

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57862; File No. SR-NYSE-2008-41)

May 23, 2008

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 15 (Pre-Opening Indications) and Exchange Rule 123C (Market On The Close Policy And Expiration Procedures)

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 May 16, 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 and II 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 amend Exchange Rule 15 (Pre-Opening Indications) and Exchange Rule 123C (Market On The Close Policy And Expiration Procedures) to allow Exchange systems to disseminate a data feed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. The text of the proposed rule change is available at www.nyse.com, the Exchange, and the

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).

Commission's Public Reference Room.

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

In its filing with the Commission, NYSE 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 these statements may be examined at the places specified in Item IV below. NYSE 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

Currently NYSE OpenBook is a packaged suite of data feed products. In addition to the current NYSE OpenBook data feed ("NYSE OpenBook Realtime"), for no additional charge, the Exchange makes available to NYSE OpenBook recipients a separate data feed containing NYSE quotations ("NYSE BestQuote").⁴ NYSE BestQuote allows customers to see additional market interest that is not displayed in the NYSE limit order book and that, therefore, is not available in NYSE OpenBook.

Pursuant to a separate filing, the Exchange intends to add to NYSE OpenBook a new category of information regarding order imbalances prior to the market opening and closing auctions ("Order Imbalance Information").⁵ Order Imbalance Information is a data feed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. Through this filing, the NYSE seeks to include Order

⁴ The Exchange added NYSE BestQuote to the NYSE OpenBook Realtime package in October 2006. See Securities Exchange Act Release No. 54594 (October 12, 2006), 71 FR 61819 (October 19, 2006) (SR-NYSE-2006-81).

⁵ See Securities Exchange Act Release No. 57861, (May 23, 2008) (SR-NYSE-2008-42).

Imbalance Information as supplemental information that may be disseminated by Exchange systems prior to the opening and closing transaction.

Background Publication of Order Imbalance Information Prior to Open and Close

On December 20, 2007, the NYSE amended Exchange Rule 15 to re-establish procedures for the publication of pre-opening price information, according to the framework established by the national market system plan (“Linkage Plan”).⁵ The rule change was sought by the Exchange in response to customer and market participant requests for the information.

Exchange Rule 15

Currently, pursuant to Exchange Rule 15 the specialist publishes a pre-opening price indication whenever the specialist, in arranging the opening transaction in a subject security, anticipates that the price of the opening transaction will be at a price that is different from the previous day’s closing price on the NYSE by more than the “applicable price change.” The applicable price is generally based on the NYSE closing price. Exchange Rule 15 provides five price groupings that establish the applicable price change parameters as follows:

Exchange Closing Price	Applicable Price Change (More Than)
Under \$20.00	\$0.50
\$20 - \$49.99	\$1.00
\$50.00 - \$99.99	\$2.00
\$100 - \$500	\$5.00
Above \$500	1.5%

⁵ See Securities Exchange Act Release No. 57003 (December 20, 2007), 72 FR 73949 (December 28, 2007) (SR-NYSE-2007-112). The Linkage Plan became effective on October 1, 2006 and operated concurrently with the existing Intermarket Trading System (“ITS”) Plan until March 5, 2007, at which time the ITS Plan terminated and SEC Rule 611 (the Order Protection Rule) of Reg. NMS became operative. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). The Linkage Plan terminated on June 30, 2007.

Exchange Rule 15 sets forth a different method for determining pre-opening indications in American Depositary Receipts (“ADRs”)⁶. Where the trading day of the underlying security in the primary foreign market concludes after trading on the NYSE for the previous day has ended, the specialists, when arranging an opening transaction on the NYSE, uses the closing price of the primary foreign market of the underlying security to determine whether such opening transaction represents a change of more than the “applicable price change.” In instances where the underlying security of an ADR is still trading on its primary foreign market at the time the specialist is arranging the opening of such ADR on the NYSE, a specialist is required to look at the last sale price of the underlying security in the primary foreign market and issue a pre-opening indication if the anticipated opening price of the ADR is not on parity with the last sale price of the underlying security. The pre-opening indication is based on the change in parity between the anticipated opening price of the ADR and the last sale price of the underlying security on the primary foreign market.

Exchange Rule 123C

Rule 123C⁷ (Market on the Close Policy and Expiration Procedures) contains requirements with respect to operation of the Exchange’s market concerning market-on-close (“MOC”) and limit-on-close (“LOC”) orders as well as order entry and imbalance publication requirements. Rule 123C defines MOC and LOC orders. A MOC order is a market order that is to be executed in its entirety at the closing price. If not executed due to a trading halt or because of its terms, (e.g., buy minus or sell plus), this type of order will be cancelled.

⁶ See the NYSE glossary, which defines an ADR as “[a] receipt that is issued by a U.S. depository bank which represents shares of a foreign corporation held by the bank....ADRs are quoted in U.S. dollars and trade just like any other stock....”

⁷ The Exchange’s Market-On-Close/Limit-On-Close Policy has been codified as Rule 123C. See Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR-NYSE-2002-31).

Rule 123C defines a LOC order as one that is entered for execution at the closing price, provided that the closing price is at or within the limit specified. LOC orders are prioritized on the specialist's book by time of entry and go behind all other orders on the specialist book at that price regardless of when such other orders are received. LOC orders with prices that are better than the closing price in the subject security are guaranteed an execution unless there is a trading halt in the security. LOC orders limited at the closing price are not guaranteed an execution.

Rule 123C⁸ requires that all MOC and LOC orders be entered by 3:40 p.m. in any stock on any trading day, unless entered to offset a published imbalance, or on either side of the market if a regulatory halt is in effect at 3:40 p.m. or occurs after that time. Floor brokers representing MOC/LOC orders in any stock must communicate their irrevocable MOC/LOC interest to the specialist by 3:40 p.m. In addition, Rule 123C prohibits the cancellation of MOCs and LOCs after 3:40 p.m., except in the case of legitimate error (e.g., side, size, symbol, price, or duplication of an order) or when a regulatory trading halt is in effect at or occurs after 3:40 p.m.

Between 3:40 and 3:50 p.m., MOC/LOC orders are irrevocable, except to correct a legitimate error or when a regulatory trading halt is in effect at or occurs after 3:40 p.m.

In the case of a regulatory halt, MOC orders may be entered until 3:50 p.m. or until the stock reopens, whichever occurs first, even if an imbalance publication occurred prior to the regulatory halt. Cancellation or reductions in size of MOC/LOC orders after 3:50 p.m. are not

⁸ On May 19, 2004 the SEC approved amendments to Exchange Rule 123C subject to technology upgrades to the electronic entry systems for MOC and LOC orders. See Securities Exchange Act Release No. 49682 (May 11, 2004), 69 FR 28969 (May 19, 2004); SR-NYSE-2004-09. The approval further provided the Exchange would notify the Commission and Exchange membership of the implementation of such electronic entry systems. Id. To date the technological upgrades required to implement the previously approved amendments to Exchange Rule 123C have not been completed. The Exchange intends to formally submit a revised proposal to the Commission in order to modify its closing procedures.

permitted for any reason, including in case of legitimate error.

Proposed Exchange System Dissemination of Order Imbalance Information

The Exchange proposes to include Order Imbalance Information as supplemental information that may be disseminated by Exchange systems prior to opening and closing transactions pursuant to Exchange Rules 15 and 123C respectively.

The Exchange plans to distribute the Order Imbalance Information in real-time at specified intervals prior to the opening and closing transactions. The Order Imbalance Information disseminated by the Exchange will include the publication time, imbalance side, imbalance quantity, paired quantity and symbol for each security.

Order Imbalance Information Prior to the Opening Transaction

The Order Imbalance Information disseminated prior to the opening transaction will include all interest eligible for execution in the opening transaction of the security in Exchange systems. The previous trading day's closing price on the NYSE in the security will serve as the reference price for the Order Imbalance Information disseminated prior to the opening transaction. The Order Imbalance Information disseminated prior to the opening transaction indicates to market participants the number of shares that would be required to equalize buy and sell interest (i.e. flat) at the reference.

The Exchange plans to distribute the Order Imbalance Information at specified intervals prior to the opening. Order Imbalances disseminated prior to the opening will be disseminated as follows:

- Every five minutes between 8:30 a.m. Eastern Time ("ET") and 9:00 a.m. EST.
- Every minute between 9:00 a.m. ET and 9:20 a.m. ET.
- Every 15 seconds between 9:20 a.m. ET and the opening (or 9:35 a.m. ET if the opening is delayed).

Order Imbalance Information Prior to the Closing Transaction

The Order Imbalance Information disseminated prior to the closing transaction will include all the same information used in Exchange Rule 123C(5)(Publication of MOC Imbalances).⁶ Order Imbalance Information disseminated prior to the close will use the last sale in the security on the NYSE prior to dissemination of the Order Imbalance Information as its reference price to indicate the number of shares required to close “flat.”

Similar to the dissemination of Order Imbalance Information prior to the open, Order Imbalance Information disseminated prior to the close will be distributed at specified intervals. Order Imbalances disseminated prior to the close will be disseminated as follows:

- Every fifteen seconds between 3:40 p.m. ET and 3:50 p.m. ET.
- Every five seconds between 3:50 p.m. ET and 4:00 p.m. ET.

On any day that the scheduled close of trading on the NYSE is earlier than 4:00 p.m. ET, the dissemination of Order Imbalance Information prior to the closing transaction will commence 20 minutes before the scheduled closing time. Order Imbalance Information will be disseminated every fifteen seconds for approximately 10 minutes. Thereafter, the Order Imbalance Information will be disseminated every five seconds until the scheduled closing time.

The data feed containing the Order Imbalance Information is in addition to the Publication of MOC Imbalances pursuant Exchange Rule 123C(5) that is disseminated by the specialist in his or her assigned security at 3:40 p.m. and 3:50 p.m. The Order Imbalance Information will be published through OpenBook. The mandatory publications published by the specialist pursuant to NYSE Rule 123C will be included in both the Order Imbalance

⁶ Exchange Rule 123C(5) provides in pertinent part:
Imbalance publications will include MOC orders as well as marketable LOC orders. In that regard, LOC orders to buy at a price higher than the last sale price are to be included with the buy MOC orders; LOC orders to sell at a price lower than the last sale price are to be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the imbalance calculation....

Information data feed and on the Consolidated Tape. Only mandatory indications published pursuant to 123C control whether a party may enter offsetting interest.

Conclusion

The Exchange believes that the amendments to NYSE Rules 15 and 123C effectively provide useful information to the marketplace especially in situations involving price changes based on order imbalances.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁷ 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. This amendment to Exchange Rules 15 and 123C supports the system of a free and open market and serves to protect investors and the public interest by providing market participants with supplemental market information prior to the execution of the opening and closing transactions on the NYSE.

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 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

Written comments were neither solicited nor received.

⁷ 15 U.S.C. 78f (b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act, which would make the rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would immediately allow the Exchange to disseminate this supplemental information prior to the execution of the opening and

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization 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. NYSE has satisfied the pre-filing notice requirement.

closing transactions on the NYSE. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.¹⁰

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.

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-2008-41 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-2008-41. 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

¹⁰ 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. 15 U.S.C. 78c(f).

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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-2008-41 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).