

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49682; File No. SR-NYSE-2004-09)

May 11, 2004

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Amend NYSE Rule 123C Relating to Market-on-Close Policy and Expiration Procedures

I. Introduction

On February 19, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 123C relating to Market-on-Close Policy and Expiration Procedures. The proposed rule change was published for comment in the Federal Register on April 1, 2004.³ The Commission received no comments on the proposal.

On April 26, 2004, the Exchange amended the proposed rule change.⁴ Amendment No. 1 adds “LOC” to the first sentence of section (3)(B) of NYSE Rule 123C, which was inadvertently excluded from the rule text of the Exchange’s original filing.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49476 (March 25, 2004), 69 FR 17255.

⁴ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated April 26, 2004 (“Amendment No. 1”). In Amendment No. 1, the NYSE corrected a typographical error. Additionally, the NYSE confirmed that by making this correction to paragraph (3)(B) of the proposed rule language, the NYSE clarifies what is established NYSE practice where there is no order imbalance. Amendment No. 1 does not expand the scope of the proposed rule change, but instead only clarifies rule language that represents existing practices at the NYSE. See, telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Joseph P. Morra, Special Counsel, Division, Commission, dated May 10, 2004.

This order approves the proposed rule change. Simultaneously, the Commission provides notice of filing of Amendment No. 1 and grants accelerated approval of Amendment No. 1.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ in that it is designed to, among other things, 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 Commission believes the electronic entry of all market-on-close (“MOC”) and limit-on-close (“LOC”) orders may allow market participants greater control in active trading crowds, and may enhance the dissemination of accurate information to all participants, because publications will be systematically generated. Furthermore, the Commission believes that moving the MOC and LOC deadline from 3:40 p.m. to 3:50 p.m. may allow traders and floor brokers greater control over the execution of customer orders and greater participation in active markets. The Exchange stated that its electronic entry systems for MOC and LOC order processing would require technology upgrades. Accordingly, the Exchange has represented that it will notify the Exchange membership and the Commission of the timing and implementation of such electronic entry systems.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

For these reasons, the Commission finds that the proposed rule change is consistent with the Act.⁷

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 added “LOC” to the first sentence of section (3)(B) of NYSE Rule 123C. Since Amendment No. 1 makes only a technical change to the proposed rule text, the Commission finds good cause to accelerate approval of Amendment No. 1 to the proposed rule change.⁸

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2004-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-09. 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

⁷ In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ See footnote 4, supra.

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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-2004-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2004-09) be, and it hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson
Assistant Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).