

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57682; File No. SR-NYSE-2008-29)

April 17, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 92(c)(3)

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 April 11, 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, II, and III below, which Items have been substantially 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 extend the operative date of NYSE Rule 92(c)(3) from May 14, 2008 to March 31, 2009. There is no new rule text.

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these 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 is proposing to extend the delayed operative date of NYSE Rule 92(c)(3) from May 14, 2008 to March 31, 2009. The Exchange believes that this extension is necessary to allow it, and the Financial Industry Regulatory Authority, Inc. ("FINRA"), sufficient time to assess their respective rules concerning trading ahead, for the purpose of harmonizing these rules, and to make any necessary changes to achieve a standardized industry practice.

Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the Exchange.⁵ These amendments were filed, in part, to begin the process of harmonizing NYSE Rule 92 and FINRA's so-called "Manning Rule."⁶ In connection with these amendments, the Exchange implemented NYSE Rule 92(c)(3), which permits Exchange member organizations to submit riskless principal orders to the Exchange, but requires them to submit a report of the execution of the facilitated order to a designated Exchange database. Exchange member organizations must also submit to the same database, within such

⁵ See Securities Exchange Act Release No. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR-NYSE-2007-21).

⁶ See NASD Rule 2111 and IM-2110-2.

time frame and in such format as the Exchange may from time to time require, an electronic report containing data elements sufficient to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the Exchange informed its member organizations that when executing riskless principal transactions, they must submit order execution reports to the Exchange's Front End Systemic Capture ("FESC") database, linking the execution of the riskless principal order on the Exchange to the specific underlying orders. The information provided must be sufficient for both member firms and the Exchange to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the Exchange and its member organizations to make certain changes to their trading and order management systems, the NYSE filed for immediate effectiveness to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.⁷

Request for Extension

The Exchange has been working diligently to develop its FESC database to accept riskless principal order types and the underlying batch orders. As part of this process, the Exchange has been in contact with its member organizations regarding how to program their respective systems to meet the new reporting requirements. It has become evident, however, that the differences between the NYSE and FINRA reporting systems for riskless principal transactions is causing member organizations that trade at the Exchange and in other markets to

⁷ See Securities Exchange Act Release No. 56968 (December 14, 2007), 72 FR 72432 (December 20, 2007) (SR-NYSE-2007-114).

have to make challenging programming changes in order to comply with disparate reporting requirements.

For example, Exchange member organizations have informed the Exchange that they often do not know to which market center an order will be routed until the time of entry, and that determination is often made electronically. These firms have advised the NYSE that it is not possible for them to implement by May 14, 2008 the required changes that will enable them to choose among multiple market centers for routing a riskless principal order and yet also meet the differing reporting standards.

Because the Exchange and FINRA are in the process of fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions, the Exchange believes that at this stage, it would be premature to require firms to meet the FESC reporting requirements.

Accordingly, to provide the Exchange and FINRA the time necessary to review their respective rules and to develop a harmonized rule set that would apply across their respective marketplaces, the Exchange is proposing to delay the operative date for NYSE Rule 92(c)(3) from May 14, 2008 to March 31, 2009.

Pending the harmonization of the two rules, the Exchange will continue to require that, as of the date each Exchange member organization implements its riskless principal routing, the Exchange member organization must have in place systems and controls that allow it to easily match and tie riskless principal execution on the Exchange to the underlying orders, and that it be able to provide this information to the Exchange upon request. Moreover, the Exchange will coordinate with FINRA to examine for compliance with the rule requirements.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, insofar as it is designed to prevent fraudulent and manipulative acts and practices, 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 extension will provide the Exchange and FINRA the time necessary to develop a harmonized rule concerning trading ahead that will enable Exchange member organizations to participate in the national market system without unnecessary impediments.

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 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) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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. Please include File Number SR-NYSE-2008-29 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSE-2008-29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give 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 and the Commission has determined to waive this five-day pre-filing notice requirement.

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-2008-29 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).