(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*. Please include File Number SR–FINRA–2009–081 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–FINRA–2009–081. 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, 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 FINRA. 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–FINRA–2009–081 and should be submitted on or before January 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31333 Filed 1–4–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61250; File No. SR–NYSEAmex–2009–92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Extending the Operative Date of Rule 92(c)(3) From December 31, 2009 to July 31, 2010

December 29, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 23, 2009, 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 extend the operative date of Rule 92(c)(3) from December 31, 2009 to July 31, 2010. The text of the proposed rule change is available at the Exchange, on the Commission's Web site at *http://www.sec.gov,* 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

The Exchange is proposing to extend the delayed operative date of Rule 92(c)(3) from December 31, 2009 to July 31, 2010. The Exchange believes that this extension will provide the time necessary for the Exchange, the New York Stock Exchange LLC (''NYSE''), and the Financial Industry Regulatory Authority, Inc. (''FINRA'') to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.[4]

Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the NYSE.[5] These amendments were filed in part to begin the harmonization process between NYSE Rule 92 and FINRA's Manning Rule.[6] In connection with those amendments, the NYSE implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits NYSE member organizations to submit riskless principal orders to the NYSE, but requires them to submit to a designated NYSE database a report of the execution of the facilitated order. That rule also requires members to submit to that same database sufficient information to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the NYSE informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the NYSE's Front End Systemic Capture (''FESC'') database linking the execution of the riskless principal order on the NYSE to the specific underlying orders. The information provided must be sufficient for both member firms and the NYSE to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE has filed a companion rule filing to conform its Rules to the changes proposed in this filing. *See* SR–NYSE–2009–129, formally submitted December 23, 2009.

[5] *See* Securities Exchange Act Release No. 56017 (Jul. 5, 2007), 72 FR 38110 (Jul. 12, 2007) (SR–NYSE–2007–21).

[6] *See* NASD Rule 2111 and IM–2110–2.

Because the rule change required both the NYSE and member organizations to make certain changes to their trading and order management systems, the NYSE filed to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.[7] The NYSE filed for additional extensions of the operative date of Rule 92(c)(3) to December 31, 2009.[8] Because NYSE Amex adopted NYSE Rule 92 in its then current form,[9] the delayed operative date for the NYSE Rule 92(c)(3) reporting requirements also applied for NYSE Amex Equities Rule 92(c)(3) reporting requirements and the Exchange filed for additional extensions of the operative date, the most recent of which was an extension to December 31, 2009.[10]

Request for Extension

FINRA, NYSE, and the Exchange have been working diligently on fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions. However, because of the complexity of the existing customer order protection rules, including the need for input from industry participants as well as Commission approval, the Exchange, NYSE, and FINRA will not have harmonized their respective customer order protection rules by the current December 31, 2009 date for the implementation of the FESC riskless principal reporting.

The Exchange notes that it has agreed with NYSE and FINRA to pursue efforts to harmonize customer order protection rules. As authorized by their respective Boards, FINRA and NYSE Regulation, Inc. (''NYSE Regulation'') have each published a Regulatory Notice/Information Memo that solicited comments from their respective member participants on the proposed harmonized approach to customer order protection.[11] Because industry participants need to code their trading systems to comply with customer order protection rules, the Exchange believes that industry input is vital to ensuring that the approach to customer order protection both meets regulatory needs of protecting customer orders, but is also feasible technologically.

Both FINRA and NYSE Regulation have received comments from the public on the Regulatory Notice and Information Memo, including comments from industry forums such as Securities Industry and Financial Markets Association (''SIFMA'') and Financial Information Forum (''FIF'') that each jointly addressed the FINRA and NYSE Regulation proposals. The comments have generally supported efforts to harmonize the FINRA and NYSE rules. Among issues raised in the comment letters, however, is the concern that FINRA and NYSE have a harmonized approach for reporting riskless principal transactions. In addition, commenters note the need for an implementation period to develop any technology that would be needed to comply with the proposed reporting standard.

On December 10, 2009, FINRA filed with the Commission its rule proposal to adopt a new industry standard for customer order protection as proposed FINRA Rule 5320.[12] That proposed filing is based on the draft rule text that FINRA and NYSE Regulation each circulated to their respective member participants and includes copies of the comment letters that FINRA and NYSE Regulation received on the rule proposal. The Exchange intends to adopt a new customer order protection rule that is substantially identical to proposed FINRA Rule 5320.

The Exchange continues to believe that pending full harmonization of the respective customer order protection rules, it would be premature to require firms to meet the current Rule 92(c)(3) FESC reporting requirements.[13] Indeed, having differing reporting standards for riskless principal orders would be inconsistent with the overall goal of the harmonization process.

Accordingly, to provide the Exchange, NYSE, and FINRA the time necessary to obtain Commission approval for and implement a harmonized rule set that would apply across their respective marketplaces, including a harmonized approach to riskless principal trade reporting, the Exchange is proposing to delay the operative date for NYSE Amex Equities Rule 92(c)(3) from December 31, 2009 to July 31, 2010.

Pending the harmonization of the three rules, the Exchange will continue to require that, as of the date each member organization implements riskless principal routing, the member organization have in place systems and controls that allow them to easily match and tie riskless principal execution on the Exchange to the underlying orders and that they be able to provide this information to the Exchange upon request. To make clear that this requirement continues, the Exchange proposes to amend supplementary material .95 to Rule 92 to specifically provide that the Rule 92(c)(3) reporting requirements are suspended until July 31, 2010 and that member organizations are required to have in place such systems and controls relating to their riskless principal executions on the Exchange. Moreover, the Exchange will coordinate with NYSE and FINRA to examine for compliance with the rule requirements for those firms that engage in riskless principal trading under Rule 92(c).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] 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 extension provides the Exchange, NYSE, and FINRA the time necessary to develop a harmonized rule concerning customer order protection that will enable member organizations to participate in the national market system without unnecessary impediments.

[7] *See* Securities Exchange Act Release No. 56968 (Dec. 14, 2007), 72 FR 72432 (Dec. 20, 2007) (SR–NYSE–2007–114).

[8] *See* Securities Exchange Act Release Nos. 57682 (Apr. 17, 2008), 73 FR 22193 (Apr. 24, 2008) (SR–NYSE–2008–29); 59621 (Mar. 23, 2009), 74 FR 14179 (Mar. 30, 2009) (SR–NYSE–2009–30); and 60396 (July 30, 2009), 74 FR 39128 [sic] (Aug. 5, 2009) (SR–NYSE–2009–73).

[9] The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE. *See* Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR–Amex-2008–63); No. 58833 (Oct. 22, 2008), 73 FR 64642 (Oct. 30, 2008) (SR–NYSE–2008–106); No. 58839 (Oct. 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR–NYSEALTR–2008–10); and No. 59027 (Nov. 28, 2008), 73 FR 73681 (Dec. 3, 2008) (SR–NYSEALTR–2008–11).

[10] *See* Securities Exchange Act Release Nos. 59620 (Mar. 23, 2009), 74 FR 14176 (Mar. 30, 2009) (SR–NYSEALTR–2009–29) and 60397 (July 30, 2009), 74 FR 39128 (Aug. 5, 2009) (SR–NYSEAmex–2009–48).

[11] *See* NYSE Regulation Information Memo 09–13 (March 12, 2009); FINRA Regulatory Notice 09–15 (March 12, 2009).

[12] *See* SR–FINRA–2009–090 (December 10, 2009).

[13] The Exchange notes that it would also need to make technological changes to implement the proposed FESC reporting solution for Rule 92(c)(3).

[14] 15 U.S.C. 78f(b).

[15] 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

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, 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[16] and Rule 19b–4(f)(6) thereunder.[17]

The Exchange has requested the Commission to waive the 30-day operative delay so that the Exchange can extend the operative date of NYSE Amex Equities Rule 92(c)(3) without interruption. The Exchange notes that extending the delayed operative date of Rule 92(c)(3) from December 31, 2009 to July 31, 2010 will provide sufficient time for the Exchange, NYSE, and FINRA to obtain Commission approval for and implement a harmonized approach to customer order protection rules, including how riskless principal transactions should be reported. The Commission hereby grants the Exchange's request and believes such waiver is consistent with the protection of investors and the public interest.[18] Accordingly, the Commission 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 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
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–92 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–2009–92. 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–NYSEAmex–2009–92 and should be submitted on or before January 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31273 Filed 1–4–10; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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 Exchange has satisfied this requirement.

[18] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61244; File No. SR–NYSEAmex–2009–81]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving the Proposed Rule Change, as Modified by Amendment No. 1, Amending NYSE Amex Equities Rule 123C To Modify the Procedures for Its Closing Process and Make Conforming Changes to NYSE Amex Equities Rule 13 and Rule 15

December 28, 2009.

I. Introduction

On November 9, 2009, the NYSE Amex LLC (''NYSE Amex'' or the ''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 proposed rule change to modify the procedures for its closing process in Rule 123C and make conforming changes to NYSE Amex Equities Rules 13 (''Definitions of Orders'') and Rule 15 (''Pre-Opening Indications''). The proposed rule change was published for comment in the **Federal Register** on November 17, 2009.[3] On November 25, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comment letters on the proposal; however, the Commission received one comment letter on the parallel NYSE proposal[5] which is germane to this proposal.[6] This order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60973 (November 9, 2009), 74 FR 59308 (''Notice'').

[4] In Amendment No. 1, the Exchange proposes to correct an erroneous cross-reference in Exhibit 5. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment.

[5] *See* Securities Exchange Act Release No. 60974 (November 9, 2009), 74 FR 59299 (November 17, 2009) (SR–NYSE–2009–111).

[6] *See* Letter from John F. Neary, Managing Director, Morgan Stanley, to Elizabeth M. Murphy,

Continued