

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68220; File No. SR-NYSE-2012-66)

November 13, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Interim Rule Change Relating to Rule 440B(b)

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 November 13, 2012, 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 an interim proposed rule change related to Rule 440B(b) to provide that on November 12, 2012, the closing price for 216 Exchange-listed securities that did not have a closing transaction on the Exchange was the consolidated last sale price available as of the end of regular trading hours on November 12, 2012, and that such closing price shall be the Trigger Price for purposes of determining whether a Short Sale Price Test has been triggered pursuant to Rule 440B(c) on November 13, 2012. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 an interim proposed rule change for Rule 440B(b) to provide that on November 12, 2012, the closing price for 216 Exchange-listed securities that did not have a closing transaction on the Exchange was the consolidated last sale price available as of the end of regular trading hours on November 12, 2012, and that such closing price shall be the Trigger Price for purposes of determining whether a Short Sale Price Test has been triggered pursuant to Rule 440B(c) on November 13, 2012. The Exchange proposes that this interim proposed rule change be in effect until the Exchange has an opportunity to amend its rules on a permanent basis.

Rule 440B sets forth how the Exchange implements the provisions of Rule 201 of Regulation SHO (“Rule 201”)⁴ under the Securities Exchange Act of 1934 (the “Act”) which, if triggered, imposes a restriction on the prices at which securities may be sold short (“Short Sale Price Test”). Among other things, Rule 201 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display

⁴ 17 CFR 242.201.

of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of a covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. Accordingly, Rule 201(b)(1)(i) delegates to the listing market how to determine the closing price for a security.

Due to a systems issue at the Exchange on November 12, 2012, the Exchange was unexpectedly unable to close 216 Exchange-listed securities pursuant to the procedures set forth in Rule 123C. The Exchange notes that market participants rely on the Exchange's official closing price for purposes of calculating the value of mutual funds, exchange traded funds, and various indices, among other things. Accordingly, on November 12, 2012, the Exchange needed to designate an official closing price for the 216 affected symbols that did not have a closing transaction at the Exchange. Because those securities continued to trade on other markets, the Exchange determined that the appropriate official closing price for those securities should be the consolidated last sale price available as of the end of regular trading hours on November 12, 2012.⁵ The Exchange believes that using the consolidated last sale price available as of the end of regular trading hours best approximated the market's determination of the appropriate price of such securities in the absence of a closing transaction on the listing market.

Rule 440B establishes procedures for the Exchange, as a listing market, to determine whether a Short Sale Price Test has been triggered for a covered security. Among other things, Rule 440B(b) defines the "Trigger Price" as the security's closing price on the listing market as

⁵ See <http://markets.nyx.com/nyse/market-status/view/11558>. The Exchange notes that for the 216 affected securities, 212 securities had a consolidated last-sale eligible trade on November 12, 2012. For the four symbols that did not have a transaction on November 12, 2012, the Exchange used the last available consolidated last-sale eligible transaction that occurred during regular trading hours.

of the end of regular trading hours on the prior day. Rule 440B(c)(2) provides that if a covered security did not trade on the Exchange on the prior trading day (due to a trading halt, trading suspension, or otherwise), the Exchange's determination of the Trigger Price shall be based on the last sale price on the Exchange for that security on the most recent day on which the security traded. The Exchange believes that Rule 440B(c)(2) does not contemplate how the Exchange should determine the closing price in the unique circumstances that occurred on November 12, 2012, namely, that due to a systems issue, the Exchange was unable to conduct a closing transaction in securities that otherwise were eligible to trade on other markets. In particular, the reason why the Exchange did not trade the 216 securities was not because of a trading halt or trading suspension, and the Exchange does not believe the "or otherwise" language in Rule 440B(c)(2) was designed to address the unanticipated scenario on November 12, 2012 when due to a systems issue, the Exchange was unable to hold a closing transaction in those securities.

Because the Exchange has determined that the official closing price of the 216 affected securities should be the consolidated last sale price available as of the end of regular trading hours, the Exchange similarly believes that such consolidated last sale prices should be the closing price for purposes of determining the Trigger Price pursuant to Rule 440B(b). Accordingly, the Exchange proposes this interim proposed rule change for Rule 440B(b) to provide that for circumstances when the Exchange does not have a closing transaction, but securities are otherwise eligible to trade on other markets, the Exchange shall use the consolidated last sale price available as of the end of regular trading hours as the closing price for purposes of Rule 440B. The Exchange further proposes that such closing price shall be the Trigger Price for purposes of determining whether a Short Sale Price Test has been triggered on the following day pursuant to Rule 440B(c). The Exchange notes that the proposed interim rule

proposal is intended to be in place only until the Exchange has an opportunity to amend its rules on a permanent basis to address this gap in its rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change will promote just and equitable principles of trade because it provides for an interim measure that provides clarity of how the Exchange, as a listing market, determined the Trigger Price for 216 securities that did not have a closing transaction at the Exchange on November 12, 2012. In particular, the Exchange believes that using the consolidated last sale price available as of the end of regular trading hours as the official closing price for the affected securities on November 12, 2012 promotes just and equitable principles of trade because the consolidated last sale price represents the market's determination of the appropriate price of the securities in the absence of a closing auction on the primary market. The Exchange further believes that using a Trigger Price based on the consolidated last sale price available as of the end of regular trading hours for purposes of determining whether a Short Sale Price Test has been triggered on November 13, 2012 promotes just and equitable principles of trade because it provides transparency of how the Exchange

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

determined the closing price for purposes of triggering a Short Sale Price Test on November 13, 2012.

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 the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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 and Rule 19b-4(f)(6)(iii) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 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, 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 Commission has determined to waive the five-day pre-filing period in this case.

¹¹ 17 CFR 240.19b-4(f)(6).

19b4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.¹³ Waiving the 30-day operative delay will allow the Exchange to provide transparency for how the Exchange determined the closing price on November 12, 2012. The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and, therefore, designates the proposal as operative upon filing.

At any time within 60 days of the filing of such 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. Please include File Number SR-NYSE-2012-66 on the subject line.

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2012-66. 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 website (<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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2012-66 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).