

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62609; File No. SR-NYSE-2010-55)

July 30, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC that Constitutes a Stated Interpretation with Respect to the Meaning, Administration, and Enforcement of Rule 128(g)

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 July 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 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 a rule change that constitutes a stated interpretation with respect to the meaning, administration, and enforcement of Rule 128(g). 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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

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

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

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 Exchange proposes to adopt a stated interpretation with respect to the meaning, administration, and enforcement of Rule 128(g), concerning the ability of an Exchange Officer to act on his or her own motion to review potentially erroneous executions.

Rule 128(g) provides that an Officer, acting on his or her own motion, may review potentially erroneous executions that occur on the Exchange and may, among other things, declare such transaction(s) null and void. When extraordinary circumstances exist, any such action must be taken by no later than the start of the Regular Trading Hours of the Exchange on the trading day following the date of execution(s) under review.

For purposes of Rule 128(g), the Exchange believes that a series of transactions in a particular security on one or more trading days may<sup>1</sup> [sic] be viewed as one event if all such transactions were effected based on incorrect or grossly misinterpreted structural or issuance information, resulting in a severe pricing dislocation for all such transactions (the "Event"). In such circumstances, the Event may be considered to constitute extraordinary circumstances pursuant to Rule 128(g). An Officer acting on his or her own motion may take action to declare all transactions that occurred during the Event null and void not later than before the start of the next trading date following the last such transaction in the Event. If the security is halted immediately following the last transaction in the Event, and before pricing ceases to be dislocated, the next trading date for all transactions comprising the Event will be the date on which trading resumes following the halt.

In particular, the Exchange believes that the interpretation is applicable to a recent event involving an exchange offer (“Exchange Offer”) made by U.S. Bancorp in which there were a series of executions based on incorrect or grossly misinterpreted structural or issuance information, as a result of which the securities traded at severely dislocated prices.

In May 2010, U.S. Bancorp commenced an offer to exchange up to 1,250,000 Depositary Shares, each representing a 1/100 the interest in a share of Series A Non-Cumulative Perpetual Preferred Stock, \$100,000 liquidation preference per share (the “Depositary Shares”) for any and all of the 1,250,000 outstanding 6.189% Fixed-to-Floating Rate Normal ITS issued by U.S. Bancorp Capital IX, each with a liquidation amount of \$1,000 (the “Normal ITS”). The Depositary Shares were approved for listing on the NYSE under the symbol USB PRA. On June 11, 2010, the NYSE opened the shares on a quote, but trading did not commence until June 16, 2010 at prices in the range of \$79.00 per share. There were additional executions on the Exchange in that price range on June 17 and 18, 2010.

On June 18, 2010, Exchange staff learned that the prices at which trades had executed were not consistent with the value of the security, which was closer to an \$800 price. Upon learning of the pricing disparity, the Exchange immediately halted trading in the Depositary Shares on all markets and alerted U.S. Bancorp and other exchanges that traded the Depositary Shares of the pricing discrepancy.

For purposes of this stated interpretation, the Exchange believes that the trading in Depositary Shares from June 16 to June 18 constituted a single event because that trading was based on incorrect or grossly misinterpreted structural or issuance information that resulted in severe price dislocation (the “U.S. Bancorp Event”). Because the Depositary Shares were halted before the price of the Depositary Shares ceased to be dislocated, and remain halted, the

Exchange believes that, pursuant to this interpretation, an Officer may review trading in Depository Shares and may declare null and void all trading in the U.S. Bancorp Event, provided such declaration is made before the security resumes trading following the trading halt.

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>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>4</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 that the proposed stated interpretation promotes just and equitable principles of trade because it ensures that a potentially erroneous execution may be reviewed if such executions are based on incorrect or grossly misinterpreted structural or issuance information, resulting in a severe pricing dislocation for all such transactions. The stated interpretation also enables the Exchange to declare null and void such potentially erroneous executions during a halt in trading, but before trading resumes at a price based on the corrected information.

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.

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<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

### 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)<sup>5</sup> of the Act and Rule 19b-4(f)(1)<sup>6</sup> thereunder. At any time within the 60-day period beginning on the date of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-2010-55 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-2010-55. 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

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

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 Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will 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-2010-55 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>7</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).