

potential confusion by Exchange Participants.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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 comments on the proposed rule change.

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

This proposed rule change was filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup> This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Because the rule change is based upon rules in place at ISE and CBOE, and does not present any novel issues, and is intended to maintain consistency among the exchanges, the Exchange requests that the Commission waive the 30-day operative delay<sup>22</sup> period for "non-controversial" proposals and make the proposed rule change effective and operative upon filing. The Commission notes that the proposed rule change is substantially identical to proposed rule changes approved by the Commission after an opportunity for public comment,<sup>23</sup> and does not raise any new substantive issues. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing for "non-controversial" proposals and makes the

proposed rule change effective and operative upon filing.<sup>24</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-BX-2009-074 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-BX-2009-074. 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 copying and inspection in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. 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 available publicly. All submissions should refer to File Number SR-BX-2009-074 and should be submitted on or before January 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61125; File No. SR-NYSE-2009-122]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Suspend Certain Provisions of NYSE Rules 116 and 123C Relating to the Requirement That the Closing Transaction Be Reported to the Consolidated Tape as a Single Transaction

December 7, 2009.

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 December 4, 2009, 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 to suspending [sic] the provisions of NYSE Rules 116 ("Stop" Constitutes Guarantee) and 123C (Market On The Close Policy And Expiration Procedures) and not require a single closing print to be reported to the Consolidated Tape for a closing transaction that exceeds 99,999,999 shares. The text of the proposed rule

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</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).

<sup>23</sup> The Exchange's proposed rule change is substantially identical to proposed rule changes by the CBOE and ISE that were recently approved by the Commission. See *supra* note 12.

<sup>24</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).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<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.

change is available at the Exchange, the Commission's Public Reference Room, and <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 C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Through this filing the Exchange seeks to temporarily suspend the provisions of NYSE Rules 116.40(c) and 123C(3) that require the closing transaction to be reported to the Consolidated Tape last sale reporting system as a single transaction. Specifically, in the event a closing execution exceeds 99,999,999 shares the Exchange seeks to report the transaction to the Consolidated Tape as two prints even though it is a single transaction.

The Exchange currently reports the closing transaction to the Consolidated Tape as a single print pursuant to NYSE Rules 116.40(C) and 123C(3). As a result of a temporary size limitation in a new market data distribution system, Exchange systems currently cannot support prints greater than 99,999,999 shares. As a result, executions of greater than 99,999,999 shares must be sent to the Consolidated Tape as two prints. The two prints together will reflect the cumulative volume of the single closing transaction. Because this is inconsistent with the provisions of NYSE Rules 116.40(C) and 123C(3), the Exchange proposes to temporarily suspend the provision of these rules that require the reporting of the closing execution as a single print.

The Exchange believes that reporting two prints will not have any detrimental affect [sic] on investors because both prints will be marked as the closing print. The Exchange further provides notice to its customers through its Trader Alert System.

#### 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>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</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 the proposed rule change will facilitate the timely and efficient reporting of the closing transaction on the Exchange and thus ultimately serve to protect investors and the public interest.

### 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: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>8</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>9</sup> the Commission

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement in this case.

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposed waiver of the requirement that the closing transaction be reported to the Consolidated Tape as a single transaction applies only to cases where the volume of the closing transaction in a security exceeds 99,999,999 shares, and that NYSE will notify market participants via its Trader Alert System each time it makes use of the waiver. The Commission understands that the Exchange expects its systems to be upgraded to accept a closing transaction whose volume exceeds 99,999,999 shares sometime in the near future.

Finally, the Exchange has also requested that this waiver be made operative as of the date of filing of this proposed rule change because of market conditions that lead the Exchange to believe that a closing print in excess of 99,999,999 shares could occur. Prior to this date, no closing transaction exceeded 99,999,999 shares, and the Exchange expects such large-sized closing transaction to be rare in the future. In light of the foregoing, the Commission designates the proposal operative upon filing.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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

<sup>10</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NYSE-2009-122 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-2009-122. 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 on official business days between the hours of 10 a.m. and 3 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 available publicly. All submissions should refer to File Number SR-NYSE-2009-122 and should be submitted on or before January 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61126; File No. SR-NYSE-2009-121]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 1600 To More Fully Incorporate Away Market Contra Side Liquidity in the Execution of New York Block Exchange Orders

December 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 4, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6) under the Act.<sup>3</sup> 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 Exchange Rule 1600 (New York Block Exchange<sup>SM</sup>) ("NYBX<sup>SM</sup>" or the "Facility") to provide for (i) routing away, for execution with all available top-of-book contra side quotations (not just those that would otherwise be traded through) displayed by other automated trading centers, of any portion of an NYBX order that remains after all available executions in the NYSE Display Book<sup>®</sup> ("Display Book" or "DBK") and the Facility have taken place as provided in the current rule and (ii) including those same away market quotations of other automated trading centers in the determination of whether the optional, user-defined Minimum Triggering Volume Quantity ("MTV") of an NYBX order is met. The text of the proposed rule change is available on NYSE's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at the Exchange's principal office, and at the Commission's Public Reference Room.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

#### 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 to amend Exchange Rule 1600 (New York Block Exchange<sup>SM</sup>) to provide for (i) routing away, for execution with all available top-of-book contra side quotations (not just those that would otherwise be traded through) displayed by other automated trading centers, of any portion of an NYBX order that remains after all available executions in DBK and the Facility have taken place as provided in the current rule and (ii) including those same away market quotations of other automated trading centers in the determination of whether the optional, user-defined MTV of an NYBX order is met. The following discussion includes examples to demonstrate the functioning of these changes in practice.

##### A. Provide routing to other automated trading centers to allow the remaining portion of an NYBX order to execute with available top-of-book contra side quotations on these markets

As currently provided in NYSE Rule 1600, an order or residual portion of an order in the New York Block Exchange facility ("NYBX" or the "Facility") of the NYSE that has exhausted all available contra side liquidity in both the NYSE Display Book ("DBK") and the Facility itself, as well as any trades against protected quotations of automated trading centers that would otherwise have been traded through, will be sent back to or remain in, as the case may be, the Facility and be placed on the NYBX book. As the system currently operates, such an order remaining in the Facility will continue to attempt to execute with available contra side liquidity in the Facility and the DBK and with protected quotations as described in the previous sentence

<sup>11</sup> 17 CFR 200.30-3(a)(12).