Imbalance in the security, the entry of MOC/LOC interest would not be allowed.[23]

Unlike MOC/LOC orders, the entry of CO orders on both sides of the market would be permitted when a Trading Halt occurs in a security, but is lifted prior to the close of trading in the security. Because CO orders are the interest of last resort in the closing transaction, entry of such orders is not restricted to offsetting the Mandatory MOC/LOC Imbalance.

*Rescission of Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements*

The Exchange proposes to rescind the provisions governing ''Expiration Friday Auxiliary Procedures for the Opening.'' According to the Exchange, the provisions governing Expiration Friday were created to facilitate a fair and orderly opening transaction in light of the additional order flow on Expiration Fridays. Because Exchange systems now allow the DMM to accommodate for such fluctuations in volume, the Exchange believes that these provisions are unnecessary. The order marking provisions were an accommodation to member organizations whose systems were unable to electronically affix the designation, and the Exchange states that all of its member organizations are capable of affixing appropriate order designations.

The Exchange further seeks to make the provisions of NYSE Amex Equities Rule 123C govern solely Market and Limit ''on the Close'' Policy. Therefore, the Exchange proposes to delete the ''Due Diligence Requirements'' from this rule as they are redundant with the provisions codified in NYSE Amex Equities Rule 405.

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, it is consistent with Section 6(b)(5) of the Act,[25] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change as amended is consistent with the provisions of Section 6(b)(8) of the Act,[26] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The electronic entry of MOC/LOC interest should increase the efficiency of NYSE Amex's market and permit accurate information to be disseminated to market participants more quickly. The modification of the procedures for the entry of MOC/LOC orders in response to imbalance publications and regulatory trading halts should likewise improve transparency and efficiency.

In connection with the change from two imbalance publications to one, the Commission notes the Exchange's representation that its customers have expressed that two imbalance publications ten minutes apart in the current electronic environment are unnecessary. Moving the cut-off time for the entry of MOC/LOC orders from 3:40 p.m. to 3:45 p.m. should allow Exchange participants additional control of the handling of their orders to be executed in the closing transaction and additional participation in active markets.

In connection with the postponing of the cancellation time for MOC and LOC orders to 3:58 p.m, the Commission notes the Exchange's representations that, with the proposed requirement that all MOC/LOC orders be entered electronically, Exchange systems will keep track of the available interest thus making it more readily available for the DMM and that systemic tracking of MOC/LOC interest makes it entirely feasible for the DMM to review in two minutes the interest eligible to participate in the closing transaction and facilitate the execution of the closing transaction.

The creation of the CO order provides an additional source of liquidity to offset an imbalance going into the closing transaction, and thus should increase the greater efficiency of the closing process.

The Commission believes that these proposed modifications are consistent with the Act because, taken as a whole, they should enhance the efficiency and transparency of the closing transaction and provide customers with a more accurate depiction of market conditions prior to the closing transaction, and therefore allow them to make better-informed trading decisions.

The Commission believes that the remainder of the proposed changes, including the codification of the hierarchy of the allocation of interest in the closing, the clarification of the definition of MOC and LOC orders, the inclusion of additional information in the Order Imbalance Information data feeds, and the rescission of the provisions governing Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements are either non-substantive or non-controversial in nature, while enhancing the transparency of NYSE Amex's market at the close, and therefore are consistent with the Act.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change, as amended (SR–NYSEAmex–2009–81), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–31272 Filed 1–4–10; 8:45 am]

**BILLING CODE 8011–01–P**

[23] *See* proposed NYSE Amex Equities Rule 123C(2)(c)(iii).

[24] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(8).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61251; File No. SR–NYSE–2009–129]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Operative Date of NYSE 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, 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

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

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

[3] 17 CFR 240.19b–4.

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 NYSE 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 NYSE 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 and the Financial Industry Regulatory Authority, Inc. (''FINRA'') to harmonize their respective rules concerning customer order protection to achieve a standardized industry practice.

Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the Exchange.[4] These amendments were filed in part to begin the harmonization process between Rule 92 and FINRA's Manning Rule.[5] In connection with those amendments, the Exchange implemented for an operative date of January 16, 2008, NYSE Rule 92(c)(3), which permits Exchange member organizations to submit riskless principal orders to the Exchange, but requires them to submit to a designated Exchange 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 Exchange informed member organizations that when executing riskless principal transactions, firms must submit order execution reports to the Exchange's Front End Systemic Capture (''FESC'') database linking the execution of the riskless principal order on the Exchange to the specific underlying orders. The information provided must be sufficient for both member firms and the Exchange 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.

Because the rule change required both the Exchange 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.[6] The Exchange filed for additional extensions of the operative date of Rule 92(c)(3), the most recent of which was an extension to December 31, 2009.[7]

Request for Extension [8]

FINRA 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 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 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.[9] 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 the 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.[10] 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

[4] *See* Securities Exchange Act Release No. 34–56017 (July 5, 2007), 72 FR 38110 (July 12, 2007), SR–NYSE–2007–21.

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

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

[7] *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).

[8] NYSE Amex LLC has filed a companion rule filing to conform its Equities Rules to the changes proposed in this filing. *See* SR–NYSEAmex–2009–92, formally submitted December 23, 2009).

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

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

firms to meet the current Rule 92(c)(3) FESC reporting requirements.[11] 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 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 Rule 92(c)(3) from December 31, 2009 to July 31, 2010.

Pending the harmonization of the two 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 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''),[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] 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 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.

*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[14] and Rule 19b–4(f)(6) thereunder.[15]

The Exchange has requested the Commission to waive the 30-day operative delay so that the Exchange can extend the operative date of NYSE 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 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.[16]

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–NYSE–2009–129 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–2009–129. 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

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

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 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.

[16] 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).

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–2009–129 and should be submitted on or before January 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–31271 Filed 1–4–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61237; File No. SR–MSRB–2009–10]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 to Proposed Rule Change Relating to Additional Voluntary Submissions by Issuers to the MSRB's Electronic Municipal Market Access System (EMMA®)

December 23, 2009.

On July 14, 2009, the Municipal Securities Rulemaking Board (''MSRB'') 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 relating to additional voluntary submissions by issuers to the MSRB's Electronic Municipal Market Access System (EMMA®). The proposed rule change was published for comment in the **Federal Register** on July 22, 2009.[3] On December 18, 2009, the MSRB filed with the Commission Amendment No. 1 to the proposed rule change. The Commission is publishing this notice of Amendment No. 1 to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission the amendment to File No. SR–MSRB–2009–10, originally filed on July 14, 2009 (the ''original proposed rule change''). The amendment amends and restates the original proposed rule change relating to additional voluntary submissions by issuers to the MSRB's Electronic Municipal Market Access system (''EMMA'') (as amended, the ''proposed rule change''). The proposed rule change would amend EMMA's primary market and continuing disclosure services to permit issuers and their designated agents to submit preliminary official statements and other related pre-sale documents, official statements and advance refunding documents, as well as to permit issuers, obligated persons and their designated agents to submit information relating to the preparation and submission of audited financial statements and annual financial information and to post links to other disclosure information. The MSRB requests an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/msrb1/sec.asp*, at the MSRB's principal office, and at the Commission's Public Reference Room.

### 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 MSRB 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 these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

*Preliminary Official Statements and Other Primary Market Documents*

The proposed rule change would amend the EMMA primary market disclosure service[4] to permit issuers and their designated agents to make voluntary submissions to the primary market disclosure service of official statements, preliminary official statements and related pre-sale documents, and advance refunding documents (collectively, ''primary market documents'').[5] Pre-sale documents other than a preliminary official statement (including but not limited to notices of sale or supplemental disclosures) would be accepted only if accompanied or preceded by the preliminary official statement.[6] An issuer seeking to make submissions of primary market documents to the EMMA primary market disclosure service would use the same accounts established with respect to submissions of continuing disclosure documents to the EMMA continuing disclosure service, subject to additional verification procedures to affirmatively establish the account holder's authority to act on behalf of the issuer in connection with such primary market disclosure submissions.

Submissions of primary market documents by issuers and their designated agents will be accepted on a voluntary basis if, at the time of submission, they are accompanied by information necessary to accurately identify: (i) The category of document being submitted; (ii) the issues or specific securities to which such document is related; and (iii) in the case of an advance refunding document, the specific securities being refunded pursuant thereto. The primary market documents and related indexing information would be displayed on the EMMA Web portal and also would be included in EMMA's primary market disclosure subscription service.

*Additional Continuing Disclosure Submissions and Undertakings*

As amended and restated by this amendment, the proposed rule change also would amend the EMMA continuing disclosure service to permit issuers, obligated persons and their agents to make voluntary submissions to the continuing disclosure service of additional categories of disclosures, as well as information about their continuing disclosure undertakings. Such additional continuing disclosures and related indexing information would be displayed on the EMMA Web portal and also would be included in EMMA's

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60315 (July 15, 2009), 74 FR 36294.

[4] This amendment does not modify the provisions of the original proposed rule change relating to the EMMA primary market disclosure service.

[5] Obligated persons would be permitted to submit primary market documents through the EMMA primary market disclosure service only if designated as an agent by the issuer.

[6] The MSRB believes that posting of such pre-sale documents without the related disclosure information provided in a preliminary official statement would be inconsistent with the core disclosure purposes of EMMA.