

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60179; File No. SR-NYSE-2009-61)

June 26, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Decommissioning the Requirement for Member Organizations to Report Program Trading Activity on the Daily Program Trading Report

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 June 24, 2009, the New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The NYSE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ 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 decommission the requirement for member organizations to report program trading activity on the Daily Program Trading Report (“DPTR”).

The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 19b-4(f)(1).

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 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 implement the previously-approved decommissioning of the requirement that member organizations report program trading activity via the Daily Program Trading Report (“DPTR”).⁵ Because certain entities previously used DPTR data, the Exchange delayed implementing the decommissioning of the DPTR requirement to provide adequate time to coordinate with such entities. The Exchange files this rule proposal to announce the stated policy of the Exchange that the last trade date for which member organizations will be required to file the DPTR with the Exchange will be July 10, 2009 and therefore the last required date to submit the DPTR will be July 14, 2009.

Background

In 2007, the Exchange filed a rule proposal to update the definition of program trading and to make certain conforming changes to rules governing program trading at the Exchange (the “2007 rule filing”).⁶ In addition to amending the definition of program trading, the Exchange

⁵ See Securities Exchange Act Release No. 55793 (May 22, 2007), 72 FR 29567 (May 29, 2007) (SR-NYSE-2007-34).

⁶ See Securities Exchange Act Release No. 55615 (Apr. 11, 2007), 72 FR 19225 (Apr. 17, 2007) (SR-NYSE-2007-34).

proposed to streamline the reporting process that member organizations must follow when reporting program trading.⁷

In the 2007 rule filing, the Exchange proposed to eliminate DPTR. The 2007 filing noted that there was some duplication between the DPTR data and the audit trail information that member organizations provide to the Exchange via account-type indicators at the time that they submit program trades to the Exchange. The Exchange uses account type indicators to capture program trade information for those portions of the program trades that are submitted to and executed on the Exchange.

In the 2007 rule filing, the Exchange also proposed to redefine two of the existing program trading related account type indicators.

Following approval of the rule filing and after consultation with the Commission the Exchange announced that it would delay implementation of the two redefined account type indicators, and pending such implementation, member organizations would be required to continue filing the DPTR with the Exchange.⁸ The current delayed implementation date of the redefined account type indicators is June 30, 2009. Accordingly, the Exchange still requires member organizations to submit DPTR.

Proposed Stated Policy, Practice, and Interpretation of Exchange Rules

The Exchange proposes to implement the decommissioning of the DPTR requirement following the July 10, 2009 trade date. Accordingly, the last required submission of the DPTR

⁷ Beginning in 1988, the Exchange required that member organizations report program trading by the close of the second business day following the trade day on the DPTR.

⁸ See NYSE Information Memos 07-52 (June 11, 2007), 07-88 (Aug. 31, 2007), 08-4 (Jan. 16, 2008), 08-25 (Apr. 30, 2008), and 08-64 (Dec. 15, 2008) (extending the reporting requirement changes to June 30, 2009).

will be on July 14, 2009, which is the second business day after the last trade date for which the DPTR is required.

Separately, the Exchange notes that in connection with this proposed stated policy, the Exchange will not be implementing the proposed redefined program trading account type indicators (J and K) and will continue to use the existing J and K audit trail account types. Upon further analysis and based on industry input, the Exchange has determined that these redefined account type indicators do not enhance the regulatory audit trail because the proposed redefined J and K could subsume some of the other, more granular account type indicators that the Exchange currently receives. Accordingly, the Exchange sees no benefit to changing the current J and K account types.

In lieu of DPTR, the Exchange will utilize existing account type indicator data – which captures program trade information for those orders that are submitted to and executed on the Exchange – to report to the Commission on a weekly basis the program trading statistics for portions of program trades executed on the Exchange. Accordingly, beginning on July 23, 2009, the Exchange will provide the Commission with its weekly statistics on program trading based on account type indicator data rather than DPTR data. Similarly, at the same time, the weekly statistics regarding program trades that the Exchange provides to media outlets will also be derived from account type indicator data rather than the DPTR.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act⁹ which requires the rules of an exchange 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

⁹ 15 U.S.C. 78f(b)(5).

system and, in general, to protect investors and the public interest. In particular, because the Commission has previously approved the decommissioning of the DPTR, this rule filing simply implements a previously-approved change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(1)¹¹ thereunder. The proposed rule change effects a change that constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. In particular, the Commission previously approved the elimination of the DPTR reporting requirements. The Exchange has delayed implementing that prior rule change and through this rule filing, announces its stated policy that July 10, 2009 will be the last trade date for which member organizations will be required to file the DPTR.

At any time within 60 days of the filing of such 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 19b-4(f)(1).

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-2009-61 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-61. 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 NYSE. 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-2009-61 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).