

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61549; File No. SR-NYSE-2010-09)

February 19, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Time Allowed to Temporarily Suspend Certain NYSE Requirements Relating to the Closing of Securities on the Exchange Which Currently Operates as a Pilot Pursuant to Former NYSE Rule 123C(8)(a)(1) Currently NYSE Rule 123C(9)(a)(1)

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 February 12, 2010,<sup>4</sup> 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 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 time allowed to temporarily suspend certain NYSE requirements relating to the closing of securities on the Exchange which currently operates as a pilot pursuant to former NYSE Rule 123C(8)(a)(1) currently NYSE Rule 123C(9)(a)(1). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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<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.

<sup>4</sup> The Exchange attempted to file this proposed rule change prior to the close of business on February 12, 2010, but experienced delays with the electronic filing system which caused this filing to be received after the close of business and to be assigned a filing date of February 16, 2010, the next business day. Because the delay was caused by technical issues, the Commission deems the official filing date of this proposed rule change to be February 12, 2010.

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

NYSE Rule 123C(9)(a)(1), formerly 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 Imbalance Pilot" or Pilot).<sup>5</sup> Through this filing, [sic] proposes to temporarily extend the time allowed to temporarily suspend certain NYSE requirements relating to the closing of securities on the Exchange which currently operates as a pilot pursuant to 123C(9)(a)(1).

Background

Pursuant to NYSE Rule 123C(9)(a)(1), the Exchange may suspend NYSE Rules 52 (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation

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<sup>5</sup> See Securities Exchange Act Release No. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR-NYSE-2009-15).

at the close as a result of an order entered into Exchange systems, or represented to a DMM orally at or near the close.<sup>6</sup>

The provisions of NYSE Rule 123C(9)(a)(1) operate as the Extreme Order Imbalance Pilot. The Exchange invokes NYSE Rule 123C(9)(a)(1) to attract offsetting interest in those rare circumstances where there exists such a large imbalance at the close that a DMM is unable to close the security without significantly dislocating the price. Further, pursuant to NYSE Rule 123C(9)(ii) the time to receive such off-setting interest must not be later than 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier close).

Proposal to Extend the Time to Receive Off- Setting Interest in Berkshire Hathaway A Security on February 12, 2010

On February 12, 2009, significant corporate actions in Berkshire Hathaway Class A and B securities significantly increased the trading volume in those securities. It was determined based on the fact that there is a relation between the price of the two securities and the fact that there was significantly greater liquidity in the Class B shares than the Class A shares that the most efficient manner to effect the close of trading in those securities was to effect the closing transaction in Berkshire Hathaway Class B securities first.

The significant volume resulted in [sic] Class B security closing transaction be [sic] completed at 4:19 p.m. Thereafter the DMM immediately assessed the shares eligible to be executed in the closing transaction for the Class A securities. At 4:27 p.m. when the imbalance was determined the Exchange sought off-setting interest; however, the remaining 3 minutes was not a sufficient amount of time to receive and effect the closing transaction in the Class A security.

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<sup>6</sup> See NYSE Rule 123C(9)(a)(1).

As to effect a fair and orderly close, the closing transaction for the Class A security occurred after 4:30 p.m.<sup>7</sup>

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> 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 proposal facilitates the fair and orderly execution of the closing transactions in an unusual market situation and thus ultimately served to protect investors and the public interest.

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

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<sup>7</sup> Specifically, the order acceptance cut-off time period designated by the Exchange was 4:35 p.m. Thereafter, once such offsetting interest from both on-Floor and off-Floor participants was received, the closing transaction for the Class A security was completed at approximately 4:41 p.m. See Email from Deanna G. W. Logan, Managing Director, NYSE Regulation, to David Liu, Assistant Director, *et al.*, Division of Trading and Markets, Commission, dated February 16, 2010.

<sup>8</sup> 15 U.S.C. 78f(b).

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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2010-09 on the subject line.

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

<sup>11</sup> 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.

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-2010-09. 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 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 available publicly. All submissions should refer to File Number SR-NYSE-2010-09 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.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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