 15, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC and NYSE Amex LLC; Order Approving Proposed Rule Changes Amending Rule 123C to Allow Exchange Systems to Provide Order Imbalance Information With Respect to Market At-The-Close and Marketable Limit At-The-Close Interest to Floor Brokers Beginning Two Hours and Until Fifteen Minutes Prior to the Scheduled Close of Trading on Every Trading Day

I. Introduction

On June 9, 2010, New York Stock Exchange LLC (“NYSE”) and NYSE Amex LLC (“NYSE Amex” and, with NYSE, each an “Exchange” and collectively, the “Exchanges”) each filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the manner in which the systems of each Exchange provide order imbalance information to Floor brokers. The proposed rule changes were published for comment in the Federal Register on June 24, 2010.³ The Commission received one comment letter opposing NYSE’s proposal and received a letter from NYSE responding to the comment letter.⁴ This order approves the proposed rule changes.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 62312 (June 17, 2010), 75 FR 36138; and 62311 (June 17, 2010), 75 FR 36140 (each a “Notice” and collectively, the “Notices”).

⁴ See Anonymous Letter dated July 14, 2010 (“Comment Letter”) and NYSE Response Letter from Janet M. Kissane, Senior Vice President – Legal & Corporate Secretary, NYSE Euronext, dated August 10, 2010 (“NYSE Response Letter”).

II. Description of the Proposals

The Exchanges each propose to amend their Rule 123C(6)⁵ to specify that, beginning at 2:00 p.m. on every trading day,⁶ Floor brokers will receive an electronic communication from the Exchanges' systems that provides the amount of, and any imbalance between, Market "At-The-Close" ("MOC") interest and marketable Limit "At-The-Close" ("LOC") interest to buy and sell in certain securities ("Order Imbalance Information"). MOC/LOC interest is executable only on the close and is subject to cancellation at any time before 3:45 p.m.⁷

The Exchanges' current rules do not allow for Exchange systems to send Order Imbalance Information to Floor brokers electronically. However, under Rule 115, Designated Market Makers ("DMMs"), while acting in a market making capacity, may provide information about buying or selling interest in the market "in response to an inquiry from a member conducting a market probe in the normal course of business" ("market probe").⁸ Thus, for Floor brokers to obtain the Order Imbalance Information, they must manually request the information from DMMs, who are permitted to provide such information in response to a Floor broker's "market probe."

The Exchanges propose to amend Rule 123C(6) to state that, between 2:00 p.m. and 3:45 p.m. on any trading day (or two hours prior to the closing transaction until 15 minutes prior to the closing transaction on any day that the scheduled close of trading on the Exchange is earlier

⁵ References to the rules herein refer to both the relevant NYSE and NYSE Amex Equities rules unless otherwise noted. The rule texts of NYSE Rule 123C(6) and NYSE Amex Rule 123C(6) are identical and the proposed additions to Rule 124C(6)(b) are identical.

⁶ On any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m., the information will be disseminated beginning two hours prior to the scheduled close of trading.

⁷ See Rule 123C(3) and (9).

⁸ See Rule 115.

than 4:00 p.m.), the Exchanges' systems would automatically provide the Order Imbalance Information to Floor brokers, approximately every 15 seconds, for any security in which the Floor broker is representing an order and in any security that the Floor broker specifically requests.⁹ Thus, for Order Imbalance Information, Floor brokers would no longer need to request such information from DMMs as part of a Rule 115 "market probe." The Exchanges' electronic dissemination of this information would be limited to Floor brokers' hand-held devices, which cannot automatically forward or re-transmit the electronic datafeed to any other location, although Floor brokers are permitted to provide their customers with specific data points from the feed. In addition, specific requests for information by Floor brokers would not carry over to the next trading day and would need to be re-entered on each trade date.

Beginning at 3:45 p.m., Floor brokers may receive the Exchanges' proprietary Order Imbalance Information datafeed pursuant to Rule 123C(6)(a)(iv), under which the Exchanges provide the datafeed to subscribers for a fee.

The Exchanges also propose to amend the time period in Rule 123C(6)(a)(v) when the dissemination of Order Imbalance Information would commence when the scheduled closing is earlier than 4:00 p.m. Currently, the Exchanges' rules state that the dissemination will commence approximately 10 minutes before the scheduled closing time when the scheduled closing is earlier than 4:00 p.m. The Exchanges state that, when they moved to a single imbalance publication at 3:45 p.m., the rule text was not modified at that time to reflect that dissemination of the Order Imbalance Information on any day that the scheduled close was prior to 4:00 p.m. would commence approximately 15 minutes before the scheduled closing time consistent with the single imbalance publication.

⁹ See Notices for a description of the history of the dissemination of the MOC/LOC imbalance information to Floor brokers.

III. Summary of Comment and NYSE's Response

One commenter opposes NYSE's proposal. The commenter notes that the Order Imbalance Information is material, that investors should receive the information at the same time as Floor brokers, and that NYSE has an obligation to ensure all participants (DMMs, Floor brokers, and the public) have the opportunity to receive the same data at the same time. The commenter also disputes NYSE's rationale that Floor brokers need the data feed to offset the decrease in Floor broker personnel. The commenter instead suggests that Floor brokers should hire additional staff or NYSE should extend the 15 minute time-period prior to the close of trading if Floor brokers require more time to analyze the Order Imbalance Information. Finally, the commenter states that the proposal is similar to flash orders, in which select market participants receive material public information prior to other market participants.

NYSE responds that the Order Imbalance Information does not represent overall supply or demand for a security, and is a small subset of buying and selling interest, subject to change or cancellation before the close. In addition, NYSE notes that MOC and LOC orders represent only a small fraction of NYSE's activity.¹⁰ NYSE believes that the Order Imbalance Information that all participants receive beginning at 3:45 p.m. is more accurate, timely, and complete, and is more material to investors. Finally, NYSE disagrees that the proposal is similar to flash orders. NYSE notes that the Order Imbalance Information is not actionable prior to 15 minutes before

¹⁰ NYSE noted that “[g]enerally, MOC and LOC orders account for less than 1% of total NYSE orders on any given trading day, both in terms of actual number of orders and the number of shares represented by those orders. With respect to the total number of shares executed on NYSE on any given trading day, MOC and LOC orders generally account for less than 10%.” See NYSE's Response Letter at 2.

the close of trading and is subject to change or cancellation and, therefore, MOC/LOC orders cannot be executed before the public receives the information.¹¹

IV. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the proposed rule changes are consistent with Section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule changes are consistent with the provisions of Section 6(b)(8) of the Act,¹⁴ which require that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposals would allow Exchange systems to disseminate the Order Imbalance Information directly to Floor brokers' handheld devices¹⁵ beginning two hours prior to the scheduled close. The Exchanges' rules currently only permit Floor brokers to obtain this and other market information on a one-off basis from DMMs as "market probes" under Rule 115. The proposal would automate the process and allow Floor brokers to receive Order Imbalance

¹¹ See NYSE Response Letter at 3-4.

¹² In approving these proposed rule changes, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ See Notices, supra note 3.

Information more frequently and quickly. Thus, the proposal would permit information Floor brokers to obtain certain market information (i.e., Order Imbalance Information) that they are already permitted to obtain under the Exchanges' current rules as part of "market probes" under Rule 115, albeit in a more technologically advanced and more efficient format. The Commission notes that the Exchanges have represented that the dissemination of this information would be limited to the Floor broker's handheld devices, and that the electronic datafeed cannot be automatically forwarded or retransmitted.¹⁶ The Commission finds that the proposal is consistent with the requirements of the Act.

Finally, the Commission notes that this order does not approve any prior dissemination of Order Imbalance Information by the Exchanges that may have been inconsistent with the approved rules of the Exchanges then in effect.

¹⁶ See also SR-NYSE-2010-53 and SR-NYSEAmex-2010-71.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule changes (SR-NYSE-2010-20 and SR-NYSEAmex-2010-25) be, and they hereby are, approved.

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

Florence E. Harmon
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).