

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61235; File No. SR-NYSE-2009-126)

December 23, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rules 116 and 123C to Allow More Than One Closing Print to be Reported to the Consolidated Tape for Closing Transactions That Exceed 99,999,999 Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 16, 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 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 amending [sic] the provisions of NYSE Rules 116 (“Stop” Constitutes Guarantee) and 123C (Market On The Close Policy And Expiration Procedures) to allow on a temporary basis more than one closing print to be reported to the Consolidated Tape for closing transactions that exceed 99,999,999 shares. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://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 received on the proposed rule change. The text of those statements may be examined at the places

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing the Exchange seeks to amend the provisions of NYSE Rules 116.40 ("Stop" Constitutes Guarantee) and 123C (Market On The Close Policy And Expiration Procedures) to allow more than one closing print to be reported to the Consolidated Tape for closing transactions that exceed 99,999,999 shares.

Currently, pursuant to NYSE Rules 116.40(c) and 123C(3), the closing transaction is reported to the Consolidated Tape last sale reporting system as a single transaction via a single print. As a result of a temporary size limitation in a new market data distribution system, Exchange systems currently cannot support prints greater than 99,999,999 shares.<sup>3</sup> Therefore, executions of greater than 99,999,999 shares must be sent to the Consolidated Tape in more than one print. The multiple prints together will reflect the cumulative volume of the single closing transaction. Because this is inconsistent with the provisions of NYSE Rules 116.40(c) and 123C(3), the Exchange proposes to amend the provisions of those rules to provide that any closing transaction exceeding 99,999,999 shares will be reported to the Consolidated Tape last sale reporting system in more than one print.<sup>4</sup>

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<sup>3</sup> The Exchange anticipates that the temporary size limitation in the new market data distribution system will be corrected by no later than the end of February 2010.

<sup>4</sup> On December 4, 2009, the closing transaction in Bank of America's security exceeded 99,999,999 shares. On that date the Exchange filed for a temporary exemption to the provisions of NYSE Rules 116 and 123C. See Securities and Exchange Act Release No. 61125 (December 7, 2009), 74 FR 66182 (December 14, 2009) (SR-NYSE-2009-122).

The Exchange believes that reporting multiple prints will not have a detrimental affect on investors because the prints will each be marked as the closing print. Moreover, the Exchange intends to provide notice to its customers through its Trader Alert System when a closing transaction exceeds 99,999,999 shares and requires more than one print.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 the proposed rule change will facilitate the timely and efficient reporting of the closing transaction on the Exchange and thus ultimately serve to protect investors and the public interest.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, so that the new procedures will be operative in the event that a closing transaction whose volume exceeds 99,999,999 shares occurs in the near future. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>13</sup>

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 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. The Exchange has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-126 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-2009-126. 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,<sup>14</sup> 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

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<sup>14</sup> The text of the proposed rule change is available on the Commission's Web site at [www.sec.gov](http://www.sec.gov).

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 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 the 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-2009-126 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.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).