

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52421; File No. SR-NYSE-2005-54)

September 14, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of a 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

I. Introduction

On July 26, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposal 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 proposed rule change was published for comment in the Federal Register on August 19, 2005.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

NYSE Rule 123C 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.⁴ Under NYSE Rule 123C(6), the Exchange currently publishes

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 52255 (August 15, 2005), 70 FR 48792.

⁴ NYSE Rule 123C defines an “expiration day” as “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

information 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. The NYSE proposes to eliminate the publication of pre-opening market order imbalances on expiration Fridays. The NYSE believes that the publication of only market order imbalances does not provide useful information, especially with respect to stocks which are part of an expiring index whose settlement is based on NYSE opening prices on one of those days.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities exchange be 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.

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.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

The Commission believes that by amending NYSE Rule 123C to eliminate the publication of pre-opening market order imbalances which do not include limit orders, the NYSE will no longer disseminate information that may have been misleading to investors.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁷ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Commission does not believe that the proposed rule change raises novel regulatory issues. Granting accelerated approval of the proposed rule change allows the NYSE to implement the proposed rule change by the next expiration Friday. Consequently, the Commission believes that it is appropriate to grant accelerated approval to permit the Exchange to eliminate the publication of pre-opening market order imbalances on expiration Fridays as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with the reasons herein, to approve the proposal on an accelerated basis.

⁷ 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSE-2005-54) be, and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz
Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).