

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60216; File No. SR-NYSE-2009-59)

July 1, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Exchange Rules to Allow Customers to Transmit Orders on the Exchange With Settlement Instructions of “Cash,” “Next Day,” and “Seller’s Option” Directly to a Floor Broker for Manual Execution

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 June 23, 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 several Exchange rules to allow customers to transmit orders with settlement instructions for other than regular way settlement, *i.e.*, settling on the third business day following the trade date. Such orders must be transmitted to a Floor broker for manual handling on the Exchange. 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

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange proposes to allow customers to transmit orders for execution on the Exchange with the settlement instructions of “cash”, “next day” and “seller’s option” (collectively referred to herein as “non-regular way settlement”) directly to a Floor broker for manual execution. Specifically, the Exchange seeks to adopt Rule 14 (Non-Regular Way Settlement Instructions for Orders) to provide that orders with these types of settlement instructions may only be submitted directly to a Floor broker. In addition, the Exchange proposes to add references to Rule 14 to several Exchange rules which relate in some way to these settlement instructions.

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

⁴ See SR-NYSE Amex-2009-31.

Background

On March 13, 2009, the Exchange's amended rule became operative to require that all orders submitted to Exchange be submitted for regular way settlement (i.e., settlement on the third business day following trade date).⁵ Prior to that requirement, the Exchange allowed market participants to submit orders that contained non-regular way settlement instructions directly to the Exchange matching/execution engine (Display Book), or to a Floor broker for representation. Cash settlement instructions required delivery of the securities the same day as the transaction. Next day settlement instructions required delivery of the securities on the first business day following the transaction. Orders that had settlement instructions of seller's option afforded the seller the right to deliver the security or bond at any time within a specified period, ranging from not less than two business days to not more than 180 days for stocks and not less than two business days and no more than sixty days for U.S. government securities.

If an order containing non-regular way settlement instructions was sent to a Floor broker for representation, then the Floor broker was responsible for going to the post where the security traded to effect the execution of that order. However, Display Book electronically submitted orders that contained non-regular way settlement instructions were ineligible for immediate and automatic execution. Rather, the orders bypassed the Display Book, and were printed on paper at the Designated Market Makers' ("DMMs") post locations, along with other administrative messages. Thereafter, the orders containing non-regular way settlement instructions required the DMM and the trading assistant to realize that the document printed was in fact an order which in some instances caused delay in the execution of the order. The DMM was then responsible for

⁵ See Securities and Exchange Act Release No. 59446 (February 25, 2009), 74 FR 9323 (March 3, 2009)(SR-NYSE-2009-17). The Exchange notes that the implementation of the changes described in this filing continue to be made on a security by security basis and, to date, are not operative in every security traded on the Exchange.

the manual execution of the order. The manual intervention required by the DMM and trading assistant at the post location in the processing of orders containing non-regular way settlement instructions put the orders at the very real risk of “missing the market” as a result of the current speed of order execution in the Exchange market.

In addition to the risk of “missing the market”, orders containing non-regular way settlement instructions were generally infrequently used by market participants for much of the trading calendar.⁶ The Exchange therefore provided that only orders for regular way execution be submitted to the Exchange.

Exchange customers, however, have expressed that certain trading strategies and/or the expiration of certain trading instrument (e.g. rights and warrants) require the ability to submit orders to the Exchange that contain instructions for execution with non-regular way settlement. To accommodate the needs of its customers, the Exchange proposes to allow orders containing non-regular way settlement instructions to be transmitted directly to a Floor broker for manual order handling.

⁶ The Exchanges review of the different types of orders received during the week of May 12, 2008 through May 16, 2008 showed that there were on average 28 cash orders (with an average of 1,653 shares per day), 48 next day orders (average of 763 shares per day) and 2 seller’s option orders (average of 2,839 shares per day) utilized by market participants each day. By comparison, for May 2008, the Exchange received an average of 92.2 million orders a day. Even during the last five trading days of 2007, when the most cash, next day and seller’s option orders are received, the average per day submissions were 123 for cash (average of 896 shares per day), 199 for next day (average of 1,848 shares per day) and 10 for seller’s option (average of 11,679 shares per day). The Exchange did however, execute an atypical amount of shares of shares submitted with cash, next day and seller’s option settlement instructions on December 30th and 31st of 2008. Specifically, on December 30, 2008, 126,504 shares were executed on a cash settlement basis, 10,284,879 shares for next day settlement and 10,000,000 shares for seller’s option settlement. In addition, there were 8,110,228 shares executed for cash settlement on December 31, 2008. The Exchange maintains that this level of activity was reflective of the economic events of 2008 and is unrelated to usual trading patterns for these settlement types.

Proposed Floor Broker Handling of Cash, Next Day, Seller's Option Settlement Instructions

The Exchange's commitment to provide its market participants with immediate and automatic execution in the most efficient manner requires the establishment of a separate order handling protocol for orders that contain non-regular way settlement instructions. Prior to the rule changes proposed in SR-NYSE-2009-17, the required manual intervention by the DMMs and DMM trading assistants did not provide for efficient order handling protocol because it put the orders at the very real risk of "missing the market" as a result of the current speed of order execution in the Exchange market. However, the Exchange recognizes that there may be a continuing need for the availability of orders with non-regular way settlement instructions in its marketplace. To that end, the Exchange has designed a method of entry for these orders that will involve minimal manual handling by DMMs.

The Exchange therefore proposes to adopt NYSE Rule 14 ("Non-Regular Way Settlement Instructions for Orders") to allow customers to directly transmit an order containing instructions for cash, next day and seller's option settlement as described above to a Floor broker for representation in the trading crowd.⁷ DMMs will not have order handling responsibility for these orders and Exchange systems that route orders to the Display Book will not accept orders containing non-regular way instructions. Routing orders to Floor brokers would then be the only

⁷ The Exchange notes that as currently configured, the only Exchange system that will accept orders with non-regular way instructions is the Broker Booth Support System ("BBSS"). Thus, these types of orders cannot be transmitted directly to a Floor broker's hand-held device. In addition, odd-lot orders with non-regular way settlement instructions will not be accepted in BBSS and, therefore, will not be permitted.

acceptable way for orders with non-regular way settlement instructions to be transmitted to the Exchange.⁸

Proposed Rule 14 will define the acceptable non-regular way settlement instructions valid on the Exchange. An order submitted with cash settlement instructions would require delivery of the securities on the same day as the trade date. Next day settlement instructions would require delivery of the securities on the first business day following the trade date. Orders that have settlement instructions of seller's option would afford the seller the right to deliver the security or bond at any time within a specified period, ranging from not less than two business days to not more than sixty days for securities and not less than two business days and no more than sixty days for U.S. government securities. The Exchange modified from the previously effective version of this rule the maximum days for a seller's option from 180 days to sixty days to reflect current industry practice for securities other than U.S. government securities.

Further, pursuant to proposed NYSE Rule 14, a customer that requests the execution of an order pursuant to non-regular way settlement instructions of cash, next day or seller's option must send the order directly to a Floor broker booth location on the Floor of the NYSE. A Floor broker that receives an order containing settlement instructions for cash, next day or seller's option must enter the order into broker systems prior to representing the order in the trading crowd to comply with his or her FESC obligations.⁹ Thereafter, the Floor broker would be

⁸ On June 10, 2009, the Exchange implemented this proposal after submitting a draft of this filing to the Commission, but prior to formal submission and receipt of a waiver of the 30-day delayed operative date.

⁹ FESC stands for "Front End Systemic Capture". Under NYSE Rule 123 (Records of Orders) members and member organizations are required to enter the details of an order, including any modification or cancellation, into a system which electronically timestamps the time of entry prior to representing or executing that order on the Floor.

allowed to represent the order in the trading crowd.¹⁰ Executions by the Floor broker of order containing non-regular way settlement would be reported to the Consolidated Tape with cash, next day or seller's option transaction indicators as appropriate.

In addition, the Exchange proposes to amend NYSE Rules 64 (Bonds, Rights and 100-Share-Unit Stocks), 66 (U.S. Government Securities)¹¹, 130 (Overnight Comparison of Exchange Transactions), to allow for non-regular way settlement as prescribed by proposed Rule 14. The Exchange further proposes to amend Rules 137 (Written Contracts) and 137A (Samples of Written Contracts) to include seller's options in written contracts. In addition, the Exchange further proposes to reinstate reserved Rules 73, 177 and 179 to re-establish "Seller's Option", "Delivery Time – "Cash" Contracts" and "Seller's Option" in order to specify precedence and delivery times for transactions made pursuant to cash and seller's option settlement instructions. The Exchange further proposes to amend NYSE Rule 189 (Unit of Delivery) to specify that the buyer shall not be required to accept a portion of a lot of securities contracted for before the seller's option expiration date. NYSE Rules 235 (Ex-Dividends, Ex-Rights), 236 (Ex-Warrants), 257 (Deliveries After "Ex" Date) and 282 (Buy-In Procedures) to add specific provisions related to orders submitted with cash settlement instructions. NYSE Rules 241 (Interest - Added to Contract Price) to add specific provisions related to orders submitted with seller's option settlement instructions.

With respect to Rule 64, the Exchange proposes to add provisions that were previously a part of the Rule before the Exchange eliminated non-regular way settlement instructions under SR-NYSE-2009-17. Specifically, the Exchange proposes to:

¹⁰ The Exchange notes that Floor brokers who accept customer orders with non-regular way settlement instructions will have the same best execution responsibilities in representing these orders as they would for regular way orders.

¹¹ Currently, the Exchange does not trade U.S. Government securities.

(1) add paragraph (a)(ii) to require that on the second and third business days preceding the final day for subscription, bids and offers in rights may only be made for next day settlement, and may only be made for cash settlement on the day preceding the final day for subscription;

(2) add paragraph (b) to require that all trades for other than regular way settlement that are more than .10 point away from the regular way bid or offer must be approved by a Floor Official, except that this will be expanded to .25 during the last trading week of the calendar year; and

(3) add paragraph (c) to require that while for seller's option trades the settlement date is established in business days, they must be reported to the tape in calendar days.

The Exchange believes these provisions are necessary to continue to regulate non-regular way trades, as they were before they were eliminated.

The Exchange also proposes to add references to proposed NYSE Rule 14 and non-regular way settlement instructions to those rules that have provisions that implicate settlement instructions. Specifically, the Exchange proposes to add the reference to NYSE Rules 12 (“Business Day”) and 123 (Record of Orders).

Odd Lot Orders

Proposed NYSE Rule 14 will only permit non-regular way settlement instructions for round lot orders and orders that are comprised of a round lot and an odd lot, i.e., partial round lot orders (“PRLs”). Odd lot orders with non-regular way settlement instructions will not be acceptable for execution on the Exchange. Exchange systems, order execution and post settlement processing will not support non-regular way settlement for odd lots. PRL orders submitted with non-regular way settlement instructions will be executed pursuant to the provisions of proposed Rule 124.40 (ii). Proposed Rule 124.40 (ii) will require that the odd-lot portion of the PRL will be executed at the same price of the last round lot in the order to better facilitate the post settlement processing of these orders.

The Exchange believes that the instant proposal will meet the needs of its customers to submit orders for non-regular way settlement in a manner that will provide effective representation for the customer in the Exchange's current market.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5)¹² that an exchange have rules that are 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 instant filing accomplishes these goals by restoring the ability of Exchange market participants to enter orders with other than "regular way" settlement instructions, and allow these orders to be represented at the point of sale in the Exchange's auction market while reducing the risk of such orders missing the market.

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder¹⁴ because the foregoing proposed rule: (1) does not

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) 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.¹⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁶ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposed rule change restores the ability of market participants to submit, and Floor brokers to receive, orders containing non-regular way settlement instructions. Accordingly, the proposed rule change does not raise any novel or troubling issues. For this reason, the Commission designates the proposed rule change as operative upon filing.¹⁸

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

¹⁵ 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.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 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. 15 U.S.C. 78c(f).

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-2009-59 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-2009-59. 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 the filing will also be available for inspection and copying at the principal office

of the self-regulatory organization. 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-2009-59 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.¹⁹

Elizabeth M. Murphy
Secretary

¹⁹ 17 CFR 200.30-3(a)(12).