

public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹⁸ The Exchange believes that this filing is non-controversial because it is consistent with the NYSE Alternext's filing implementing the Options Relocation,¹⁹ as well as the Exchange's current regulatory controls governing the use of personal portable or wireless communications devices²⁰ and wireless trading devices,²¹ which were approved by the Commission. Accordingly, the Exchange believes that these rule changes are eligible for immediately effective treatment under the Commission's Streamlining Order.²²

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change as operative upon filing so that the proposed rule changes may become effective upon filing and operative on the date of the Options Relocation, currently scheduled for March 2, 2009. The Commission hereby grants the Exchange's request.²³ The Commission believes that such action is consistent with the protection of investors and the public interest because the Exchange's proposal would clarify the Exchange's policies governing the use of personal portable or wireless communication devices as well as wireless trading devices. This clarification is necessitated by the Options Relocation.

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-2009-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-23. 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 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-NYSE-2009-23 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59483; File No. SR-NYSE-2009-22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Certain Equity Transaction Fees and Rebates

March 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 27, 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, II and III below, which Items have been prepared by the Exchange. 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 make a number of changes to its schedule of equity transaction fees and rebates, with effect from March 1, 2009. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, 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 Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁸ In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE has satisfied this requirement.

¹⁹ See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494 (December 31, 2008) (SR-NYSEALTR-2008-14), as amended.

²⁰ See Securities Exchange Act Release No. 58068 (June 30, 2008), 73 FR 39363 (July 9, 2008) (SR-NYSE-2008-20).

²¹ See Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR-NYSE-1995-22) and Securities Exchange Act Release No. 39379 (December 1, 1997), 62 FR 64615 (December 8, 1997) (SR-NYSE-1997-17).

²² See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40143 [sic] (July 11, 2008) (concerning 17 CFR 200 and 241).

²³ 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).

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

The Exchange proposes to make a number of changes to its schedule of equity transaction fees and rebates, with effect from March 1, 2009.

The following are the proposed changes:

- Currently, the Exchange does not charge any fees to customers adding liquidity to the order book. Customers who execute orders that add liquidity (both displayed and non-displayed) will now receive a rebate of \$0.0010 per share. Transactions in stocks with a per share price less than \$1.00 will not qualify for this rebate, but will continue to be free of charge.³

- Currently floor broker orders adding liquidity to the book receive a \$0.0004 per share rebate. This rebate will increase from \$0.0004 per share to \$0.0012 per share.

- Currently the fee per share for customers (except for designated market makers ("DMMs")) taking liquidity from the order book is \$0.0008 per share (subject to a cap of \$120 per transaction). This fee will increase from \$0.0008 per share to \$0.0018 per share. For trades in stocks with a per share price less than \$1.00, the fee will equal the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) \$0.0018 per share.

- The fee for market-at-close and limit-at-close orders (except for DMMs) is currently \$0.0004 per share to both sides. This fee will increase from \$0.0004 per share to \$0.0005 per share (subject to a cap of \$120 per transaction). For trades in stocks with a per share price less than \$1.00, the fee will equal the lesser of (i) 0.30% of the total dollar value of the transaction and (ii) \$0.0005 per share.

- The fee for non-electronic agency transactions of less than 10,000 shares between floor brokers in the crowd is currently \$0.0004 per share to both sides. These transactions will now be free of charge.

- Currently the Exchange charges a fee of \$0.0004 per share in all odd lot transactions (including the odd lot portions of partial round lots). This fee will increase from \$0.0004 per share to \$0.0005 per share (subject to a cap of

\$120 per transaction). For trades in stocks with a per share price less than \$1.00, the fee will equal the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) \$0.0005 per share.

- DMMs currently pay no fee when taking liquidity from the order book. Going forward, DMMs will be charged \$0.0010 when taking liquidity. This fee will offset the \$0.0010 per share rebate the Exchange will pay the customer providing liquidity on the contra side of the transaction.

- DMMs currently receive a rebate per share of \$0.0004 for executions at the close. This rebate will be increased from \$0.0004 per share to \$0.0005 per share.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6⁴ of the Act in general and furthers the objectives of Section 6(b)(4)⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as it provides the DMMs appropriate incentives to act as liquidity providers and supports them in performing their central function in the Exchange's market model.

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 purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and Rule 19b-4(f)(2) thereunder.⁷

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-2009-22 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-2009-22. 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 will also 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 No. SR-NYSE-2009-22 and should be submitted on or before March 31, 2009.

³ See e-mail from John Carey, Chief Counsel—U.S. Equities, NYSE Euronext, to David Liu, Assistant Director, Division of Trading and Markets, Commission, dated March 2, 2009.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59489; File No. SR-NYSE-2009-18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 123C To Provide the Exchange With the Ability To Temporarily Suspend Certain NYSE Requirements Relating to the Closing of Securities at the Exchange

March 3, 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 February 19, 2009, 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. On March 2, 2009, the Exchange filed Amendment No. 1. The Commission is publishing this notice 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 Exchange proposes to amend Rule 123C to provide the Exchange with the ability to temporarily suspend certain NYSE requirements relating to the closing of securities at the Exchange.

The text of the proposed rule change is available at <http://www.nyse.com>, NYSE, and 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 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 amend NYSE Rule 123C to provide the Exchange with the ability to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The amendments proposed for NYSE Rule 123C are similar in substance to recent amendments to Rule 48 that added an extreme market volatility condition at the close. With this rule filing, the Exchange proposes to delete those provisions from Rule 48 and add them in modified form to Rule 123C. The Exchange also proposes to amend Rule 48(c)(2) to conform the rule to the actual practice of how the Exchange notifies the Commission staff when a Rule 48 condition has been declared.⁴

Background

On October 2, 2008, the Exchange filed for immediate effectiveness to amend NYSE Rule 48 to provide the Exchange with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close.⁵ The Exchange amended Rule 48 in order to respond swiftly to market conditions at that time. Those amendments are temporary and will end on March 27, 2009.⁶

In that filing, the Exchange amended Rule 48 to include the close of trading as a time when a qualified Exchange officer would be permitted to declare an extreme market volatility condition. In such event, the Exchange could temporarily suspend NYSE Rules 52 (Hours of Operation) and 123C(1) and (2) (Market on the Close Policy and Expiration Policy), provided that certain requirements are met.

To enable a qualified Exchange officer to declare a Rule 48 condition at the

close, the Exchange amended Rule 48(c) to include that a qualified Exchange officer may consider the volatility during that day's trading session and evidence of significant order imbalances across the market at the close for purposes of determining whether to declare an extreme market volatility condition at the close. Under amended Rule 48, an extreme market volatility condition at the close is a separate event and must be considered in light of the facts and circumstances leading to the close. A Rule 48 condition at the open of trading does not extend to the close; a qualified Exchange officer needs to make an independent determination to invoke Rule 48 at the close regardless of whether Rule 48 was invoked at the open. Such a Rule 48 condition at the close must be declared by a qualified Exchange officer before the scheduled close of trading.

Once an extreme market volatility condition at the close has been declared Floor wide, under NYSE Rule 48(b)(2)(A), the Exchange may temporarily suspend Rule 52 on a security-by-security basis so that interest can be solicited and entered into Exchange systems to offset an imbalance in a security that may be present after the scheduled close of trading. During an extreme market volatility condition, interest may be solicited—including interest that may not have been present prior to 4 p.m.—to offset any imbalance that may exist as of 4 p.m. (or earlier, in the case of an earlier scheduled close).⁷ If offsetting interest is received in response to such solicitation, rather than have the DMM represent such offsetting interest in the close pursuant to Rule 902, such interest could be entered by the DMM directly into Exchange systems on behalf of the member or member organization representing such interest. Because Exchange systems do not allow for the electronic entry of orders after 4 p.m., such interest must be represented manually by a Floor broker in the closing auction process and entered into Exchange systems by the DMM by no later than 4:30 p.m.⁸ The entry of any orders after 4 p.m. pursuant to the rule must be under the supervision and approval of a Floor Governor.⁹

To ensure a complete audit trail, any offsetting interest entered after 4 p.m. during an extreme market volatility condition must also be entered into the Front End Systemic Capture database ("FESC"), as required by NYSE Rule

⁸ 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 Alternext US LLC has submitted a companion rule filing to conform Rules 48 and 123C-NYSE Alternext Equities to the changes proposed in this filing. See SR-NYSEALTR-2009-15, formally submitted February 20, 2009.

⁵ See SEC Release No. 58743 (Oct. 7, 2008), 73 FR 60742 (Oct. 14, 2008) (SR-NYSE-2008-102).

⁶ See NYSE Rule 48.10.

⁷ See NYSE Rule 48(b)(2)(A)(i).

⁸ See NYSE Rule 48(b)(2)(A)(ii).

⁹ See NYSE Rule 48(b)(2)(A)(iv).