

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59626; File No. SR-NYSE-2009-33)

March 25, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Wireless Data Communications Initiatives and Codifying the Wireless Policy

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 March 20, 2009, the New York Stock Exchange, LLC (“NYSE” or the “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 NYSE. NYSE has submitted the proposed rule change pursuant to Rule 19b-4(f)(6) under the Act,³ 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: (1) modify its Wireless Data Communications Initiatives (referred to herein as the “Wireless Policy”) to eliminate the requirement that all orders or messages transmitted electronically from off the Floor must first be recorded in a Floor broker’s booth location on the Floor (“Floor booth”) before being transmitted to the Floor broker’s wireless hand-held device for representation and execution; (2) modify the Wireless Policy to eliminate the requirement that Floor booth locations print paper records of all orders; (3) modify

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

the interpretation of NYSE Rule 117 as it applies to what constitutes a “written order”; and (4) codify the Wireless Policy as amended herein.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 proposes to: (1) modify its Wireless Data Communications Initiatives (referred to herein as the “Wireless Policy”)⁴ to eliminate the requirement that all orders or messages transmitted electronically from off the Floor must first be recorded in a Floor broker’s booth location on the Floor (“Floor booth”) before being transmitted to the Floor broker’s wireless hand-held device for representation and execution; (2) modify the Wireless Policy to eliminate the requirement that Floor booth locations print paper records of all orders; (3) modify the interpretation of NYSE Rule 117 as it applies to what constitutes a “written order”; and (4) codify the Wireless Policy as amended herein.

⁴ See Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR-NYSE-95-22). The approval order of the initial filing and subsequent amendment by the Commission to changes to the Wireless Data Communications Initiatives has historically been referred to by the NYSE as the “Wireless Policy.” See also Securities Exchange Act Release No. 39379 (December 1, 1997), 62 FR 64615 (December 8, 1997) (SR-NYSE-97-17).

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex Exchange (formerly the American Stock Exchange).⁵

Background

On August 25, 1995, the Commission approved the Exchange's introduction of wireless data communications technology to the Floor. One feature of the wireless technology was the use of wireless hand-held data communications devices on the Floor. A wireless hand-held device ("hand-held") is a tool used by NYSE Floor brokers as part of an integrated Floor order management system to trade and to send and receive messages. Such messages can consist of the price, size and time of the orders as well as cancellations and modification of orders from the hand-held to the Floor booth and thereafter to locations off the Floor. The Exchange developed and installed a wireless data communications infrastructure on its Floor and provided its Floor brokers with hand-helds. The Exchange also allowed private vendors to offer hand-helds, with any needed support infrastructure, to be used by Floor brokers.

The Wireless Policy was implemented in four phases in order to adequately install and test the viability of the wireless data communication infrastructure and connections to private vendor hand-helds.

By December 1997, the Exchange had completed the second phase of the implementation of the Wireless Policy, namely the supervision of additional pilot testing of independent wireless data communication services, including the services offered by the Exchange. After entering the next phase, the Exchange amended the Wireless Policy to, inter alia, modify the types of wireless

⁵ See SR-NYSEAmex-2009-02 (to be filed on March 23, 2009).

data communications that the Exchange would permit over the infrastructure by allowing communications between two hand-helds on the Floor.⁶

The purpose of the 1997 amendments was to permit communication between two hand-helds on the Floor, thereby eliminating the first step of routing all such communications to the Floor booth. These amendments expedited the transmittal and receipt of orders and to allow for more efficient processing of orders and dissemination of information.

NYSE Rule 117 and the Wireless Policy

NYSE Rule 117 (“Orders of Members to be in Writing”) states that no member on the Floor shall make any bid, offer or transaction for or on behalf of another member except pursuant to a written or electronically recorded order.

Pursuant to the Wireless Policy, the Exchange interpreted NYSE Rule 117 to mean that an order sent to an Exchange Floor member by an authorized hand-held constituted a “written order” for the purposes of NYSE Rule 117 if the member could show that the transmission of the order: 1) provided adequate information relating to the price, size and time of the order, the cancellation of the order and any other relevant order information; 2) satisfied the Exchange’s audit trail requirements; and 3) satisfied all other Exchange reporting and record-keeping requirements.

Furthermore, the Wireless Policy provided that all orders entered from off the Floor were required to be transmitted to a Floor broker’s booth terminal prior to transmission to the Floor

⁶ See Securities Exchange Act Release No. 39379 (December 1, 1997), 62 FR 64615 (December 8, 1997) (SR-NYSE-97-17). The 1997 amendments also clarified that a vendor cannot provide wireless data communications services to Floor members unless such member is a member organization of the Exchange; and announced the forms of agreement and provisions pursuant to which the Exchange would allow vendors and member organizations to provide wireless data communications services to members on the Floor of the Exchange in the production roll-out environment.

broker's hand-held.⁷ In addition, the Wireless Policy required Floor brokers to create and maintain a paper record at the booth to supplement the electronic record of an order transmitted from an off-Floor location to a booth terminal and, from the booth to a Floor broker's hand-held.⁸

Since the implementation of the Wireless Policy in 1995 and its subsequent amendment, the Exchange has made significant technological developments to the operation of its market. The Exchange has evolved into a more electronic market and the NYSE's trading systems have been continuously upgraded to provide for greater speed and efficiency in processing orders and reports through the hand-held.

The current electronic trading environment on the Floor has obviated the necessity for paper orders, as well as the need to electronically route all messages through the booth as an intermediate step between the Floor broker's hand-held and the message's points of origin and destination. In particular, the NYSE's systems have evolved significantly since the Wireless Policy was first approved, and are now capable of capturing all order information, including price, size and time, electronically, thereby rendering paper records unnecessary. In recognition of this, subsequent to the implementation of the Wireless policy, the Exchange amended NYSE Rule 123 (Record of Orders) to add sections (e) (System Entry Required) and (f) (Reports of Order Executions).⁹ These amendments required the entry of order information and execution

⁷ See Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR-NYSE-95-22) at Footnote 8.

⁸ Id. at Footnote 9.

⁹ See Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR-NYSE-98-25).

reports into an electronic system on the Floor. All NYSE broker trading systems operate to create an electronic order trail, making the creation of a supplemental paper audit trail obsolete.¹⁰

Proposed Modifications to the Wireless Policy and Interpretation of NYSE Rule 117

The Exchange now proposes to amend the Wireless Policy and the interpretation of NYSE Rule 117, to provide that wireless communications can be sent and received directly to and from the hand-held. For example, orders entered from off the Floor may be transmitted directly to a hand-held, bypassing the booth.¹¹ Likewise, Floor brokers may send order-related messages (e.g., cancellations and administrative messages) and information (e.g., Market Look data) back to the customer directly through the hand-held. The Exchange seeks to modify its Wireless Policy to eliminate the requirement that orders be routed to the booth terminal before being received by the hand-held. Order-related messages or information sent from the hand-held would also not be routed to the booth terminal before being transmitted off-Floor. Pursuant to the instant proposal, orders and order-related messages or information may be sent directly to and received by the hand-held. These proposed amendments to the Wireless Policy do not

¹⁰ Additionally, the NYSE has adopted NYSE Rule 132A (Synchronization of Member Business Clocks) and NYSE 132B (Order Tracking Requirements). These rules require that members and member organizations create and maintain electronic records of orders originated, received, and transmitted to a market center for execution. These Rules, in conjunction with the amendments to NYSE Rule 123 which requires system entry on the Floor, create an electronic record of orders, transmittals, and executions.

¹¹ In 2007, the NYSE amended NYSE Rule 54 and other rules to permit appropriately registered and supervised employees working in Exchange Regulation-approved booths to process orders sent to the booth in the same manner that sales traders in an “upstairs” office are allowed to process orders. See Securities Exchange Act Release No. 55908 (June 14, 2007), 72 FR 34056 (June 20, 2007) (SR-NYSE-07-51). See also Exchange Information Memo 07-77. This amendment to the Wireless Policy would not impact those rules because the direct transmittal of an order from off the Floor to the handheld would constitute a determination to have the order represented and executed on the NYSE Floor, and not processed in the booth in the same manner as an “upstairs” trading desk.

change the content of what is sent currently to and from the hand-helds but simply amends the procedure for transmitting such information to and from the hand-held.

Pursuant to the proposed new Wireless Policy, where: 1) orders are transmitted electronically from a member's off-Floor location to a booth terminal and then the order is retransmitted from the booth terminal to a member's hand-held; or 2) order-related messages or information are transmitted directly to the hand-held, bypassing the booth, a record must be established and maintained which reflects the time the order or order-related message or information was received by the booth terminal or the hand-held. The time of receipt will be captured by the Booth or the hand-held, depending upon where the order was routed. The record of time of receipt by a hand-held and [sic] will be established and maintained by such device or the Booth and by the server which receives a message acknowledgment from the hand-held or the Booth. The Booth will not be required to print records.

Orders sent from off-Floor to the booth or the hand-held are first sent through a secured network and routed to an NYSE wired database that captures and records the orders. Likewise, order related messages or information generated from the Floor broker's booth or hand-helds are transmitted back to the Exchange-wired databases via the secured wireless network, where the information is captured and recorded, and then sent off-Floor to the customer via the Exchanges secured network. In short, Exchange wired databases capture and record all of the information sent to and transmitted from the hand-held.

The Exchange notes that the transmission of orders from off-Floor locations directly to the hand-helds and order-related messages or information sent from hand-helds to off-Floor locations will not result in an increased risk of loss of order information. As is the case today, all orders and order-related messages or information will be recorded in an Exchange database upon

receipt and prior to delivery to the hand-held. In the event that a hand-held loses connectivity with the database, all incoming and outgoing transactions will continue to be captured and stored in said database and will be re-transmitted to the hand-held once connectivity is restored. To further mitigate the risk of any loss of data, the NYSE infrastructure offers a fully redundant, dual-sited back-up database. This same infrastructure is currently in place today for orders received into NYSE systems destined for a booth. Therefore, all the information captured by the database is the identical information that would be captured had the order been sent to the Floor booth before being sent to the hand-held or the order-related message or information had been sent from the hand-held to the Floor booth. The informational content transmitted to and from the hand-held remains the same and is not affected by these proposed amendments.

Furthermore, this change will not impact the requirements for the system entry of orders and execution reports under NYSE Rules 123(e) and (f). All order, order messages and report information captured by the database will be provided electronically in the same manner as orders transmitted directly to a booth today for audit trail purposes. The wireless infrastructure captures the same information that was previously captured in the Floor booth. The hand-held will operate as the functional equivalent as the Floor booth premise for order receipt and retention purposes.

Removing the requirement that orders be transmitted to the Floor booth will not affect the adequacy of information that is required to be provided through the hand-held. In fact, the hand-held will continue to provide the requisite information as to price, size and time of the order, and information if the order is cancelled. Audit trail information will be captured electronically by the hand-held, thereby obviating the need for the transmission to the booth terminal which historically recorded this information.

NYSE Rule 117 will now be interpreted to recognize any order transmitted directly to the hand-held to constitute a written order since the requisite information as to price, size and time of the order, and information if the order is cancelled will be captured by the hand-held. Furthermore, the information directly sent to the hand-held satisfies the Exchange's audit trail requirements and all other Exchange reporting and record-keeping requirements.

The Exchange believes that this proposal will provide for a more efficient and expeditious mechanism for order execution. The Exchange further believes that its customers and market participants will benefit from faster order execution, enhanced market quality and a reduction in latency of order executions as a result of this proposal.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),¹² which requires that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change is consistent with these objectives in that it enables the Exchange to further facilitate transactions on the NYSE Trading Floor by eliminating the requirements that orders entered from off the Floor require transmission to a Floor booth before being transmitted to the hand-held for representation and execution or that order-related messages or information from the hand-held be transmitted to a Floor booth before being transmitted off-Floor. The elimination of this routing through the Floor booth terminal

¹² 15 U.S.C. 78f (b)(5).

removes an impediment to the order execution system and provides for a faster, more efficient method of order execution.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay in order to immediately remove an impediment to the efficient execution

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6).

of customer orders and transmission of order-related messages or information. The Exchange believes that it promotes the protection of investors and serves the public interest to have its systems allow for the delivery of customer orders to the point of sale and order-related messages or information back to the customer immediately now that hand-held technology is capable of meeting all audit trail requirements. The Commission notes the Exchange's representation that the proposed changes to the Wireless Policy do not change the content of what is sent to and from the hand-helds, but simply amends the procedure for transmitting such information. In addition, the Commission notes the Exchange's representation with regard to the ability of Exchange systems to capture and record all information sent to and transmitted from the handhelds. For these reasons, the Commission believes that waiving the 30-day operative delay¹⁷ is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal 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:

¹⁷ 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).

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-2009-33 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-2009-33. 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-33 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).