

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59815; File No. SR-NYSE-2009-41)

April 23, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rules 15 and 123C Regarding the Operation of its NYSE Order Imbalance Information Service to Modify the Reference Price at Which the Exchange Reports the Order Imbalance Information and Clarify what Information is Included and Excluded from the Order Imbalance Information 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 April 17, 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. 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 15 and 123C regarding the operation of its NYSE Order Imbalance Information service to: 1) modify the reference price at which the Exchange reports the Order Imbalance Information; and 2) clarify what information is included and excluded from the Order Imbalance Information reports. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 New York Stock Exchange LLC (the “Exchange”) is proposing to amend NYSE Rules 15 and 123C regarding the operation of its NYSE Order Imbalance Information service to: 1) modify the reference price at which the Exchange reports the Order Imbalance Information; and 2) clarify what information is included and excluded from the Order Imbalance Information reports.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).⁴

a. Background

By order dated March 9, 2009 (the “Approval Order”), the Commission approved a \$500 monthly access fee for the Exchange’s NYSE Order Imbalance Information service.⁵ NYSE Order Imbalance Information is a datafeed 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. These

⁴ See SR-NYSEAmex-2009-13 (to be filed April 17, 2009).

⁵ See Securities Exchange Act Release No. 59543 (March 9, 2009), 74 FR 11159 (March 16, 2009) (SR-NYSE-2008-132).

orders are subject to execution at the market's opening or closing price, as the case may be, and represent issues that are likely to be of particular trading interest at the opening or closing.

The Exchange distributes information about these imbalances in real-time at specified intervals prior to the opening and closing auctions. As set forth in the Approval Order, the Exchange currently makes order imbalance information available at the following intervals.

For opening Order Imbalance Information:

- Every five minutes between 8:30 am EST and 9:00 am EST.
- Every one minute between 9:00 am EST and 9:20 am EST.
- Every 15 seconds between 9:20 am EST and the opening (or 9:35 am EST if the opening is delayed).

For closing Order Imbalance Information:

- Every fifteen seconds between 3:40 pm EST and 3:50 pm EST.
- Every five seconds between 3:50 pm EST and 4:00 pm EST.

Reference Price

The NYSE Order Imbalance Information service that is the subject of the Approval Order uses the last sale price as the reference price for the Order Imbalance Information. In the case of opening order imbalances, this means the last sale price at the end of the prior trading day. For closing order imbalances, the reference price is equal to the last sale price.

Orders Included in NYSE Order Imbalance Information Reports

The NYSE Order Imbalance Information service that is the subject of the Approval Order provides the following information:

- (A) in the case of the pre-opening datafeed, all interest eligible to trade in the opening transactions excluding odd-lot orders and the odd-lot portion of partial round-lot orders. Floor broker interest includes all interest except non-displayed reserve

interest marked “Do Not Display” (“DND”). Customer interest includes all interest except for non-displayed reserve interest. DMM interest is not included in the pre-opening datafeed.

(B) in the case of pre-closing datafeed, all market-on-close orders and limit-on-close orders eligible to participate in the closing transaction. It excludes odd-lot orders, the odd-lot portion of partial round-lot orders, DMM interest and Crowd interest.

b. Proposed Amendments

Reference Price

In order to provide the most accurate imbalance information, the Exchange proposes to modify what constitutes the reference price for the dissemination of the NYSE Order Imbalance Information feed. Prior to the opening transaction, if a pre-opening indication is published pursuant to the provisions of NYSE Rule 15 (“Pre-Opening Indications”) paragraphs (a) and (b), or in the event of a mandatory publication⁶ pursuant to NYSE Rule 123D (“Openings and Halts in Trading”), the reference price will no longer be the closing price of the prior trading day. The Exchange proposes to have the reference price equal the last sale (previous closing price) or the price indication published under the Rule 15 or 123D. Therefore, when the Exchange publishes a pre-opening indication in a security pursuant to the provisions of paragraphs (a) and (b) of NYSE Rule 15 or NYSE Rule 123D, the reference price will be determined as follows:

⁶ Exchange policy requires the dissemination of an indication in connection with any delayed opening — involving any stock which has not opened (or been quoted) by 10:00 a.m. In addition, the dissemination of an indication is mandatory for an opening which will result in a significant price change from the previous close:

| <u>Previous NYSE Closing Price</u> | <u>Price Change (equal or greater than)</u> |
|------------------------------------|---|
| Under \$10 | 1 point |
| \$10-\$99.99 | the lesser of 10% or 3 points |
| \$100 and Over | 5 points. |

- If the Bid Price from the indication (the lower price) is higher than the last sale, the Reference Price will be the Bid.
- If the Offer Price from the indication (the higher price) is lower than the last sale, the Reference Price will be the Offer.
- If the Last Sale is within the indication range, the Book shall use the Last Sale as the Reference Price
- If multiple indications have been published, the last indication that the Exchange makes available shall be used as the Reference Price.

Examples:

- 1) XYZ security closed at a price of \$15.00 on April 1, 2009. On April 2, 2009, the Exchange publishes a pre-opening indication for XYZ with a bid price of \$16.00 and an offer price of \$16.50. The reference price for the NYSE Order Imbalance datafeed in XYZ security on April 2, 2009 will be \$16.00.
- 2) XYZ security closed at a price of \$15.00 on April 1, 2009. On April 2, 2009, the Exchange publishes a pre-opening indication for XYZ with a bid price of \$14.00 and an offer price of \$14.50. The reference price for XYZ data feed on April 2, 2009 will be \$14.50.
- 3) XYZ security closed at a price of \$15.00 on April 1, 2009. On April 2, 2009, the Exchange publishes pre-opening indication for XYZ with a bid price of \$14.99 and an offer price of \$15.02. The reference price for XYZ data feed on April 2, 2009 will be \$15.00.

In the case of pre-closing imbalances, the NYSE Order Imbalance Information service that is the subject of the Approval Order also uses the last sale price as the reference price for pre-closing Order Imbalance Information that it disseminated pursuant to Exchange Rule 123C (“Market on the Close Policy and Expiration Procedures”).

The Exchange proposes to modify what it uses as the reference price when the last sale price does not fall within the best bid and the best offer on the Exchange at the time that the Exchange calculates a closing imbalance for a security,⁷ as follows:

- If the last sale price is lower than the Bid price, then the Bid Price will serve as the Reference Price.
- If the last sale price is higher than the Offer price, then the Offer Price will serve as the Reference Price.
- If the last sale price falls within the Exchange’s best bid and offer for the security, the last sale price will serve as the Reference Price.

Examples:

- 1) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of \$15.00. The quote prior to the dissemination of the datafeed is 100 shares bid at a price of \$15.02 and 500 shares offered at a \$15.20. The reference price for the NYSE Order Imbalance datafeed in XYZ security will be \$15.02.
- 2) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of \$15.00. The quote prior to the dissemination of the datafeed is 100 shares bid at a price of \$14.91 and 500 shares offered at a

⁷ Currently NYSE securities operating on the 14.0 Technology Release employ the proposed method to determine the reference price.

\$14.99. The reference price for the NYSE Order Imbalance datafeed in XYZ security will be \$14.99.

- 3) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of \$15.00. The quote prior to the dissemination of the datafeed is 100 shares bid at a price of \$14.98 and 500 shares offered at a \$15.02. The reference price for the NYSE Order Imbalance datafeed in XYZ security will be \$15.00.

The Exchange believes that the amendments to the reference price for the publication of the NYSE Order Imbalance Information service will enhance the value of the product by providing the user with a more accurate depiction of the market interest available in the security.

Orders Included in NYSE Pre-Opening Order Imbalance Information Reports

The Exchange proposes to add all DMM s-quote interest eligible for execution in the opening transaction, at no additional charge, to the order information currently included in the pre-opening NYSE Order Imbalance Information Reports. DMM s-quote interest is currently eligible for execution in the opening transaction but is not included in the Order Imbalance Information Report. The Exchange believes that the addition of DMM s-quote interest to the Order Imbalance Information Report will enhance the value of this product by including additional information about the electronic interest eligible to trade at the opening.

2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the “1934 Act”) for this proposed rule change are the requirements under Section 6(b)(5) that the rules of an exchange be 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 proposal benefits investors by modifying NYSE Order Imbalance Information to provide investors with a more accurate depiction of the market and additional information on the open for a security.

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: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing in order to immediately provide market participants with the most accurate supplemental market information prior to the execution of the opening and closing transactions on the Exchange. The Commission believes

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to 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. The Exchange has satisfied this requirement.

such waiver is consistent with the protection of investors and the public interest.¹⁰ Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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-2009-41 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-2009-41. 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

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. See 15 U.S.C. 78c(f).

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 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-2009-41 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

Elizabeth M. Murphy
Secretary

¹¹ 17 CFR 200.30-3(a)(12).