

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66401; File No. SR-NYSE-2012-03)

February 15, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 123C(4) to Provide for How Certain Interest is Included in the Calculation of MOC and LOC Imbalances

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 February 2, 2012, 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 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 amend Exchange Rule 123C(4) to provide for how certain interest is included in the calculation of MOC and LOC imbalances. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, [www.nyse.com](http://www.nyse.com), and [www.sec.gov](http://www.sec.gov).

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

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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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 123C(4) to provide more specificity of how certain interest is treated for purpose of calculating MOC and LOC<sup>4</sup> imbalances. In particular, the Exchange proposes to amend Rule 123C(4)(a)(vi) to describe how LOC orders priced equal to the last sale are treated in the imbalance publication and to add new supplementary material to describe how sell short interest is treated in the imbalance publication during a Short Sale Period, as defined in Exchange Rule 440B.

Background

Exchange Rule 123C(4) describes how the Exchange calculates the MOC and LOC imbalances. The Exchange publishes MOC and LOC imbalance information as part of its Informational Imbalance Publication (as defined in Rule 123C(1)(b)), Mandatory MOC/LOC Imbalance Publication (as defined in Rule 123C(1)(d)), and Order Imbalance Information (as defined in Rule 123C(1)(e)), which are further described in Rule 123C(5) and (6). The MOC and LOC imbalance information is intended to provide market participants with a snapshot of the prices at which interest eligible to participate in the closing transaction would be executed in full against each other at the time the data feed is disseminated. The manner by which the imbalance is calculated takes into consideration the order of execution at the close, as set forth in Rule 123C(7). The goal of such transparency is to attract contra-side interest to offset order imbalances, thereby potentially minimizing price dislocation at the close.

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<sup>4</sup> See Rule 13 for definitions of MOC and LOC orders.

### Proposed Amendments

Because the MOC and LOC imbalance calculations under Rule 123C(4) are intended to provide an informational snapshot of what an imbalance may be at a particular time, and are intended to mirror how the imbalance is calculated for purposes of determining the closing price, the Exchange proposes to amend elements of Rule 123C(4) to describe with more specificity how the imbalance is calculated. The Exchange notes that these proposed rule change does not change how the Exchange currently calculates the imbalance information, but rather provides more detail in the rule text concerning the methodology for calculation.

First, the Exchange proposes to amend Exchange Rule 123C(4)(a)(vi) to describe with more specificity how LOC interest that is priced equal to the last sale is addressed in the MOC and LOC imbalance calculation. Because the Buy or Sell Imbalance is intended to be indicative of what the imbalance would be at the close, the Exchange seeks to reduce the Buy or Sell Imbalance by any closing interest that could potentially participate in the close, which is why the rule currently provides that tick sensitive MOC and LOC interest can reduce the Buy or Sell Imbalance to bring the imbalance quantity as close to zero as possible.

The Exchange proposes to amend Rule 123C(4)(a)(vi) to add that LOC orders priced equal to the last sale also reduce the Buy or Sell Imbalance. The Exchange proposes this change because, as set forth in Rule 123C(7)(b)(ii), LOC orders priced equal to the closing price may participate in the closing transaction. Because such interest may participate in the close, the Exchange believes that when calculating the imbalance, reducing the Buy or Sell Imbalance by the amount of LOC interest priced equal to the last sale provides a potentially more realistic indication of how the imbalance may be offset at the close.

Second, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B), which currently provide more detail of which tick sensitive interest is included to offset a Buy or Sell Imbalance, as provided for under Rule 123C(4)(a)(vi). Rule 123C(4)(a)(vi)(A) currently provides that of tick sensitive orders, only Sell Plus<sup>5</sup> MOC and Sell Plus LOC orders priced below the last sale will be included to offset the Buy Imbalance. Rule 123C(4)(a)(vi)(B) currently provides that of tick sensitive orders, only Buy Minus<sup>6</sup> MOC and Buy Minus LOC orders priced above the last sale price will be included to offset the Sell Imbalance. Because the Exchange is proposing to amend Rule 123C(4)(a)(vi) to add that LOC interest priced equal to the last sale price can offset the Buy or Sell Imbalance, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B). Accordingly, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) to specify that Sell Plus LOC orders priced equal to or below the last sale price and Sell and Sell Short LOC orders priced equal to the last sale price will also be included to offset the Buy Imbalance. Similarly, the Exchange proposes to amend

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<sup>5</sup> As defined in Rule 13, a Sell Plus order is a market or limit order to sell a stated amount of stock for which the price to be obtained is not lower than the last sale if the last sale was a “plus” or “zero plus” tick, and is not lower than the last sale plus the minimal fractional change in the stock if the last sale was a “minus” or “zero minus” tick. The purpose of a Sell Plus order is to ensure that a market participant does not create a new low price with the sell order. For example, if the closing price is \$10.10, and the last sale prior to the closing transaction was \$10.11 or higher on a plus or zero plus tick, a Sell Plus LOC with a limit of \$10.09 would not participate in the closing transaction because it would be selling at a price lower than the last sale, which was on a plus or zero plus tick.

<sup>6</sup> As defined in Rule 13, a Buy Minus order is a market or limit order to buy a stated amount of stock on the close for which the price to be obtained is not higher than the last sale if the last sale was a “minus” or “zero minus” tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a “plus” or “zero plus” tick. The purpose of a Buy Minus order is to ensure that a market participant does not create a new high price with the buy order. For example, if the closing price is \$10.10, and the last sale prior to the closing transaction was \$10.09 or below on a minus or zero minus tick, a Buy Minus LOC with a limit price of \$10.11 would not participate in the closing transaction because it would be buying at a price higher than the last sale, which was on a minus or zero minus tick.

Rule 123C(4)(a)(vi)(B) to specify that Buy Minus LOC orders priced equal to or above the last sale price, and Buy LOC orders priced equal to the last sale will be included to offset the Sell Imbalance.

Third, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) and (B) to further specify that tick sensitive interest will be included to offset the Buy or Sell Imbalance only if such orders could be executed consistent with the terms of their tick restrictions. This proposed amendment is consistent with the rationale of how MOC and LOC imbalances are calculated, namely, to include interest that could participate in the closing price to offset the imbalance. If, by the terms of the tick restriction, an order could not participate in the close, such interest should not be used to offset the imbalance calculation. For example, if the Buy Imbalance is calculated based on a \$10.10 reference price, and the last sale prior to that reference price is \$10.11 on a plus or zero plus tick, Sell Plus MOCs and Sell Plus LOCs are not included to offset that Buy Imbalance because they would not participate if that were the closing price at that time. Likewise, if the last sale is \$10.09 on a minus or zero minus tick, and the Sell Imbalance is calculated based on a \$10.10 reference price, Buy Minus MOCs and Buy Minus LOCS priced below the last sale are not included to offset the Sell Imbalance because they would not participate if that were the closing price at that time.

Finally, the Exchange proposes to add supplementary material .30 to Rule 123C to specify how Sell Short interest is treated for purposes of calculating MOC and LOC imbalances during a Short Sale Period, as defined in Rule 440B(d). Rule 123C(4)(a)(iv) currently provides that Sell Short MOC and Sell Short LOC orders priced below the last sale price are included in the aggregation of the Sell side closing volume. During a Short Sale Period, if a security closes at a price equal to or lower than the last Exchange bid, sell short interest would not be eligible to

participate in the closing transaction. Because a Sell imbalance publication is an indication that the security is more likely to close at a price that is equal to or lower than the bid, during a Short Sale Period, Sell Short MOC and LOC interest likely would not participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to exclude Sell Short MOC and LOC orders from the Sell side volume because such interest would likely not be eligible to participate in the closing transaction.

In addition, during a Short Sale Period, in addition to the interest specified in Rule 123C(a)(4)(vi)(A) that offsets the Buy Imbalance (as amended by this rule proposal), all Sell Short MOC and LOC interest priced equal to or below the last sale price will be included to offset the Buy Imbalance. During a Short Sale Period, if a security closes higher than the last Exchange bid, Sell Short MOC and LOC interest would be eligible to participate in the closing transaction. Because a Buy side imbalance publication is an indication that there may be upward price pressure on the closing sale price, and the security is more likely to close at a price that is above the bid, in such a situation, Sell Short MOC and LOC interest likely would participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to offset the Buy Imbalance with Sell Short MOC and LOC interest because such interest would likely participate in the closing transaction.

The Exchange notes that the manner by which the Exchange currently calculates the MOC and LOC imbalances is consistent with how such interest would participate if the closing transaction were to be based on the point in time at which each MOC and LOC imbalance publication is calculated. The Exchange proposes these rule amendments to provide that level of specificity in how the rule text describes the manner by which the MOC and LOC imbalances are being calculated. The Exchange further notes that this rule change concerns only the manner by

which the MOC and LOC imbalance is calculated for purposes of imbalance publications and does not change in any way the manner by which trading occurs at the Exchange or how interest is executed in the closing transaction.

2. Statutory Basis

The basis under the Act for these proposed rule changes are the requirement under Section 6(b)(5)<sup>7</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. Specifically, this rule proposal supports the objective of perfecting the mechanism of a free and open market as it provides transparency in the manner by which the Exchange calculates the MOC and LOC imbalance information that the Exchange publishes pursuant to Rule 123C(5) and (6) both during regular trading and during a Short Sale Period pursuant to Rule 440B. Specifically, these rule changes provide transparency of how LOC interest priced equal to the last sale price will be used to offset a Buy or Sell Imbalance and how Sell Short interest will be treated for the imbalance calculation during a Short Sale Period.

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

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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:

- 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 No. SR-NYSE-2012-03 on the subject line.

##### Paper comments:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).



- 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 No. SR-NYSE-2012-03. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, 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 No. SR-NYSE-2012-03 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>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).