

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59997; File Nos. SR-NYSE-2009-50 and SR-NYSEAmex-2009-20)

May 28, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC and NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to Comparison of Executed Transactions

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on May 19, 2009, New York Stock Exchange LLC (“NYSE”) and NYSE Amex LLC (“NYSE-Amex”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes as described in Items I and II below, which Items have been prepared primarily by NYSE and NYSE-Amex (collectively, “Exchanges”). The Exchanges filed the proposed rule changes pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(6) thereunder⁵ so that the proposals were effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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

The Exchanges propose to amend NYSE Rule 134 (Differences and Omissions-Cleared Transactions) and NYSE-Amex Rule 134 (NYSE Amex Equities. Differences and Omissions-Cleared Transactions) to provide for certain technical procedures that the Exchanges use in the comparison stage of trade settlement.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

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 Exchanges included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of those statements may be examined at the places specified in Item IV below. The Exchanges have 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

NYSE operates the On-Line Comparison System ("OCS"), which provides the first step for the settlement of securities transactions on the Exchanges. OCS conducts comparison processing, which includes matching initial trade submissions, correction processing, omnibus processing, and questioned trade ("QT") resolution. OCS interacts with the Exchanges' members and member organizations in their roles as clearing firms, brokers, and Designated Market Making Units ("DMM Units") and is linked internally to the Exchanges' trading systems and externally to the National Securities Clearing Corporation.⁶

For all Exchange-based transactions, NYSE Rule 132.30 (Comparison and Settlement of Transactions Through A Fully-Interfaced or Qualified Clearing Agency) and NYSE-Amex Equities Rule 132.30 (Comparison and Settlement of Transactions Through A Fully-Interfaced or Qualified Clearing Agency) require members and member organizations to submit data elements to OCS.⁷ This data is then used to compare the terms of the two sides (i.e., buy and

⁶ The National Securities Clearing Corporation ("NSCC") is a clearing agency registered with the Commission under Section 17A of the Securities Exchange Act of 1934. NSCC provides centralized clearance and settlement services for equity security trades for U.S. broker-dealers.

⁷ See also NYSE Rule 130(c) and NYSE-Amex Equities Rule 130(c) (Overnight

sell) of a trade. When the two sides match, the trade is successfully compared and will move on to the subsequent stages of settlement processing. For automated trades, this data is recorded electronically, which reduces the error rate and produces “clean” or “locked-in” trades. For manual trades, data is submitted by both sides of the trade through their clearing firms.

To facilitate the comparison process, the Exchanges utilize omnibus account designations to record trade data.⁸ Using omnibus account designations allows for universal contras for one trade side, thereby reducing the number of different data elements that have to be independently recorded into a broker’s hand-held device or written on a Floor report for a trade, which also reduces the likelihood of error.

Despite the increased automation of the trading process and the use of universal designations, there are still a few trades that do not successfully compare. That is, all the trade data elements from the buy and sell sides do not match. This can occur when the trade is done manually and there is an error made in submitting the trade information from one or both sides. It can also occur on electronic trades if there are software problems or systemic problems that cause incorrect information to be filed thus causing inaccurate information to be transmitted. When trades do not compare, a QT is created and then goes through the “QT process.” This process mandates that clearing member organizations must resolve any trades that have not been successfully compared by the first business day after the trade date (“T+1”).⁹

Comparison of Exchange Transactions).

⁸ An “omnibus account” is an account in which the transactions of multiple individual members are combined.

⁹ NYSE Rule 134(a) and NYSE-Amex Equities Rule 134(a). These rules also set forth the procedures and timeframes to resolve QTs.

The Exchanges note that the incidence of QTs is very low both in terms of absolute numbers and as a percentage of daily trades. For example, for the period January 2 through January 8, 2009, there was an average of just 337 QTs per day at the NYSE on a T+1 basis, spread among the approximately 120 clearing firms and six DMM units. These are then researched and almost all of these are reconciled by the second evening after the trade date (“T+2”). As a result, on average there are typically less than three unresolved trades per month. There is an average of over 4 million trades each day on NYSE.

One of the functions of OCS is to reconcile the balances in the omnibus accounts at the end of each trading day. The accounting procedure used for trade resolution requires that an omnibus account must net to zero at the end of any trading session. That is, there cannot be an unassigned security or money position in an omnibus account since that would, in effect, assign the open balance to the Exchange where the transaction occurred. The Exchanges, therefore, propose to assign on T+2 any open balance in any of the omnibus accounts it uses to compare trades to either a DMM Unit or the member organization that has been identified as the clearing firm for one side of the unresolved trade. A clearing firm will be assigned as the default contra side in a trade that resulted from an execution involving e-Quotes, which are trades involving Floor broker agency interest files.¹⁰ The DMM Unit will be assigned when there is an open imbalance in an omnibus account that resulted from the execution of orders that did not involve an e-Quote, regardless of whether the DMM was involved in the transaction.

Specifically, the Exchanges propose to add language to their respective Rule 134 to enable them to assign either a DMM Unit or an e-clearing member organization as the contra

¹⁰ NYSE Rule 70(a)(i) and NYSE-Amex Equities Rule 70(a)(i).

party to any uncomparated transaction or unresolved omnibus account imbalance remaining in OCS at the close of business on the second business day after the trade date.

Since the number of QTs that remain unresolved by the end of the second day after the initial trade date is extremely low, the Exchanges expect that there will be very few assignments of a default contra side involving clearing firms or DMM Units that will be made under the proposed revisions of their respective Rule 134.

The Exchanges state that the proposed rule changes are consistent with their obligations under Section 6(b)(5) of the Act,¹¹ which requires the rules of a registered 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. The Exchanges believe that the proposed rule changes comply with these requirements because the changes enhance the comparison process at the Exchanges thereby supporting the timely settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchanges do 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

The Exchanges did not solicit or receive written comments with respect to the proposed rule change. The Exchanges will notify the Commission of any comments they receive.

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

The foregoing rule changes were effective upon filing with the Commission pursuant to

¹¹ 15 U.S.C. 78f(b)(5).

Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder¹³ because each of the proposed rule changes 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchanges have asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will enable the Exchanges to clarify and strengthen their process to resolve uncompleted transactions or unresolved account imbalances without undue delay while still affording interested parties the opportunity to submit comments or concerns to the Commission regarding these proposals. The new processes should instill greater confidence among the Exchanges' members and investors that such situations will be handled in an orderly and expeditious manner. For these reasons, the

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ Id.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁶

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 No. SR-NYSE-2009-50 or NYSEAmex-2009-20 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 No. SR-NYSE-2009-50 or NYSEAmex-2009-20. At least one of these file numbers 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.

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. 15 U.S.C. 78c(f). The Exchange provided the Commission written notice of its intent to file the proposed rule change at least five business days prior to filing.

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 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Exchanges principal offices and on NYSE's Internet Web site at www.nyse.com. 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-2009-50 or NYSEAmex-2009-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).