

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59345; File No. SR-NYSE-2009-10)

February 3, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rules 116 and 123C to Create a Single Closing Print to be Reported to the Consolidated Tape for Each Security

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 January 30, 2009, 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. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders it 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 NYSE Rules 116 (“Stop” Constitutes Guarantee) and 123C (Market On The Close Policy And Expiration Procedures) to create a single closing print to be reported to the Consolidated Tape for each security.

The text of the proposed rule change is available at www.nyse.com, the Exchange, 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.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 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 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

Through this filing the Exchange seeks to amend NYSE Rules 116 and 123C to create a single closing print to be reported to the Consolidated Tape for each security.

Current Reporting of Closing Transactions

NYSE Rules 116.40 and 123C prescribe, *inter alia*, the procedures for the execution of the entry of market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders⁶ and the determination of the closing print(s) to be reported to the Consolidated Tape for each security at the close of trading.

Pursuant to NYSE Rule 123C market participants may enter an MOC order to have that order executed as part of the closing transaction at the price of the close.⁷ Similar to a market order, an MOC order is to be executed in its entirety at the closing price; however, if the order is not executed as a result of a trading halt or because of its terms (*e.g.*, buy minus or sell plus), the

⁶ In the NYSE Rules and for the purposes of this discussion, the terms “market-on-close” and “limit-on-close” are used interchangeably with “market-at-the-close” and “limit-at-the-close”.

⁷ See NYSE Rule 123C(1).

MOC order is cancelled.⁸

Market participants that seek to have their orders executed on the close but are sensitive to price may, pursuant to NYSE Rule 123C, enter LOC orders that will be eligible for execution in the closing transaction, provided that the closing price is at or within the limit specified.⁹ An LOC order is not guaranteed an execution in the closing transaction; rather, only an LOC order with a limit price that is better¹⁰ than the closing price in the subject security is guaranteed an execution.¹¹ An LOC order limited at the closing price is sequenced with other LOC orders on the NYSE Display Book^{®12} (“Display Book”) in time priority and will be available for execution after all other orders on the Display Book at the closing price are executed regardless of when such other orders are received.¹³

Pursuant to NYSE Rule 123C(5), at 3:40 p.m. if a security has a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell of 50,000 shares or more the assigned DMM is required to send a message from Display Book that is published to the Consolidated Tape informing the investing public of the disparity (“Mandatory Indication”). The Mandatory Indication includes the symbol, the amount and the side of the

⁸ See Id.

⁹ See NYSE Rule 123C(2).

¹⁰ As used herein, better than the closing price means an order that is lower than the bid in the case of an order to sell or higher than the offer in the case of an order to buy.

¹¹ It should be noted that orders are cancelled if there is a trading halt in the security that is not lifted prior to the close of trading.

¹² The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains the Book, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

¹³ See NYSE Rule 123C(2).

imbalance. In addition, to the Mandatory Indication, a DMM may, with Floor Official approval, disseminate an imbalance publication that is for a disparity of less than 50,000 shares when the imbalance in the security is significant in relation to the average daily trading volume in the security. At 3:50 p.m. the DMM is required to provide an update of the previous imbalance publications.

At the close of trading, any closing imbalance of MOC and marketable LOC orders are calculated by netting (i.e., pairing off) the aggregate amount of MOC and marketable LOC buy orders against the aggregate amount of MOC and marketable LOC sell orders.¹⁴ Exchange systems calculate the number of MOC and marketable LOC orders on each side of the market and pair them off. Where there is an imbalance (i.e. more orders to buy than sell or vice versa), the shares constituting the imbalance are executed against the offer (in case of a buy imbalance) or the bid (in the case of a sell imbalance).¹⁵ This transaction is reflected on the first closing print from the NYSE to the Consolidated Tape for the particular security.¹⁶ The DMM then pairs off the remaining MOC and marketable LOC buy and sell orders against each other at the price at which the imbalanced shares were executed.¹⁷ This “pair off” transaction is reported as a second closing print from the NYSE to the Consolidated Tape as “stopped stock.”¹⁸

If there is no imbalance, the aggregate buy and sell MOC and marketable LOC orders are paired off at the price of the last sale of the subject security on the Exchange prior to the close of

¹⁴ See NYSE Rules 116.40 and 123C(3).

¹⁵ See NYSE Rules 116.40(B) and 123C(3)(A).

¹⁶ See Id.

¹⁷ See NYSE Rule 123C(3)(A).

¹⁸ See NYSE Rules 116.40(C) and 123C(3)(A).

trading in the security.¹⁹ This transaction is reported to the Consolidated Tape in a single closing print as “stopped stock.”²⁰

Proposed Single Closing Print

The closing transaction on the Exchange continues to be a manual auction in order to facilitate greater price discovery and allow for the maximum interaction between market participants. Currently, increased volatility in the market has given rise to the need to simplify procedures. In order to continue to provide timely closing of securities, the Exchange believes that it is necessary to reduce the manual processing required of the DMM to promote an even more efficient close. As such, the Exchange seeks to create a single closing print to be reported to the Consolidated Tape for each security. The Exchange believes that this will work to optimize the efficient operation of the closing process.

The Exchange therefore proposes to amend NYSE Rules 116 and 123C(3) to provide for a single closing print to be reported to the Consolidated Tape system for each listed security. Currently, the DMM is required to manually enter the imbalance and the paired prints to Exchange systems for reporting to the Consolidated Tape. Requiring two prints impedes DMMs’ efficiency in reporting the closing transaction.

Multiple closing prints were used to provide information about the share imbalances that impacted the closing price of a security on the Exchange. In May 2008, the Exchange amended NYSE Rule 123C to allow Exchange systems to disseminate a data feed of real-time order imbalances that accumulate prior to the close of trading on the Exchange (“Order Imbalance

¹⁹ See NYSE Rules 116.40(C) and 123C(3)(B).

²⁰ See Id.

Information”).²¹ Order Imbalance Information is supplemental information disseminated by the Exchange prior to a closing transaction.²² Specifically, Order Imbalance Information is disseminated every fifteen seconds between 3:40 p.m. and 3:50 p.m.; thereafter, it is disseminated every five seconds between 3:50 p.m. and 4:00 p.m. On any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m., the dissemination of Order Imbalance Information commences 20 minutes before the scheduled closing time. On those days, Order Imbalance Information is disseminated every fifteen seconds for approximately 10 minutes; thereafter, the Order Imbalance Information is disseminated ever [sic] five seconds until the scheduled closing time.

The Exchange believes that the Order Imbalance Information achieves the goal of providing real-time detail and transparency for market participants about the factors that impact the closing price of a security. The Exchange further notes that the current imbalance publications pursuant to NYSE Rule 123C(5) will continue to be disseminated in accordance with the provisions of the rule. As such, the Exchange believes that there no longer exists a need for the dissemination of two separate prints at the close.

The Exchange therefore proposes that the imbalance, if any, paired off closing transactions and stop orders elected for execution on the close be reported to the Consolidated

²¹ See Securities Exchange Act Release Nos. 57862 (May 23, 2008), 73 FR 31174 (May 30, 2008) (SR-NYSE-2008-41) and 57861 (May 23, 2008), 73 FR 31905 (June 4, 2008) (SR-NYSE-2008-42). On December 19, 2008, the Exchange filed with the Securities and Exchange Commission to offer, for a separate fee, the Order Imbalance Information datafeed as a stand alone market data product. See Securities Exchange Act Release No. 59202 (January 6, 2009) 74 FR 1744 (January 13, 2009) (SR-NYSE-2008-132).

²² See NYSE Rule 123C(6).

Tape System as a single transaction and print.²³ The Exchange proposes to amend the text of NYSE Rule 116.40(C) to remove language that states that “pair off” transactions should be printed to the Consolidated Tape as stopped stock. Similarly, the Exchange proposes to amend NYSE Rule 123C(3) (Closing Prints) to state that the imbalance and the pair off amounts shall be printed to the Consolidated Tape as a single transaction.

Pursuant to the above proposed changes, a single print close in a security would occur as described in the example below.

The DMM for stock XYZ has determined that the closing price in the stock will be \$30.25. The last sale price on the Exchange was \$30.00. The DMM has 6,000,000 shares of MOC and marketable LOC buy orders up to a price of \$30.25. On the sell side, there are 5,000,000 MOC and marketable LOC sell orders down to a price of \$30.24. The DMM pairs 5,000,000 shares of MOC and marketable LOC buy orders against the 5,000,000 shares of MOC and marketable LOC sell orders at a price of \$30.25, leaving an imbalance of 1,000,000 shares on the buy side. On the Display Book, the DMM has 700,000 shares of limit sell orders at various prices marketable up to a price of \$30.25, and there is also Crowd interest of 300,000 shares at that price. The DMM will use the 700,000 shares of limit sell orders on the Display Book and 300,000 shares of Crowd interest to offset the remaining 1,000,000 shares of MOC and marketable buy LOC imbalance.

²³ The Exchange formally eliminated the percentage orders (referred to as a “CAP” order) as a valid order type on the NYSE. See Securities Exchange Act Release No. 58013 (June 24, 2008), 73 FR 37521 (July 1, 2008) (SR-NYSE-2008-46) [sic].

In the above example, the DMM would continue to arrange the closing transaction as set forth in 123C(3) and NYSE Rule 116.40; however, rather than reporting two separate closing prints to the Consolidated Tape, a single closing print reflecting the execution of 6,000,000 shares at \$30.25 would be reported. The 6,000,000 share volume in the single print close includes: (1) the 1,000,000 share buy order imbalance; and (2) the 5,000,000 shares of MOC and marketable LOC buy and sell orders that were paired off.

The Exchange believes that the consolidation of the separate closing transactions and prints will reduce the amount of manual information to be reported by the DMM thus increasing the speed and efficiency of the closing process ultimately improving the quality of the Exchange market with timelier reporting of closing transactions.

Proposed Technical Amendment to NYSE Rule 123C(3)

On October 24, 2008, the Commission approved the operation of a pilot for the Exchange's New Market Model.²⁴ As part of its new model, the Exchange rescinded percentage orders as a valid order type on the Exchange. As part of the New Market Model filing, the Exchange inadvertently failed to eliminate a reference to percentage orders in NYSE Rule 123C(3). The Exchange therefore seeks to correct this oversight by deleting that reference through this filing given that percentage orders are no longer valid order types on the Exchange.

Proposed Changes to NYSE Alternext Rules

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Alternext Exchange (formerly the American Stock Exchange) through a separate filing to be submitted on a later date.

²⁴ See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (approving certain rules to operate as a pilot scheduled to end October 1, 2009).

Operative Date

The Exchange proposes that the amendments herein will be operative as of February 6, 2009.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁶ in particular, in that 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 rule change will facilitate the timely and efficient closing of securities on the Exchange and thus ultimately serve to protect investors and the public interest.

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 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

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

competition; and (3) by its terms, does not 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 Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.²⁹ However, Rule 19b-4(f)(6)(iii) 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, as specified in Rule 19b-4(f)(6)(iii),³⁰ and has proposed to make the rule change operative as of February 6, 2009.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will enable the Exchange to immediately implement a more efficient closing process, thereby providing for timelier reporting of the closing transaction. Additionally, the Commission notes that the Exchange will continue to publish the Mandatory Indication when there is a significant imbalance before the close, as

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6).

²⁹ 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.

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

required under Rule 123C(5). Accordingly, the Commission designates the proposed rule change as operative as of February 6, 2009.³¹

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.³²

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-2009-10 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-2009-10. 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

³¹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³² 15 U.S.C. 78s(b)(3)(C).

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 am and 3:00 pm. 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-2009-10 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.³³

Florence E. Harmon
Deputy Secretary

³³ 17 CFR 200.30-3(a)(12).