

MSRB-2010-10), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>70</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63613; File No. SR-NYSEAmex-2010-121]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Permanent NYSE Amex Equities Rule 123C(9)(a)(1) and Amending Rule 123C(9)(a)(1)(iii)

December 29, 2010.

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 20, 2010, 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 make permanent NYSE Amex Equities Rule 123C(9)(a)(1), which currently operates on a pilot basis. The Exchange also proposes to amend Rule 123C(9)(a)(1)(iii) to eliminate the requirement that only Floor brokers can represent interest after 4 p.m. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, [www.sec.gov](http://www.sec.gov), 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 Exchange proposes to make permanent NYSE Amex Equities Rule 123C(9)(a)(1),<sup>4</sup> which has operated on a pilot basis and allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price ("Extreme Order Imbalances Pilot" or "Pilot").<sup>5</sup> The Pilot has recently been extended to June 1, 2011. In addition, in connection with proposing to make the rule permanent, the Exchange proposes to amend Rule 123C(9)(a)(1)(iii) to eliminate the requirement that only Floor brokers can represent interest after 4:00 p.m. and to make technical amendments related to the obligations of member firms entering interest pursuant to Rule 123C(9)(a)(1).<sup>6</sup>

##### Background

Pursuant to NYSE Amex Equities Rule 123C(9)(a)(1), the Exchange may suspend NYSE Amex Equities Rule 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a Designated Market Maker ("DMM") orally at or near the close. NYSE Amex Equities Rule 123C(9)(a)(1) was intended to be and has been invoked to attract offsetting

interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often an NYSE Amex Equities Rule 52 temporary suspension pursuant to the Pilot was invoked during the six months following its approval; and (ii) the Exchange's determination as to how to proceed with technical modifications to reconfigure Exchange systems to accept orders electronically after 4 p.m. As the Exchange has previously noted in filings with the Commission, the Pilot has been invoked only twice in NYSE Amex-listed securities.<sup>7</sup>

#### Proposal To Make Permanent the Operation of the Extreme Order Imbalance Rule

The Exchange has completed and tested the system modifications necessary to accept orders electronically after 4 p.m. The Exchange therefore proposes to make Rule 123C(9)(a)(1), as amended, permanent beginning on January 3, 2011.

Because the Exchange can now accept orders electronically after 4 p.m., the Exchange proposes to amend Rule 123C(9)(a)(iii) to eliminate the restriction that only Floor brokers can represent offsetting interest in response to a solicitation of interest pursuant to the Rule. The Exchange further proposes to make technical changes to Rule 123C(9)(a)(1)(iii) to identify what interest may be entered in response to a solicitation, *i.e.*, it must be offsetting interest, a limit order priced no worse than the last sale, and irrevocable. Market participants sending in interest electronically in response to a solicitation after 4 p.m. are responsible for assuring compliance with all provisions of subsection (iii), including that such interest must be on the opposite side of the imbalance, must be limit priced no worse than the last sale, and must be irrevocable. Failure to abide by these requirements could subject a market participant to regulatory review and possible disciplinary action.<sup>8</sup>

The Exchange also proposes to amend Rule 123C(9)(a)(iv) to make clear that all

<sup>4</sup> The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. See SR-NYSE-2010-84.

<sup>5</sup> See Securities Exchange Act Release Nos. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR-NYSEAltr-2009-15) (order granting approval of the Pilot); 60808 (October 9, 2009), 74 FR 53539 (October 19, 2009) (SR-NYSEAmex-2009-70) (extending the operation of the Pilot to December 31, 2009); 61265 (December 31, 2009), 75 FR 1094 (January 8, 2010) (SR-NYSEAmex-2009-96) (extending the operation of the Pilot from December 31, 2009 to March 1, 2010); 61611 (March 1, 2010), 75 FR 10530 (March 8, 2010) (SR-NYSEAmex-2010-15) (extending the operation of the Pilot from March 1, 2010 to June 1, 2010); 62293 (June 15, 2010), 75 FR 35862 (June 23, 2010) (SR-NYSEAmex-2010-50) (extending the operation of the Pilot from June 1, 2010 to December 1, 2010); and SR-NYSEAmex-2010-113 (filed November 30, 2010) (extending the operation of the Pilot from December 1, 2010 to June 1, 2011).

<sup>6</sup> In addition, the Exchange proposes to make a technical change to the text of Rule 123C(9)(a)(1)(v).

<sup>7</sup> See SR-NYSEAmex-2010-113 (filed November 30, 2010) (extending the operation of the Pilot from December 1, 2010 to June 1, 2011).

<sup>8</sup> Prior to implementation of this rule change, the Exchange will issue guidance in the form of an Information Memo that member organizations entering interest will be responsible for complying with Rule 123C(9)(a)(1)(iii).

<sup>70</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.

offsetting interest solicited pursuant to the Rule will be executed consistent with Rule 72(c), which governs the allocation of executions among market participants.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>9</sup> that an Exchange have rules that are 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. The Exchange believes that this filing is consistent with these principles because the proposed rule change will increase the ability of market participants to enter trading interest designed to prevent significant dislocation to closing prices that could result from extreme order imbalances. The Exchange further believes that this filing is consistent with these principles in that it expands the field of market participants that can directly enter interest in response to a solicitation of offsetting interest after 4 p.m. pursuant to Rule 123C(9)(a)(1).

### 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>11</sup> The

Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Exchange reports in connection with this proposal to make permanent Rule 123C(9)(a)(1) that it has completed testing of a functionality that would enable the electronic submission of orders after 4 p.m., and thus now proposes to remove the requirement that all interest entered after 4 p.m. in response to a DMM's solicitation of interest to offset an extreme order imbalance must be represented by Floor brokers. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so would allow the benefits of the new systems modifications allowing all market participants to enter orders electronically (rather than solely through a Floor broker) during a Rule 123C(9)(a)(1) suspended close to be realized immediately.<sup>12</sup> Accordingly, the Commission waives the 30-day operative delay requirement and 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 summarily may temporarily suspend 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-121 on the subject line.

proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</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).

### 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-2010-121. 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 website 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2010-121 and should be submitted on or before January 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the

<sup>13</sup> 17 CFR 200.30-3(a)(12).