

*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–CBOE–2010–106. 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 available publicly. All submissions should refer to File Number SR–CBOE–2010–106 and should be submitted on or before January 11, 2011.

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

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

[FR Doc. 2010–31932 Filed 12–20–10; 8:45 am]

**BILLING CODE 8011–01–P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–63538; File No. SR–NYSE–2010–75]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 123C To Clarify That Exchange Systems Enforce Rule 123C With Respect to Market At-The-Close and Limit At-The-Close Order Entry After 3:45 p.m.**

December 14, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on December 6, 2010, 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 amend Rule 123C to clarify that Exchange systems enforce Rule 123C with respect to Market At-The-Close (“MOC”) and Limit At-The-Close (“LOC”) order entry after 3:45 p.m. 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**

The purpose of this proposed rule change is to amend Rule 123C to clarify that Exchange systems enforce Rule 123C with respect to MOC<sup>3</sup> and LOC<sup>4</sup> order entry after 3:45 p.m.

Rule 123C governs certain closing procedures on the Exchange, including MOC, LOC and CO order entry, cancellation of such orders and the calculation and publication of imbalances. In particular, Rule 123C(2)(b) currently provides that MOC/LOC interest may be entered after 3:45 p.m. only to offset a Mandatory MOC/LOC Imbalance Publication. The rule therefore suggests that members or member organizations entering MOC or LOC orders are actively responsible for compliance therewith (*e.g.*, “orders may be entered”). However, Exchange systems enforce compliance with this rule pursuant to system functionality that allows only the entry of offsetting MOC/LOC interest after 3:45 p.m. and blocks the entry of all MOC/LOC orders that would join the same side of a published MOC/LOC imbalance and the entry of MOC/LOC orders after 3:45 p.m. for securities for which there has not been a Mandatory MOC/LOC Imbalance Publication.<sup>5</sup> Exchange systems also enforce compliance with this rule pursuant to system functionality that allows or blocks, depending upon the circumstances, MOC/LOC order entry in the event of a Trading Halt.

The Exchange proposes to amend Rule 123C(2) and (3) generally to clarify that Exchange systems enforce compliance with the rules, and therefore clarify that members and member organizations are not responsible for ensuring compliance with this aspect of the rule.

The Exchange proposes additional clean-up amendments to Rule 123C. Specifically, the Exchange proposes to delete certain text in Rule

<sup>3</sup> A MOC order is a market order in a security that, by its terms, is to be executed in its entirety at the closing price. If not executed due to tick restrictions or a trading halt, the order will be cancelled. *See* Rule 13 (Definitions of Orders).

<sup>4</sup> A LOC order is a limit order in a security that is entered for execution at the closing price of the security on the Exchange provided that the closing price is at or within the specified limit. If not executed due to a trading halt or because, by its terms it is not marketable at the closing price, the order will be cancelled. *See* Rule 13 (Definitions of Orders).

<sup>5</sup> *See* Information Memos 09–12 and 10–11, respectively.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>8</sup> 17 CFR 200.30–3(a)(12).

123C(2)(b)(ii)<sup>6</sup> and 123C(2)(c)(iii)<sup>7</sup> pertaining to a “no imbalance” notification after dissemination of an Informational Imbalance as well as the text of current Rule 123C(2)(b)(iii), because these provisions are no longer necessary due to the system-enforced compliance with MOC/LOC order entry. In addition, the Exchange proposes to amend Rule 123C(3)(c) to clarify that Exchange systems will reject cancellations of MOC, LOC and CO orders after 3:58 p.m. and to add a reference to Rule 123C(9), which pertains to alternative procedures in the case of extreme order imbalances at the close.

Because the Exchange previously disclosed this system functionality to member organizations, the Exchange believes that this rule proposal would not require technical programming and/or modification by members or member organizations.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of 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. Specifically, the changes proposed herein would reflect that Exchange systems enforce compliance with Rule 123C(2) and (3) and therefore clarify that Exchange members and member organizations are not responsible for ensuring such compliance.

### *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.

<sup>6</sup> See e-mail from Clare F. Saperstein, Vice President, Regulatory Policy and Management, NYSE Regulation, Inc., to Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, dated December 10, 2010 (amending the proposed rule change by replacing the reference to “Rule 123C(2) and (3)” with “Rule 123C(2)(b)(ii) and 123C(2)(c)(iii)”).

<sup>7</sup> See *id.*

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

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

### *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 foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act<sup>10</sup> and Rule 19b-4(f)(1) thereunder,<sup>11</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. Specifically, the change proposed herein would reflect that Exchange systems enforce compliance with Rule 123C(2) and (3) and therefore clarify that Exchange members and member organizations are not responsible for ensuring such compliance.

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-NYSE-2010-75 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-2010-75. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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-2010-75 and should be submitted on or before January 11, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-31928 Filed 12-20-10; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63536; File No. SR-NASDAQ-2010-163]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Collection of Exchange Fees**

December 14, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that, on December 8, 2010, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>11</sup> 17 CFR 240.19b-4(f)(1).