

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62231; File No. SR-NYSE-2010-42)

June 4, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 123C(9)(a)(1) to Extend the Operation of a Pilot Operating Pursuant to the Rule Until December 1, 2010

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 27, 2010, 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 Rule 123C(9)(a)(1) to extend the operation of a pilot operating pursuant the Rule until December 1, 2010. The text of the proposed rule change is available at the Exchange, on the Commission’s Web site at <http://www.sec.gov>, 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> 15 U.S.C. 78a.

<sup>3</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

The New York Stock Exchange (“NYSE” or the “Exchange”) proposes to amend NYSE Rule 123C(9)(a)(1) to extend the operation of a pilot that allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price (“Extreme Order Imbalances Pilot” or “Pilot”)<sup>4</sup> until December 1, 2010.<sup>5</sup>

Background

Pursuant to NYSE Rule 123C(9)(a)(1), the Exchange may suspend NYSE Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems or represented to a DMM orally at or near the close. The provisions of NYSE Rule 123C(9)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) how often a Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the

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<sup>4</sup> See Securities Exchange Act Release No. 59755 (April 13, 2009) 74 FR 18009 (April 20, 2009) (SR-NYSE-2009-18); see also, Securities and Exchange Act Release No. 61264 (December 31, 2009) 75 FR 1107 (January 8, 2010) (SR-NYSE-2009-131) (extending the operation of the pilot from December 31, 2009 to March 1, 2010); Securities Exchange Act Release No. 61612, (March 1, 2010), (SR-NYSE-2010-11) (extending the operation of the pilot from March 1, 2010 to June 1, 2010).

<sup>5</sup> The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. See SR-NYSEAmex-2010-50.

Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4:00 p.m.

During the operation of the Pilot, the Exchange believed that the systems modifications to allow Exchange systems to accept orders electronically after 4:00 p.m. would not be as onerous as previously believed when the Pilot was initially commenced. The Exchange completed the system modifications necessary to accept orders electronically after 4:00 p.m. and began the process of testing the modifications. The Exchange therefore filed to extend the Extreme Order Imbalance Pilot until the earlier of SEC approval to make such Pilot permanent or June 1, 2010.<sup>6</sup> At the time, the Exchange anticipated that its quality assurance review process would be completed by June 1, 2010 and it would be able to operate under the new system. The quality assurance review determined that additional testing was required in order to assure the optimal functioning of the system modifications. Given unanticipated market wide initiatives that were [sic] (i.e., short sale and stock-by-stock circuit breakers), which require systemic modifications and a significant allocation of quality assurance resources, additional testing is not feasible at this time.

#### Proposal to Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

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<sup>6</sup> See Securities Exchange Act Release No. 61612, (March 1, 2010), (SR-NYSE-2010-11) (extending the operation of the pilot from March 1, 2010 to June 1, 2010).

NYSE Rule 123C(9) was intended to be and has been invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price. This is evidenced by the fact that since the inception of the pilot in April 2009, the Exchange has invoked the provisions of NYSE Rule 123C(9)(a)(1) on only four occasions.

Given the infrequency of these situations, the Exchange proposes to extend the operation of the Pilot for a six month period to allow the Exchange to complete systemic modifications required to implement the short sale and stock-by-stock circuit breakers, as well as to upgrade server capacity and an upcoming initiative to incorporate odd-lot orders into the round lot market and decommission its Odd-lot System. During the six month period, the Exchange will continue to monitor and provide to the Commission information on how often it suspends NYSE Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. At the end of that period, the Exchange will be in a better position to determine the efficacy of providing any additional functionality under this Pilot rule. The Exchange therefore requests an extension from the current expiration date of June 1, 2010, until December 1, 2010.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>7</sup> 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

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

Exchange believes that the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to determine the efficacy of providing any additional functionality under this Pilot rule. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

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 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) does not become operative for 30 days after the date of the filing, 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>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give 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.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program was scheduled to expire on June 1, 2010, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested the extension to allow the Exchange time to fully evaluate the Extreme Order Imbalance Pilot. Therefore, the Commission designates the proposed rule change operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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:

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<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>12</sup> 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).

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 No. SR-NYSE-2010-42 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 No. SR-NYSE-2010-42. 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>13</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 that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

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<sup>13</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSE-2010-42 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>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).