

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59446; File No. SR-NYSE-2009-17)

February 25, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Eliminating the Ability to Enter Orders on the Exchange with the Settlement Instructions of “Cash”, “Next Day” and “Seller’s Option”

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 February 18, 2009, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“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 eliminate the ability to enter orders on the Exchange with the settlement instructions of “cash”, “next day” and “seller’s option”.

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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing the Exchange seeks to amend several Exchange rules to remove references to certain settlement instructions that are no longer compatible with the Exchange’s more electronic market. These include instructions to settle on “cash”, “next day” or “seller’s option” basis.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Alternext Exchange (formerly the American Stock Exchange).⁴

Background

Currently, in addition to regular way settlement (i.e., settlement on the third business day following trade date), a customer may submit an order with settlement instructions for cash, next day or seller’s option. An order with cash settlement instructions requires delivery of the securities the same day as the transaction in contrast to a regular way transaction, where the seller is required to deliver the securities on the third business day. Next day settlement instructions require delivery of the securities on the first business day following the transaction. Orders that have settlement instructions of seller’s option affords the seller the right to deliver the security or bond at any time within a specified period, ranging from not less than two business days to not more than 180 days for stocks and not less than two business days and no more than sixty days for U.S. government securities.

Cash, next and seller’s option settlement instructions are remnants of a time when the Exchange functioned completely as a manual auction market. While each of these settlement

⁴ See SR-NYSE Alternext-2009-14 (to be filed February 18, 2009). The Commission notes that the referenced filing was rejected because of a deficiency in the proposed rule text.

instructions may be included on order types that are submitted electronically to the Exchange, orders containing any of those settlement instructions cannot be immediately and automatically executed but must bypass the Exchange matching/execution engine, Display Book, and are literally printed on paper at the trading post for manual processing on the Floor.

Proposed Elimination of Cash, Next Day, Seller's Option Settlement Instructions

In the Exchange's current more electronic market, orders received by Exchange systems that are marketable upon entry are eligible to be immediately and automatically executed. Order types and settlement instructions that require manual intervention pose significant impediments to the efficient functioning of the Exchange's market. To this end the Exchange filed with the Commission to remove legacy orders that require manual processing. Specifically, on January 31, 2008, the Exchange filed with the Commission to amend NYSE Rule 13 to invalidate the use of the manual order types "Alternative Order – Either/Or Order", "Orders Good Until a Specified Time", "Scale Order" and "Switch Order – Contingent Order" and Rule 124's order types "Limited Order, With or Without Sale" and "Basis Price Order" as being incompatible with the more electronic Exchange market environment.⁵

The Exchange's commitment to provide its market participants with the ability to have their orders executed in the most efficient manner necessitates the elimination of cash, next day and seller's option as valid settlement instructions for orders submitted to the Exchange. These instructions result in these orders printing to paper at the trading Post⁶ when they are submitted electronically in Exchange systems. The DMM and the trading assistant must realize that the document printed was in fact an order thus causing delay in the execution of the order. The

⁵ See Securities and Exchange Act Release No. 57295 (February 8, 2008), 73 FR 8731 (February 14, 2008)(SR-NYSE-2008-11).

⁶ Trading Posts are the horseshoe shaped counters manned by DMMs and trading assistants on the Trading Floor of the NYSE where individual stocks are bought and sold.

DMM is then responsible for the manual execution of the order. The manual intervention required of the DMM and trading assistant at the Post in the processing of these orders puts the orders at the very real risk of “missing the market” as a result of the current speed of order execution in the Exchange market.

In addition, the inefficiency of these order types is made obvious by the fact that they are infrequently used by market participants. A review of the different types of orders received by the Exchange during the week of May 12, 2008 through May 16, 2008 shows that there were on average 28 cash orders (with an average of 1,653 shares per day), 48 next day orders (average of 763 shares per day) and 2 seller’s option orders (average of 2,839 shares per day) utilized by market participants each day. By comparison, for May 2008, the Exchange received an average of 92.2 million orders a day. Even during the last five trading days of 2007, when the most cash, next day and seller’s option orders are received, the average per day submissions were 123 for cash (average of 896 shares per day), 199 for next day (average of 1,848 shares per day) and 10 for seller’s option (average of 11,679 shares per day).⁷

The Exchange now seeks to eliminate cash, next day and seller’s option as valid settlement instructions for orders submitted to the NYSE. The Exchange therefore proposes to delete the references to those settlement instructions from NYSE Rules 12 (“Business Day”), 64

⁷ The Exchange notes that on December 30th and 31st of 2008 it executed an atypical amount of shares for orders submitted with cash, next day and seller’s option settlement instructions. Specifically, on December 30, 2008, 126,504 shares were executed on a cash settlement basis, 10,284,879 shares for next day settlement and 10,000,000 shares for seller’s option settlement. In addition, there were 8,110,228 shares executed for cash settlement on December 31, 2008. The Exchange believes that this level of activity is reflective of the economic events of 2008 and is unrelated to usual trading patterns for these settlement types.

(Bonds, Rights and 100-Share-Unit Stocks), 66 (U.S. Government Securities)⁸, 123 (Records of Orders), 124 (Odd-Lot Orders), 130 (Overnight Comparison of Exchange Transactions), 137 (Written Contracts), 137A (Samples of Written Contracts), 189 (Unit of Delivery), 235 (Ex-Dividends, Ex-Rights), 236 (Ex-Warrants), 241 (Interest - Added to Contract Price), 257 (Deliveries After “Ex” Date), 282 (Buy-In Procedures) and 440G (Transactions in Stocks and Warrants for the Accounts of Members, Principal Executives and Member Organizations). In addition, the Exchange seeks to eliminate entirely Rules 73 (“Seller’s Option”), 177 (Delivery Time – “Cash” Contracts) and 179 (“Seller’s Option”). In addition, the Exchange proposes to remove language in Rules 64 and 66 that provide for the possibility of using multiple settlement periods for bids and offers entered on the Exchange since, for all practical purposes, the Exchange will now only accept orders for regular way settlement.

The Exchange also proposes to amend Rule 66 to add the provision that exists in Rule 64 to allow the Exchange, in its discretion, to provide for additional settlement periods. The Exchange is proposing this addition to bring the provisions of the two rules into harmony as they address similar procedures with respect to different types of securities admitted to dealings on the Exchange. The Exchange, however, recognizes that any additional settlement periods it proposes to add will be subject to the rule filing process under Section 19(b) of the Securities Exchange Act of 1934 (the “Act”) [sic].⁹

The Exchange will commence implementation of the proposed elimination of the settlement instructions discussed herein on March 13, 2009. The Exchange intends to progressively implement this elimination on a security by security basis as it gains experience

⁸ The Exchange does not have the capability to accept these order types for U.S. Government securities.

⁹ 15 U.S.C. 78s(b).

with the implementation until it is operative in all securities traded on the Floor. During the implementation, the Exchange will identify on its website which securities will no longer be eligible for these settlement instructions.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Act”) [sic] for this proposed rule change is the requirement under Section 6(b)(5)¹⁰ that an exchange have rules that are 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 instant filing accomplishes these goals by rescinding legacy settlement instructions that place customers at risk of missing the market and possibly receiving inferior priced executions.

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

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 for 30 days after the date of the filing, or such shorter time as the Commission

¹⁰ 15 U.S.C. 78f(b)(5).

may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A)¹¹ of the Act and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative on March 13, 2009. Specifically, the Exchange states that the proposal will rescind legacy settlement instructions that are not compatible with the Exchange's electronic market. The Commission believes that allowing the proposed rule change to become operative on March 13, 2009 is consistent with the protection of investors and the public interest, because it will enable the Exchange to implement pending technological enhancements that require the rescission of these settlement instructions. The Exchange expects these enhancements to make its order processing operations more efficient and thereby strengthen and advance the quality of the Exchange's market. Accordingly, the Commission designates the proposed rule change to be operative on March 13, 2009.¹⁵

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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ Id. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

¹⁵ For purposed only of waiving the 30-day operative delay of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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 Number SR-NYSE-2009-17 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-2009-17. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00

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-2009-17 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.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).