For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61264; File No. SR–NYSE–2009–131]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 123C(8)(a)(1) To Extend Operation of the Extreme Order Imbalances Pilot

December 31, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 24, 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 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 amend NYSE Rule 123C(8)(a)(1) to extend the operation of the pilot to temporarily suspend certain NYSE requirements relating to the closing of securities on the Exchange until the earlier of Securities and Exchange Commission approval to make such pilot permanent or March 1, 2010. 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

NYSE Rule 123C(8)(a)(1) allows the Exchange to temporarily suspend certain rule requirements at the close when extreme order imbalances may cause significant dislocation to the closing price. The rule has operated on a pilot basis since April 2009 ("Extreme Order Imbalances Pilot" or "Pilot").[3] Through this filing, NYSE proposes to extend the Pilot until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or March 1, 2010.[4]

Background

Pursuant to NYSE Rule 123C(8)(a)(1), the Exchange may suspend NYSE Rules 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close. The provisions of NYSE Rule 123C(8)(a)(1) operate as the Extreme Order Imbalance Pilot.

As a condition of the approval to operate the Pilot, the Exchange committed to provide the Commission with information regarding: (i) How often a 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.

The Extreme Order Imbalance Pilot is scheduled to end operation on December 31, 2009.[5] The Exchange is currently preparing a rule filing seeking permission to make the provisions of the Pilot permanent with certain modifications but does not expect that filing to be completed and approved by the Commission before December 31, 2009.

Proposal To Extend the Operation of the Extreme Order Imbalance Pilot

The Exchange established the Extreme Order Imbalance Pilot to create a mechanism for ensuring a fair and orderly close when interest is received at or near the close that could negatively affect the closing transaction. The Exchange believes that this tool has proved very useful to resolve an extreme order imbalance that may result in a closing price dislocation at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.

As the Exchange has previously stated, NYSE Rule 123C(8) will be 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. This is evidenced by the fact that during the course of the Pilot, the Exchange invoked the provisions of NYSE Rule 123C(8), including the provisions of the Extreme Order Imbalance Pilot pursuant to NYSE Rule 123C(8)(a)(1), in only one security on August 31, 2009.

In addition, during the operation of the Pilot, the Exchange determined that it would not be as onerous as previously believed to modify Exchange systems to accept orders electronically after 4:00 p.m. The Exchange anticipates that such system modifications could [sic] be completed by December 31, 2009.

Given the above, the Exchange believes that provisions governing the Extreme Order Imbalance Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the Pilot in order to allow the Exchange to formally submit a filing to the Commission to convert the provisions governing the Pilot to permanent rules and complete the technological modifications required to accept orders electronically after 4:00 p.m. The Exchange therefore requests an extension from the current expiration date of December 31, 2009, until the earlier of Securities and Exchange Commission approval to make such Pilot permanent or March 1, 2010.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the

[10] 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. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSE–2009–18).

[4] The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. *See* SR–NYSEAmex–2009–96.

[5] *See* Securities Exchange Act Release No. 60809 (October 9, 2009), 74 FR 53532 (October 19, 2009) (SR–NYSE–2009–104) (extending the operation of the pilot from October 13, 2009 to December 31, 2009).

[6] 15 U.S.C. 78f(b)(5).

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 the instant filing is consistent with these principles. Specifically an extension will allow the Exchange to: (i) Prepare and submit a filing to make the provisions governing the Extreme Order Imbalance Pilot permanent; (ii) have such filing complete public notice and comment period; and (iii) complete the 19b–4 approval process. The rule operates to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[9] However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[10] which would make the rule change operative immediately. The Exchange believes that continuation of the Pilot does not burden competition and would operate to protect investors and the public interest by ensuring that the closing price at the Exchange is not significantly dislocated from the last sale price by virtue of an extreme order imbalance at or near the close.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption while the Exchange works towards submitting a separate proposal to make the Pilot permanent. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[11]

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.[12]

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–2009–131 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–2009–131. 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,[13] 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 Section on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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 Number SR–NYSE–2009–131 and should be submitted on or before January 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii). 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.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 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).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[14] 17 CFR 200.30–3(a)(12).