

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59570; File No. SR-NYSE-2009-28)

March 12, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Rules 13, 902, 903, 904, 905 and Rule 906 to Eliminate Certain Order Types From the Off-Hours Trading Facility

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 11, 2009, 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 Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal 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 13 (Definitions of Orders), 902 (Off-Hours Trading Orders), 903 (Off-Hours Transactions), 904 (Priority of Off-Hours Trading Orders), 905 (Off-Hours Trading Reports and Recordkeeping) and Rule 906 (Impact of Trading Halts on Off-Hours Trading) to eliminate certain order types from the off-hours trading facility. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 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 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 902, 903, 904 and 906 to remove certain off-hours trading functions from the Exchange's Crossing Session I. The Exchange is making this change in connection with certain technology upgrades it expects to begin rolling out on or about March 16, 2009.

As explained more fully below, customers who previously relied on the trading functions in Crossing Session I that are being eliminated will be able to execute their off-hours trades through the NYSE MatchPoint® system. The Exchange will continue to accommodate certain types of off-hours trading (error offset trades and trades between a member and the DMM for the purpose of offsetting a market-on-close imbalance) in Crossing Session I.

I. Background

The Exchange initiated its Off-Hours Trading Facility in June 1991<sup>5</sup>. In connection with its implementation, the Exchange adopted the "900" series of rules to govern trading, order eligibility, order entry and record keeping requirements.

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<sup>5</sup> See Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (June 3, 1991) approving File Nos. SR-NYSE-90-52 and 90-53 which established the NYSE Off-

In one application of the Off-Hours Trading Facility, members and member organizations may enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4:00 p.m. trading session (“Crossing Session I”). Orders may be entered for any Exchange-listed issue, other than a security that is subject to a trading halt at the close of the regular trading session<sup>6</sup> or is halted after 4:00 p.m. Crossing Session I normally runs from 4:15 p.m. to 5:00 p.m. on each trading day.

Under Rule 902(a)(i) and (ii)(A) respectively, members may enter single-sided orders (i.e., either an order to buy or an order to sell) and coupled orders (i.e., both a buy and a sell order) into Crossing Session I. In addition, pursuant to Rule 902(b), the Exchange will migrate into Crossing Session I for possible execution any good-til-cancelled (“GTC”) orders that have been designated as eligible for execution in the Off-Hours Trading Facility<sup>7</sup>. These types of orders entered into Crossing Session I are usually executed at the end of the Session, i.e., at 5:00 p.m.

Rules 903 and 904 describe, in pertinent part, how orders that are entered into the off-hours trading facility establish priority, and the execution protocols for such orders. Specifically, Rule 903 provides that single-sided and migrated GTX orders are to be executed against opposite side single-sided and GTX orders in the Off-Hours trading Facility, while coupled orders are to be executed against the other side of the coupled order. Rule 904 provides that GTX orders

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Hours Trading Facility on a pilot basis. See also, Securities Exchange Act Release No. 33992 (May 2, 1994), 59 FR 23907 (May 9, 1994) approving the NYSE Off-Hours Trading Facility on a permanent basis.

<sup>6</sup> This includes any market-wide trading halt instituted under Exchange Rule 80B (Trading Halts Due to Extraordinary Market Volatility).

<sup>7</sup> See NYSE Rule 13 (Definitions of Orders). GTC orders that have been designated as “Off-Hours Eligible” under this rule are referred to as “GTX orders.”

retain the priority among themselves that existed when they were entered into Display Book®, while the priority of coupled orders will be determined based upon their sequence of entry into the Off-Hours Trading facility.

Rule 905 requires that certain records be maintained by members and member organizations with respect to off-hours trading.

Rule 906 outlines procedures under which Off-Hours Trading Facility orders in an NYSE-listed security may go unexecuted if such security was subject to a trading halt.

## II. Proposed Changes to Off-Hours Order Processing and Rule Amendments

The Exchange is preparing to institute a number of technology changes to its systems that will foster more efficient and cost effective processing of orders it receives. As part of these changes, the Exchange is phasing out the SuperDOT® system and will replace it with a system referred to as Super Display Book (“SDBK”).

Because the Off-Hours Trading Facility relies on the SuperDOT system for certain trade processing functions, the Exchange plans to eliminate the ability for single-sided, coupled orders and GTX to be entered or migrated into the off-hours trading facility known as Crossing Session I, and to instead direct customers to use the NYSE’s MatchPoint system to effect those types of trades. Accordingly, the Exchange is proposing to amend Rules 902, 903, 905 and 906 and to rescind Rule 904 in its entirety to remove the provisions that relate to closing price single-sided, coupled and GTX orders. The Exchange also proposes to amend Rule 13 to remove provisions relating to GTX orders as these will no longer be supported by Exchange systems.

1. Proposed Amendments

a. Rule 13 (Definitions of Orders)

When the Exchange created its Off-Hours Trading Facility, it decided to provide a means for good-til-cancelled (GTC) orders to become automatically eligible for execution in this facility if the person or entity who had entered the GTC order so desired. This would then provide a possible source of liquidity to the Off-Hours Trading Facility, and could increase a GTC order's chance of being executed since it could access additional liquidity that was entered into the Off-Hours Trading Facility that was not available during the Exchange's regular trading session. At the same time, the Exchange provided that the GTC orders designated to migrate to the Off-Hours Trading Facility would return to the Display Book, and retain their original priority on Display Book, if not executed in the Off-Hours Trading Facility. This would provide a further incentive to migrate GTC orders since they would not lose their standing on the Display Book as a result of the migration.

The language indicating that a good-til-cancelled order may be designated as "Off-Hours eligible" and executed through the "Off-Hours Trading Facility" is proposed for deletion as this order type is being eliminated. The Exchange also proposes to add language to the definition of the good-til-cancelled order type to indicate that these orders are not eligible for execution in any Off-Hours Trading Facility of the Exchange.

b. Rule 902 (Off-Hours Trading Orders)

The Exchange proposes to delete paragraph (a)(i) (Closing-Price Orders) and paragraph (a)(ii)(A) (Closing-Price Coupled Orders) in their entirety to eliminate these as order types

eligible for entry and execution in the Off-Hours Trading Facility<sup>8</sup>. Paragraph (b) (Migration of Orders) is also proposed to be deleted to reflect the elimination of GTX, as that paragraph explains the migration of GTC orders from the regular hours trading session to the Off-Hours Trading Session. Paragraph (d) is proposed to be deleted since it explains that a migrated order (i.e., a GTX order) or a closing price order may be cancelled before execution. Paragraph (e) (Disposition of Unexecuted Orders) is proposed for deletion as it relates to migration of unexecuted GTX orders back to the Display Book if they are not executed in the Off-Hours Trading Facility, and to the fact that unexecuted closing-price orders expire if unexecuted in the Off-Hours trading Facility. References to closing-price orders and paragraphs (a)(ii) and (b) are proposed for deletion in paragraph (g) (Odd-Lots and Partial Round Lots).

c. Rule 903 (Off-Hours Transactions)

Paragraph (a) (Priority of Single-Sided Orders) is proposed for deletion as it relates solely to this order type, which is being eliminated. In paragraphs (b) (Priority of Coupled Orders) and (c) (Binding Nature), references to closing-price, paragraph (a)(ii) of Rule 902 and paragraph (a) of Rule 903 are proposed for deletion as they will no longer be valid references. References to single-sided and coupled closing-price orders in (d) (Executions of Orders) are also proposed for deletion.

d. Rule 904 (Priority of Off-Hours Trading Orders)

The Exchange proposes to delete this rule entirely. Rule 904 (Priority of Off-Hours Trading Orders) relates to the priority of GTX among themselves as existed when these orders

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<sup>8</sup> The Exchange is retaining the Aggregate-Price Coupled Order type, as defined in Rule 900 (Off-Hours Trading: Applicability and Definitions), paragraph (e)(i). This order type is specified for coupled buy and sell orders representing 15 or more securities having a total market value of \$1 million or more. These orders are entered and executed in Crossing Session II.

were on the Display Book, and the priority of closing-price orders entered into the Off-Hours Trading Facility.

e. Rule 905 (Off-Hours Trading reports and Recordkeeping)

A reference to closing price and migrated orders is proposed for deletion in paragraph (b) (Off-Hours Trading Records) of this rule.

f. Rule 906 (Impact of Trading Halts on Off-Hours Trading)

Paragraph (a) (Security Halts Prior to Off-Hours Trading) is proposed to be deleted in its entirety as it relates to closing-price and migrated orders, which are both being eliminated. Paragraph (b) (Corporate Developments during Off-Hours Trading Session) of the rule establishes the Exchange's ability to halt trading in a security during the time it is open for Off-Hours Trading as a result of a corporate development. The Exchange proposes to delete subparagraphs (i), (ii) and (iii), which relate to closing-price and migrated GTC orders since they are being eliminated. The provision in the rule relating the permissibility of entry or the exemption from cancellation for closing price orders entered by Designated Market Makers ("DMMs") in stocks that would otherwise be cancelled or prohibited from entry as a result of corporate developments to offset all or part of a market-on-close imbalance that existed in a stock prior to the close of the Exchange's regular trading session is being retained<sup>9</sup>. In these instances, the DMM and the member organization taking the other side have already agreed to trade in the stock at the closing price and this agreement is not affected by the ensuing corporate development. The Exchange is therefore proposing to add the phrase "as a result of corporate developments during the Off-Hours Trading Session" to paragraph (b) to complete the last sentence of the paragraph.

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<sup>9</sup> These types of orders are entered pursuant to Rule 902(a)(ii)(B).

## 2. Availability of MatchPoint for Off-Hours Trading

In the Exchange's view these changes will not significantly affect the experience of customers who would have previously submitted orders to Crossing Session I for execution since similar functionality exists in the MatchPoint system. MatchPoint is an NYSE electronic equity-trading facility that matches aggregated orders at predetermined fixed times with prices that are derived from primary markets. There are seven matching sessions at fixed times throughout the trading day, and, of particular relevance to this filing, an after-hours matching session at 4:45 p.m.

Orders in MatchPoint are executed at a single trading price (known as the "reference price") that, for the 4:45 match is equal to the NYSE official closing price for NYSE-listed securities and the official closing price of the primary market for all non-NYSE-listed securities<sup>10</sup>. Customers who previously executed single-sided and coupled trades through Crossing Session I at the NYSE's official closing price can submit single-sided and coupled orders for execution through MatchPoint.

It should be noted that certain other order types allowed under Rule 902 will not be affected by the proposed changes, although after the phase-out, the Exchange will process these trades on a different system instead of through SuperDOT. In particular, Rule 902(a)(ii)(C) permits a coupled order to be submitted in Crossing Session I to address situations where a member or member organization wishes to close out an error at the closing price on the Exchange, and the Designated Market Maker has agreed to take the other side of the error trade. NYSE Rule 902(a)(ii)(B) permits entry of coupled orders when one side of such coupled order is

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<sup>10</sup> See, generally, NYSE Rule 1500 (NYSE MatchPoint<sup>SM</sup>) and Securities Exchange Act Release No. 57058 (December 28, 2007), 73 FR 903 (January 4, 2008) approving adoption of that rule

for the account of a specialist member organization entered in those instances in which the coupled order reflects contra side interest to offset an imbalance of market-on-close orders<sup>11</sup> that existed at the regular 4:00 p.m. close. The Exchange is not deleting these provisions from its rules, and member organizations will continue to be able to execute these trades in the same manner that they do today.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup>, in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup>, 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 execution of securities on the Exchange by eliminating the use of an under-utilized order types 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.

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<sup>11</sup> A “market-on-close order is a market order which is to be executed in its entirety at the closing price, on the Exchange, of the stock named in the order, and if not so executed, is to be treated as cancelled. See NYSE Rule 13.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 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)<sup>14</sup> of the Act and subparagraph (f)(6) of Rule 19b-4<sup>15</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. 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 requests that the Commission waive the 30-day operative delay so that the Exchange can implement a number of technology changes to its system related to off-hours trading immediately. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. NYSE believes that the proposed rule change is non-controversial in that it serves to allow the Exchange to merely eliminate duplicate functions with respect to entry of off-hours orders.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>16</sup> Because customers who previously relied on

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 satisfied this requirement.

trading functions in Crossing Session I will be able to execute their off-hours trades through the NYSE MatchPoint® system, the elimination of such functionality within the Exchange's system does not appear to present any novel or significant regulatory issues or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-28 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-2009-28. This file number should be

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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-2009-28](#) 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>17</sup>

Florence E. Harmon  
Deputy Secretary

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