

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61130; File No. SR-NYSE-2009-118)

December 8, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Exclude Early Closing Days from Certain ADV Calculations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 1, 2009, New York Stock Exchange LLC (the “NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. 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 its price list to provide that data from days on which the Exchange closes early will not be included in calculations of average daily trading volume for the applicable month in determining member organizations’ qualification for pricing tiers and qualification of Supplemental Liquidity Providers (“SLPs”) for liquidity credits. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 NYSE charges member organizations a lower transaction fee per share when they provide liquidity with respect to specified levels of average daily trading volume (“ADV”) in the applicable month. In addition, the Exchange pays credits to SLPs for providing liquidity to the Exchange and, in doing so, pays higher credits to SLPs that provide liquidity in excess of specified levels of ADV for the applicable month. The Exchange proposes to exclude trading volume data from those days on which it closes early from calculations of ADV used in determining member organizations’ and SLPs’ qualification for more favorable transaction pricing and liquidity credit tiers. The Exchange closes early on a small number of trading days in the course of the year, which are generally the trading days before or after a public holiday (e.g., Christmas Eve and the day after Thanksgiving). As the trading on those days occurs over a shorter time period and is typically very light, the Exchange believes that including it in ADV calculations distorts ADV for the applicable month. Consequently, the Exchange believes it is appropriate to exclude days on which it closes early from ADV calculations. The Exchange notes that it will continue to include early closing days in ADV calculations when determining whether securities are “More Active Securities” or “Less Active Securities” for purposes of determining which rebate tier Designated Market Makers qualify for when adding liquidity to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6³ of the Act in general and Section 6(b)(4) of the Act⁴ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges, as ADV will be calculated on the same basis for purposes of determining the qualification of all member organizations for more favorable transaction pricing and liquidity credit tiers.

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 purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁵ of the Act and Rule 19b-4(f)(2)⁶ thereunder.

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

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

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, as amended, 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-2009-118 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-2009-118. 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,⁷ 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 Section, 100 F

⁷ The text of the proposed rule change is available at the Commission's Web site (<http://www.sec.gov>).

Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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-2009-118 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.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).