

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52255; File No. SR-NYSE-2005-54)

August 15, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) to Eliminate the Requirement to Publish Pre-Opening Market Order Imbalances on Expiration Fridays

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 26, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 proposed rule change seeks to amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) to eliminate the requirement to publish pre-opening market order imbalances on expiration Fridays.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

**Market on the Close Policy and Expiration Procedures**

**Rule 123C**

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

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

## **(6) Expiration Friday Auxiliary Procedures for the Opening**

The Exchange adopted monthly auxiliary procedures for expiration days in order to integrate stock orders relating to expiring index contracts into the NYSE's opening procedures in a manner that will assure an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation). The twelve expiration days are "expiration Fridays" which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month.

### **Order Entry**

Stock orders relating to index contracts whose settlement pricing is based upon the "Expiration Friday's" opening prices must be received by SuperDOT or by the specialist by 9:00 a.m.

- These orders may be cancelled or reduced in size. Firms cancelling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Rule 410 provides.
- Stock orders relating to index contracts whose settlement pricing is not based upon the "Expiration Friday's" opening prices may be entered before or after 9:00 a.m.

To facilitate early order entry, SuperDOT (a) will begin accepting orders at 7:30 a.m. and (b) will accept orders of 500,000 shares or less.

“Limit at the opening” (“limit OPG”) orders are permitted, including delivery through Exchange systems.

- Ordinary limit orders may also be entered.

### **Order Identification**

Stock orders relating to opening-price settling contracts must be identified “OPG”.

- Firms entering these orders through SuperDOT, but unable to identify orders as “OPG,” may use a unique branch code or firm identifier (mnemonic) to identify these orders.
- Firms unable to identify these orders in either way, and firms not using SuperDOT, must submit a list of all these orders and related details to the NYSE Market Surveillance Division.

### **[Dissemination of Order Imbalances] Applicability of Regular Opening Procedures**

[On Expiration days, for any stocks having a market order imbalance of 50,000 shares or more at 9:00 a.m., the NYSE will disseminate the size of the order imbalance via the low-speed ticker and the news services as promptly as practicable after 9:00 a.m.]

Except for the auxiliary procedures described above, all stocks are subject to the regular NYSE opening procedures, including price indications where a substantial price change is anticipated. Ten minutes must elapse between a first indication and a stock’s opening. However, when more than one indication is necessary, a stock may open five minutes after the last indication provided that ten minutes must have elapsed from the dissemination of the first indication.

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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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) contains requirements with respect to operation of the Exchange’s market concerning market-on-close (“MOC”) and limit-on-close (“LOC”) orders as well as order entry and imbalance publication requirements for use on expiration days. An “expiration day” as defined in NYSE Rule 123C is “a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (e.g., the Options Clearing Corporation). The twelve expiration days are ‘expiration Fridays’ which fall on the third Friday in every month.” On these expiration days, the Exchange has specific requirements governing the entry of orders in stocks relating to index contracts whose settlement prices are based on the opening prices on the Exchange of the stocks comprising the indices. Stock orders relating to index contracts whose settlement pricing is based upon the expiration Friday’s opening prices must be received by SuperDOT<sup>®</sup> or by the specialist by 9:00 a.m. and must be identified as pertaining to opening-price settling contracts by placing the letters “OPG” on the order.

Both market and limit orders in stocks which are part of an expiring index whose settlement is based on NYSE opening prices may be entered on expiration Fridays. Market and limit orders may also be entered with respect to stocks that are not part of an expiring index whose pricing is based on NYSE opening prices. Under NYSE Rule 123C(6), the Exchange publishes informational order imbalances, as promptly as possible after 9:00 a.m., only with respect to the imbalance of buy and sell market orders, and does not include buy and sell limit orders entered up to that time for execution at the opening. On occasion, this practice of publishing only pre-opening market order imbalances has prompted observations from some market participants that this may provide misleading information, since the imbalances disseminated may not show the true imbalance situation in a stock, especially in those stocks that are part of an expiring index whose settlement is based on NYSE opening prices, since limit orders are not included in the imbalance publication.

To address these concerns, the Exchange proposes to eliminate the publication of pre-opening market order imbalances on expiration Fridays. The Exchange believes that, based on input from its market participants, the publication of only market order imbalances does not provide useful information, especially with respect to those stocks which are part of an expiring index whose settlement is based on NYSE opening prices on one of those days. To calculate an imbalance using pre-opening limit orders, reference prices at various points would have to be used to determine whether the limit order would be marketable, that is, whether, based on the reference price, the limit order could be executed. The Exchange's systems are not able to show pre-opening limit order imbalances in this manner and, thus, the Exchange cannot expand the imbalance publications to include limit orders.

The Exchange will, however, continue to utilize its pre-opening procedures with respect to price indications in situations where the opening price would be affected by an imbalance of buy and sell orders, both market and limit orders, in a security. These procedures, as set forth in NYSE Rule 123D (Openings and Halts in Trading), provide ample notification to the marketplace through multiple price indications if necessary under the supervision of a Floor Official. In addition, Intermarket Trading System procedures contained in NYSE Rule 15 (ITS and Pre-Opening Applications) require pre-opening price notifications if the opening price of a stock is anticipated to be more than .10 of a point from a composite last sale under \$15 or more than .25 of a point from a composite last sale of \$15 or higher. These procedures set forth in NYSE Rules 123D and 15 have proven effective in providing adequate and useful information to the marketplace in situations involving price changes based on order imbalances and the Exchange believes they will continue to do so.

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>3</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.

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

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 No. SR-NYSE-2005-54 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-54. 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, 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-2005-54 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

Jonathan G. Katz  
Secretary

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<sup>4</sup> 17 CFR 200.30-3(a)(12).