

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63541; File No. SR-NYSEAmex-2010-113)

December 14, 2010

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 123C(9)(a)(1) to Extend the Operation of a Pilot Operating Pursuant to the Rule Until June 1, 2011

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 November 30, 2010, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) 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 Amex Equities Rule 123C(9)(a)(1) to extend the operation of a pilot operating pursuant to the Rule until June 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, [www.sec.gov](http://www.sec.gov), 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 Exchange proposes to amend NYSE Amex Equities 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 June 1, 2011.<sup>5</sup> The Pilot is currently scheduled to expire on December 1, 2010.<sup>6</sup>

Background

Pursuant to NYSE Amex Equities Rule 123C(9)(a)(1), the Exchange may suspend NYSE Amex Equities 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 Designated Market Maker ("DMM") orally at or near the close. The provisions

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<sup>4</sup> See Securities Exchange Act Release Nos. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR-NYSEAltr-2009-15) (order granting approval of the Pilot); 60808 (October 9, 2009), 74 FR 53539 (October 19, 2009) (SR-NYSEAmex-2009-70) (extending the operation of the Pilot to December 31, 2009); 61265 (December 31, 2009), 75 FR 1094 (January 8, 2010) (SR-NYSEAmex-2009-96) (extending the operation of the Pilot from December 31, 2009 to March 1, 2010); 61611 (March 1, 2010), 75 FR 10530 (March 8, 2010) (SR-NYSEAmex-2010-15) (extending the operation of the Pilot from March 1, 2010 to June 1, 2010); 62293 (June 15, 2010), 75 FR 35862 (June 23, 2010) (SR-NYSEAmex-2010-50) (extending the operation of the Pilot from June 1, 2010 to December 1, 2010).

<sup>5</sup> The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. See SR-NYSE-2010-79.

<sup>6</sup> See Securities Exchange Act Release No. 62293 (June 15, 2010), 75 FR 35862 (June 23, 2010) (SR-NYSEAmex-2010-50) at note 6. Due to a technical deficiency in a prior filing, the Exchange did not invoke the Pilot between June 1, 2010 and June 7, 2010.

of NYSE Amex Equities 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 an NYSE Amex Equities Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the 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 December 1, 2010.<sup>7</sup> At the time, the Exchange anticipated that its quality assurance review process would be completed by December 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.

#### 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

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<sup>7</sup> Id.

near the close.

NYSE Amex Equities 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 during the course of the Pilot to date, the Exchange invoked the provisions of NYSE Amex Equities Rule 123C(9), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Amex Equities Rule 123C(9)(a)(1), in two securities on June 26, 2009, the date of the annual rebalancing of Russell Indexes. Rule 123C(9) has not been invoked at the Exchange since that time.

The Exchange proposes to extend the operation of the pilot for a six-month period. At this time, the Exchange is completing testing of functionality that would enable the electronic acceptance of orders after 4:00 p.m. If the tests are successful, the Exchange expects to be able to implement the new functionality by the end of December 2010. If the Exchange does not believe it will be able to implement the new functionality by the end of December 2010, it will work with the Commission to set a new target date for implementation as soon as practicable thereafter. In conjunction with the new functionality, the Exchange plans to file a proposed rule change to amend Rule 123C(9) to remove the limitation set forth in Rule 123C(9)(a)(1)(iii) that only Floor brokers can represent interest after 4:00 p.m. and to make Rule 123C(9) permanent.<sup>8</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section

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<sup>8</sup> See email from Theodore Lazo, Vice President, Legal and Government Affairs, NYSE Euronext, to David Liu, Senior Special Counsel, Division of Trading and Markets, Commission, and Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, dated December 13, 2010 (“NYSE Euronext Email”).

6(b)(5)<sup>9</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 Exchange believes that this 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 Pilot 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 foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>11</sup> The Exchange has asked the Commission to waive

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 filing of the proposed rule change, or such shorter

the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has represented that it is completing testing of a functionality that would enable the electronic acceptance of orders after 4:00 p.m., and if successful, the Exchange expects to be able to implement the new functionality by the end of December 2010. If the Exchange will not be able to implement the new functionality by that date, it will work with the Commission to set a new target date for implementation. The Exchange also has represented that it plans to file a proposed rule change to amend Rule 123C(9) to make the pilot permanent and to remove the limitation that only Floor brokers can represent interest after 4:00 p.m.<sup>12</sup>

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the pilot to continue uninterrupted, thereby permitting offsetting interest represented by floor brokers to alleviate extreme order imbalances occurring at the close until the Exchange is able to allow the electronic submission of such interest after 4:00 p.m. in such circumstances.<sup>13</sup> Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days 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.

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time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

<sup>12</sup> See NYSE Euronext Email, supra note 8.

<sup>13</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. See 15 U.S.C. 78c(f).

#### 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-NYSEAmex-2010-113 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-NYSEAmex-2010-113. 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 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 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2010-113 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).