

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59207; File No. SR-NYSE-2008-134)

January 6, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 1500 (“MatchPoint”) to Clarify the Functionality of the Intra-Day Matching Sessions in Relation to Order Entry, Correction and Cancellation Capabilities, and When the MatchPoint System Cancels Unexecuted Orders Back to the User and Disseminates Intra-Day and After Hours Trade Reports

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 22, 2008, 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 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 1500 (NYSE MatchPointSM) (“MatchPoint”) to clarify the functionality of the intra-day matching sessions in relation to order entry, correction and cancellation capabilities, and when the MatchPoint system cancels unexecuted orders back to the User and disseminates intra-day and after hours trade reports. The text of the proposed rule change is available at www.nyse.com, NYSE, and the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.

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

1. Purpose

The Exchange seeks to amend Exchange Rule 1500 ("NYSE MatchPoint") to clarify the functionality of the intra-day matching sessions, and the timing of the dissemination of intra-day and after hours trade reports and when unexecuted orders are cancelled back to the User (*i.e.*, those customers entering orders into MatchPoint). Intra-day matching sessions begin at 9:45 a.m., 10:00 a.m., 11:00 a.m., 12:00 p.m., 1:00 p.m., 2:00 p.m. and 3:00 p.m. A MatchPoint after hours matching session occurs at 4:45 p.m.

The MatchPoint rule provides that a User can only enter, correct and cancel an order prior to commencement of a pre-determined one-minute matching session (see subsection (d)(2) of Rule 1500). However, subsequent to the September 2008 launch of the intra-day matching sessions, Exchange staff became aware that the MatchPoint system permits orders to be entered, corrected and cancelled during the one-minute intra-day matching sessions up to and including the time the algorithm randomly selects the Reference Price and commences the "matching process." The "matching process" continues with the execution of orders and allocation of

executed shares among the orders. MatchPoint orders cannot be entered, corrected or cancelled once the “matching process” has commenced.

For example, in the intended MatchPoint model, if a User entered an order into the MatchPoint system at 10:00:05 a.m. (5 seconds after the commencement of the 10:00 a.m. matching session), such order would be rejected by the MatchPoint system as untimely, and the order would not participate in the 10:00 a.m. matching session. However, as the system is functioning today, the User is able to enter, correct or cancel an order up to and including the time that the MatchPoint algorithm randomly selects the Reference Price and commences the matching process. Therefore, if a User enters a MatchPoint order into the MatchPoint system after the commencement of the 10:00 a.m. matching session at 10:00:05, the order may participate in the 10:00 a.m. matching session as long as the order is entered prior to the time the MatchPoint algorithm randomly selects the Reference Price and commences the matching process. Thus, if the Reference Price in this example is randomly selected at 10:00:10, the order that was entered at 10:00:05 will participate in the 10:00 matching session, but an order entered at 10:00:20 will not participate in the 10:00 matching session and will be rejected as untimely and cancelled back to the User. Thus, to be assured participation in the 10:00 a.m. matching session, a User must enter a MatchPoint order into the system anytime prior to the commencement of the 10:00 a.m. matching session.

The proposed rule change will clarify that the User may enter, correct or cancel an order up to and including the time that the MatchPoint algorithm randomly selects the Reference Price and commences the matching process. The Exchange believes the manner in which the MatchPoint intra-day matching process currently functions is appropriate in that it provides customers with a greater ability to manage orders because the orders are not necessarily held in

the MatchPoint system for the entire one-minute session, and the customers are able to react more quickly to the market. Further, more customers may have the opportunity to enter, correct or cancel orders for a particular matching session in a timely fashion without having to wait a full hour for the next matching session to commence.

Additionally, the Exchange seeks to amend and clarify subsection (b)(2)(F) of NYSE Rule 1500 (“NYSE MatchPoint Orders”) to reflect the actual functionality of the MatchPoint system and to conform this subsection with the other proposed amendments to the Rule. In the intra-day and after hours MatchPoint matching sessions, the cancelling back of unexecuted orders and dissemination of trade reports actually occurs immediately after completion of the “matching process” and not after completion the “matching session.” Therefore, the definition of NYSE MatchPoint orders will include language that indicates that unexecuted orders will be cancelled back to the User “immediately upon completion of the matching process in the relevant one-minute matching session,” and that trade reports will be disseminated immediately after completion of the “matching process.”⁴

Additionally, the Exchange seeks to amend and clarify subsection (c)(1)(B) and (c)(1)(C) of NYSE Rule 1500 regarding MatchPoint intra-day matching sessions when the market is crossed. The MatchPoint rule provides the following:

(B) If the NBBO for a particular security is locked at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session shall execute orders at the locked price. Unexecuted MatchPoint orders in that security shall be immediately cancelled back to the User upon completion of the matching session.

(C) If the NBBO for a particular security is crossed at the time of a MatchPoint matching session during the regular trading hours of the Exchange, the matching session in that particular security shall not occur. Unexecuted MatchPoint orders

⁴ See proposed NYSE Rule 1500 (c)(1).

in that security shall be immediately cancelled back to the User upon completion of the matching session.

The Exchange is proposing to amend the rule text in subsections (c)(1)(B) to clarify that during any intra-day matching session, the MatchPoint system will execute orders at the locked price when the market is locked at the time the MatchPoint algorithm randomly selects the Reference Price and commences the matching process - and not at the commencement of the particular matching session. Further, the proposed text will indicate that unexecuted orders will be cancelled back to the User immediately upon completion of the “matching process” - and not at the completion of the “matching session.”

The Exchange is proposing to amend the rule text in subsections (c)(1)(C) to clarify that during any intra-day matching session, if the NBBO for a particular security is crossed at the time the “MatchPoint algorithm randomly selects the Reference Price,” the matching session in that particular security will not occur, and unexecuted orders will be cancelled back to the User immediately upon completion of the “matching process” - and not at the completion of the “matching session.”

The Exchange believes that the way the MatchPoint system currently functions in relation to the dissemination of trade reports, crossed markets and the time the unexecuted orders are cancelled back to the User are beneficial functionalities for all customers. These functionalities will, among other things, provide customers with more immediate information regarding the processing of their orders and enable them to better manage their order flow. The immediacy of this information allows the customer to respond more quickly and more strategically to the movement of the market.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")⁵ for this proposed rule change is the requirement under Section 6(b)(5)⁶ 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 Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act because it clarifies the operation of the MatchPoint trading platform in relation to order entry, correction and cancellation capabilities during the intra-day matching sessions, and when the MatchPoint system cancels unexecuted orders back to the User and disseminates intra-day and after hours trade reports.⁷ By clarifying these functionalities of the MatchPoint trading platform, a trading platform that is available to all members of the Exchange and those non-members who are authorized to access the platform as a Sponsored Participant, the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.⁸

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.

⁵ 15 U.S.C. 78f(a).

⁶ 15 U.S.C. 78f(b)(5).

⁷ See E-mail, dated January 6, 2009, from Jean Walsh, Managing Director, NYSE, to Nathan Saunders, Special Counsel, and Steve Varholik, Attorney, Division of Trading and Markets, Commission.

⁸ See id.

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 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 after the date of 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 Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to the 30th day after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon filing. The Exchange believes that the operative date should be waived so that NYSE Rule 1500 will accurately reflect the technological functioning of the MatchPoint system and will immediately provide customers transparency regarding how their MatchPoint orders are being processed. The

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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 this requirement.

¹² Id.

Exchange believes this will permit customers to better manage their order flow and trading decisions by being able to rely on the MatchPoint system.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the Commission believes that the proposed rule change should clarify the functioning of MatchPoint intra-day matching sessions in relation to automated order entry, correction and cancellation capabilities, when locked and crossed markets are identified, when the MatchPoint system cancels unexecuted orders back to the User, and when the system disseminates intra-day and after hours trade reports. The Commission further believes that investors should have access to accurate information regarding how their MatchPoint orders are being processed without delay. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹³

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

¹³ 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).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2008-134 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-2008-134. 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, 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 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 Number SR-NYSE-2008-134 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.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).