

compensation and personnel matters overlap with the broader mandate of the NYSE Euronext Human Resources and Compensation Committee. The Commission notes that the proposed elimination of the NYSE Arca Compensation Committee is comparable to a structure for NYSE and NYSE Amex that the Commission has previously considered and approved.<sup>15</sup> The Commission finds that the proposed elimination of the NYSE Arca Compensation Committees is consistent with the Act.

#### Elimination of NYSE Arca Regulatory Oversight Committee

The Exchange also proposes to eliminate its ROC, and in lieu thereof, provide for the exercise of the current formal responsibilities of the ROC to be divided between the NYSE Board and the Exchange's Board. Currently, the ROC is responsible for ensuring (i) the independence of Exchange regulation; (ii) adequate resources for the Exchange to properly fulfill its self-regulatory obligations; and (iii) that Exchange management fully supports the execution of the regulatory process.

In support of its proposal to eliminate the ROC, the Exchange represents that it has previously entered into an RSA with NYSE to perform all of the Exchange's regulatory functions on the Exchange's behalf; that the Financial Industry Regulatory Authority ("FINRA") performs some of the regulatory functions contracted out to NYSE pursuant to a separate multi-party regulatory services agreement with FINRA;<sup>16</sup> and that these regulatory contractual arrangements closely parallel the regulatory arrangements for NYSE Amex that the Commission reviewed and approved in the NYSE Amex Approval Order.<sup>17</sup> The Exchange states that the proposed elimination of its ROC will result in regulatory arrangements similar to those approved for NYSE Amex. In addition to the foregoing, the Exchange specifically represents that (i) NYSE will provide a comparable level of independence as that of a ROC; (ii) NYSE Euronext has agreed to provide adequate funding to

NYSE Regulation to conduct its regulatory activities with respect to the Exchange; and (iii) notwithstanding its regulatory agreements, the Exchange retains ultimate legal responsibility for the regulation of its permit holders and its market and has full authority to take action to assure that its regulatory responsibilities are met. Acknowledging that it retains ultimate legal responsibility, the Exchange has further stated that its Board of Directors will directly assume the ROC's current formal responsibility to ensure that Exchange management fully supports the execution of the regulatory process and that it retains the authority to direct NYSE and FINRA to take any action necessary to fulfill the Exchange's statutory and self-regulatory obligations.

The Commission notes that the proposed elimination of the NYSE Arca ROC is comparable to the structure that the Commission approved in the NYSE Amex Approval Order.<sup>18</sup> The Commission finds that the proposed elimination of the NYSE Arca ROC is consistent with the Act.

#### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-NYSEArca-2010-31) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-15285 Filed 6-23-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62312; File No. SR-NYSE-2010-20]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rule 123C To Allow Exchange Systems To Provide Order Imbalance Information With Respect to Market At-The-Close and Marketable Limit At-the-Close Interest to Floor Brokers Beginning Two Hours and Until Fifteen Minutes Prior to the Scheduled Close of Trading on Every Trading Day

June 17, 2010.

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 June 9, 2010, 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, II, and III 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 Rule 123C ("The Closing Procedures") to describe the manner in which Exchange systems provide order imbalance information to Floor brokers. The text of the proposed rule 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The New York Stock Exchange LLC ("NYSE" or "Exchange") proposes to amend NYSE Rule 123C(6) to specify that, beginning at 2:00 p.m. on every trading day,<sup>3</sup> Floor brokers will receive an electronic communication from Exchange systems that provides the amount of, and any imbalance between, Market "At-The-Close" ("MOC") interest and marketable Limit "At-The-Close" ("LOC") interest to buy and MOC interest and marketable LOC interest to

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

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

<sup>3</sup> On any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m., the information will be disseminated beginning two hours prior to the scheduled close of trading.

<sup>15</sup> See *supra* note 12.

<sup>16</sup> The Commission notes that on June 14, 2010, NYSE, NYSE, NYSE Amex, and NYSE Arca ("NYSE Parties") entered into a new multi-party regulatory services agreement with FINRA, pursuant to which FINRA will perform additional regulatory functions on behalf of the NYSE Parties, including market surveillance and enforcement activities. See <http://www.nyse.com/press/1276509404802.html>. See also June 16, 2010 e-mail correspondence from William Love, Chief Counsel, NYSE Euronext, to Heidi Pilpel, Special Counsel, Commission.

<sup>17</sup> See *supra* note 12.

<sup>18</sup> See *supra* note 12.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

sell in certain securities.<sup>4</sup> The MOC/LOC interest is executable only on the Close and is subject to cancellation at any time before 3:45 p.m.<sup>5</sup>

#### Background

Pursuant to NYSE Rule 115 (“Disclosure of Orders by DMMs”), DMMs may, while acting in a market making capacity, provide information about buying or selling interest in the market, including (a) Aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders and (c) the interest included in DMM interest files, excluding CCS interest as described in Rule 1000(c), in response to an inquiry from a member conducting a market probe in the normal course of business. Market probes assist Floor brokers in representing customer orders efficiently and effectively. There is no limitation in Rule 115 as to the number of market probes permitted during the trading day.

Historically, Floor brokers could only orally request a market probe from the specialist.<sup>6</sup> As the NYSE evolved to a more automated trading venue, the Exchange and the Floor community endeavored to address an increase in the volume of market probes by Floor brokers to specialists in the afternoon hours leading up to the closing transaction. In May 2008, Exchange systems began electronically providing to Floor brokers, the amount of, and any imbalance between MOC interest and marketable LOC interest to buy and MOC interest and marketable LOC interest to sell in each security in which a Floor broker is representing an order or in any security that the Floor broker electronically requests such information. In March 2010, as part of changes to the Exchange’s closing process, Exchange systems began decrementing the total imbalance between MOC interest and marketable LOC interest to buy and MOC interest and marketable LOC interest to sell by any Closing Offset Orders on the opposite side of the imbalance to calculate the imbalance (the “MOC/LOC imbalance information”). The dissemination of the MOC/LOC imbalance information to Floor brokers between 2:00 and 3:45 p.m. was deactivated on May 17, 2010. Floor

brokers may still orally request and receive responses to market probes directly from DMMs.

#### Proposed Amendments to NYSE Rule 123C(6)

The Exchange proposes to amend NYSE Rule 123C(6) to state that, between 2 p.m. and 3:45 p.m. on any trading day (or two hours prior to the closing transaction until 15 minutes prior to the closing transaction on any day that the scheduled close of trading on the Exchange is earlier than 4 p.m.), Exchange systems shall automatically provide the MOC/LOC imbalance information to Floor brokers, approximately every 15 seconds, for any security in which the Floor broker is representing an order and in any security that the Floor broker specifically requests. Specific requests for information by Floor brokers will not carry over to the next trading day and must be re-entered on each trade date Floor brokers want to receive the information. Beginning at 3:45 p.m., Floor brokers may receive the Exchange’s proprietary Order Information Imbalance datafeed pursuant to NYSE Rule 123C(6)(a)(iv). The Exchange provides the Order Information Imbalance datafeed to subscribers for a fee.

The Exchange’s proposed dissemination of this MOC/LOC imbalance information is the electronic evolution of the market probe response that Floor brokers have always been entitled to receive and may otherwise orally request directly from DMMs. While a vast majority of the transactions executed on the Exchange are automated, Floor brokers play an important role for customers in those transactions that require the expertise of a professional trading floor agent. Providing the MOC/LOC imbalance information to Floor brokers is appropriate because a key component of their role as agent for these sophisticated customers is to provide market “color” to the extent permitted under applicable rules. The Exchange’s electronic dissemination of this information would be limited to the Floor broker hand-held devices, which are unable to automatically forward or re-transmit the electronic datafeed to any other location, although Floor brokers are permitted to provide their customers with specific data points from the feed.<sup>7</sup>

Finally, the Exchange proposes to correct erroneous rule text in 123C(6)(a)(v). The rule text incorrectly states that the dissemination of the Order Imbalance Datafeed commences 10 minutes prior to the scheduled close of trading on any day that the scheduled close of trading on the Exchange is earlier than 4 p.m. The 10 minute interval is a legacy time frame related to the Exchange’s prior publication of imbalance at 3:40 p.m. and 3:50 p.m. When the Exchange moved to a single imbalance publication at 3:45 p.m., the rule text should have been modified to reflect that dissemination of the Order Imbalance Information on any day that the scheduled close was prior to 4 p.m. would commence approximately 15 minutes before the scheduled closing time consistent with the single imbalance publication. The Exchange therefore seeks to amend NYSE Rule 123C(6)(a)(v) accordingly.

#### 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),<sup>8</sup> which requires that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change is consistent with these objectives in that the dissemination of MOC/LOC imbalance information would provide Floor brokers with an understanding of developing trends early enough to get appropriate direction from their customers and to know where on the physical Trading Floor it needs to deploy its brokers in preparation for the closing transaction. Overall, the Exchange believes that dissemination of MOC/LOC imbalance information to Floor brokers is consistent with the above objectives because it removes impediments to and perfects the mechanism of a free and open market through the efficient operation of the Exchange.

Dissemination of MOC/LOC imbalance information to Floor brokers would serve as an efficiency tool to

hand-held device as permitted by the NYSE’s “Wireless Data Communications Initiatives” (See Securities Exchange Act Release No. 59626 (March 25, 2009), 74 FR 14831 (April 1, 2009) (SR-NYSE-2009-33). The Exchange records all of the information sent to and transmitted from the hand-held devices.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> The Exchange notes that parallel changes are proposed to the rules of its affiliate, NYSE Amex LLC. See SR-NYSEAmex-2010-25.

<sup>5</sup> See NYSE Rule 123C(3) and (9).

<sup>6</sup> The specialist is the predecessor to the DMM.

<sup>7</sup> Current NYSE rules permit a Floor broker to communicate information obtained through a market probe to a customer using a wired telephone line (NYSE Rule 36.20), an NYSE approved portable phone (NYSE Rule 36.21), or through a written electronic communication from the Floor brokers’

enhance the Floor brokers' ability to meet their best execution obligations in the face of a dilemma that is unique to a physical Trading Floor, *i.e.*, how to position resources so that they are in the correct place to execute orders on behalf of sophisticated customers whose needs are not effectively met by strictly electronic trading. While the imbalance information is important to Floor brokers in carrying out their obligations to those customers, the Exchange believes this information would not be material to market participants executing automated orders. In this regard, the Exchange believes it is appropriate to provide Floor brokers with specific types of information that is directly related to the unique functions they perform on the Trading Floor.

In this particular case, the Exchange believes that the dissemination of MOC/LOC information to Floor brokers would promote the efficient operation of the Exchange's market by reducing the frequency of time-consuming Floor broker oral market probes leading up to the closing transaction, thus affording DMMs more time to monitor trading. As trading has become more electronic, staffing on the trading Floor has declined, so that there are now fewer Floor brokers even as the number of listed securities has increased.<sup>9</sup> Similarly, DMM units and individual DMMs on the Floor are managing trading in greater numbers of stocks than ever before. The need for DMMs to be focused on their assigned securities, particularly on high volume trading days, such as an Expiration Friday or an index rebalancing event, or trading days with high levels of market volatility, is critical to the maintenance of fair and orderly markets.<sup>10</sup>

#### *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.

<sup>9</sup> The number of Floor brokers operating on the Exchange Floor has decreased since 2004 from approximately 800 Floor brokers to approximately 325 Floor brokers operating on the Floor today.

<sup>10</sup> It should be noted that NYSE rules and the Federal securities laws provide safeguards that are designed to deter the potential abuse of market probe information. For example, Floor broker member organizations are not permitted to initiate proprietary orders on the Floor. In addition, Floor brokers representing a principal or proprietary order that has been initiated in the off-Floor premises of the firm are subject to the requirements of Section 11(a) of the Securities Exchange Act of 1934.

#### *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**

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 self-regulatory organization consents, the Commission will:

(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 Number SR-NYSE-2010-20 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-2010-20. 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 Web site 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 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-2010-20 and should be submitted on or before July 15, 2010.

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

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

[FR Doc. 2010-15246 Filed 6-23-10; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62311; File No. SR-NYSEAmex-2010-25]

### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Rule 123C To Allow Exchange Systems To Provide Order Imbalance Information With Respect to Market At-the-Close and Marketable Limit At-the-Close Interest to Floor Brokers Beginning Two Hours and Until Fifteen Minutes Prior to the Scheduled Close of Trading on Every Trading Day**

June 17, 2010.

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 June 9, 2010, NYSE Amex LLC ("NYSE Amex" 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 self-regulatory organization. The Commission is publishing this notice to solicit

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

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

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