SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60974; File No. SR–NYSE–2009–111]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 123C to Modify the Procedures for Its Closing Process and Making Conforming Changes to NYSE Rules 13 and 15

November 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 2009, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 amendments to NYSE Rule 123C (Market On The Close Policy And Expiration Procedures) to modify the procedures for its closing process; and make conforming changes to NYSE Rules 13 (''Definitions of Orders'') and Rule 15. (''Pre-Opening Indications''). 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In October 2008, the NYSE implemented sweeping changes to its market rules and execution technology that were designed to improve execution quality on the Exchange. Among the elements of the enhanced Exchange market model, the NYSE eliminated the function of specialists on the Exchange by creating a new category of market participant, the Designated Market Maker or DMM. The DMMs, like specialists, have affirmative obligations to make an orderly market in assigned securities, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. The NYSE also recognized that in view of the NYSE's electronic execution functionality, the DMM, unlike the specialist, would no longer be deemed the agent for every incoming order. The NYSE also responded to customer demand and created new order types to represent additional undisplayed reserve interest.

The NYSE has also focused on streamlining and improving efficiency of its closing process by implementing a single print close,[3] activating systemic compliance filters for market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders and enhancing the transparency of its informational data feed for imbalances by including d-Quotes [4] and all other e-Quotes [5] containing pegging instructions eligible to participate in the closing transaction in the NYSE Order Imbalance Information datafeed.[6] In continuing the enhancements to the Exchange's market model, the Exchange seeks to amend NYSE Rule 123C to streamline the closing process, enhance transparency on the close [7] and allow for greater customer participation when there is an imbalance in a security prior to the closing transaction. Specifically, the Exchange proposes to amend NYSE Rule 123C to: (i) Extend the time for the entry of MOC and LOC orders [8] from 3:40 p.m. to 3:45 p.m.; (ii) amend the procedures for the entry of MOC/LOC orders in response to imbalance publications and regulatory trading halts; (iii) change to the cancellation time for MOC/LOC orders to 3:58 p.m.; (iv) require only one mandatory imbalance publication; (v) rescind the provisions governing Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements; (vi) modify the dissemination of Order Imbalance Information pursuant to NYSE Rule 123C(6) to commence at 3:45 p.m.; (vii) include additional information in both the pre-opening and pre-closing Order Imbalance Information data feeds; (viii) amend NYSE Rule 13 to create a conditional-instruction limit order type called the Closing Offset Order (''CO order''), which may only be used to offset an existing imbalance of orders on the close; (ix) delete the ''At the Close'' order type from NYSE Rule 13 and replace it with the specific definitions of MOC and LOC orders; and (x) codify the hierarchy of allocation of interest in the closing transaction in NYSE Rule 123(C).

The Exchange notes that similar changes are proposed to the rules of its affiliate, NYSE Amex LLC.[9]

Current Closing Procedures

NYSE Rule 123C prescribes, *inter alia,* the procedure for the entry and execution of MOC and marketable LOC orders and the determination of the closing print(s) to be reported to the Consolidated Tape for each security at the close of trading.

Pursuant to NYSE Rule 123C market participants may enter an MOC order for execution as part of the closing transaction at the price of the close.[10] Similar to a market order, an MOC order is to be executed in its entirety at the closing price; however, if the order is not executed as a result of a trading halt or because of its terms (*e.g.,* buy minus or sell plus), the MOC order is cancelled.[11]

Market participants that seek to have their orders executed on the close but are sensitive to price, may pursuant to NYSE Rule 123C, enter LOC orders that will be eligible for execution in the closing transaction, provided that the closing price is at or within the limit specified.[12] An LOC order is not guaranteed an execution in the closing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange [sic] Release No. 59345 (February 3, 2009), 74 FR 6444 (February 9, 2009) (SR–NYSE–2009–10).

[4] *See* NYSE Rule 70, Supplementary Material .25.

[5] *See* NYSE Rule 70(a).

[6] *See* Securities Exchange [sic] Release No. 60153 (June 19, 2009), 74 FR 30656 (June 26, 2009) (SR–NYSE–2009–49).

[7] Conforming changes related to the information disseminated prior to the opening transaction are also proposed in this filing.

[8] In the NYSE Rules and for the purposes of this discussion, the terms ''market-on-close'' and ''limit-on-close'' are used interchangeably with ''market-at-the-close'' and ''limit-at-the-close''.

[9] *See* SR–NYSEAmex–2009–81.

[10] *See* NYSE Rule 123C(1).

[11] *See Id.*

[12] *See* NYSE Rule 123C(2).

transaction; rather, only an LOC order with a limit price that is better [13] than the closing price is guaranteed an execution.[14] An LOC order limited at the closing price is sequenced with other LOC orders on the NYSE Display Book® [15] (''Display Book'') in time priority of receipt in Exchange systems and is available for execution after all other orders on the Display Book at the closing price are executed, regardless of when such other orders are received.[16]

NYSE Rule 123C(1) and (2) require that all MOC and LOC orders be entered by 3:40 p.m. in any stock on any trading day, unless entered to offset a published imbalance, or on either side of the market if a regulatory halt is in effect at 3:40 p.m. or occurs after that time. Pursuant to NYSE Rule 123C, between 3:40 and 3:50 p.m., MOC/LOC orders are irrevocable, except to correct a legitimate error (*e.g.,* side, size, symbol, price, or duplication of an order) or when a regulatory trading halt is in effect [17] at or after 3:40 p.m. During normal trading conditions, cancellations or reductions in the size of a MOC/LOC orders after 3:50 p.m. are not permitted for any reason, even in the case of legitimate error, except as provided in NYSE Rule 123C(8)(a)(2). Currently, NYSE Rule 123C(8) allows the Exchange to temporarily suspend certain requirements related to the closing of securities, provided certain conditions are met.[18] If a suspension is invoked in a security pursuant to NYSE Rule 123C(8)(a)(2), MOC/LOC interest may be cancelled or reduced after 3:50 p.m.[19]

Exchange systems calculate imbalance of MOC and marketable LOC orders (*i.e.,* more shares to buy than sell or vice versa) by netting the aggregate amount of MOC shares and marketable LOC buy orders against the aggregate amount of MOC shares and marketable LOC sell orders.[20]

Between 3:00 p.m. and 3:40 p.m., if there is an imbalance of MOC/LOC orders, a DMM who has received Floor Official approval may publish an imbalance of any size (''Informational Balance''). If the DMM publishes an Informational Imbalance and at 3:40 p.m. there exists an imbalance of 50,000 shares or more, or any other significant imbalance, the DMM must publish that updated imbalance information as soon as possible after 3:40 p.m. If there is neither a significant imbalance nor one of 50,000 shares or more, the DMM is required to publish a ''no imbalance'' message if an Informational Imbalance was published. If the DMM publishes a ''no imbalance'' message at 3:40 p.m. and a significant imbalance or one of 50,000 shares or more occurs between 3:40 and 3:50 p.m., then the DMM must publish the imbalance information as soon as possible after 3:50 p.m.

In the absence of an Informational Imbalance publication, if at 3:40 p.m. there is an imbalance of 50,000 shares or more of MOC/LOC orders, the DMM is required to publish the imbalance information to the Consolidated Tape in order to solicit contra-side interest.[21] The published imbalance information must be updated again at 3:50 p.m. with the current numerical imbalance or a no imbalance message.[22]

NYSE Rule 123C(6) further allows Exchange systems to disseminate a data feed of real-time order imbalances that accumulate prior to the close of trading on the Exchange (''Order Imbalance Information'').[23] Order Imbalance Information is supplemental information disseminated by the Exchange prior to a closing transaction.[24] Specifically, Order Imbalance Information is disseminated every fifteen seconds between 3:40 p.m. and 3:50 p.m.; thereafter, it is disseminated every five seconds between 3:50 p.m. and 4 p.m.[25]

The mandatory publications are included in both the Order Imbalance Information data feed and on the Consolidated Tape. In addition, commencing at 3:55 p.m., the Order Imbalance Information data feed also includes d-Quotes [26] and all other e-Quotes [27] containing pegging

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[13] As used herein, ''better priced than the closing price'' means an order that is lower than the closing price in the case of an order to sell or higher than the closing price in the case of an order to buy.

[14] It should be noted that orders are cancelled if there is a trading halt in the security that is not lifted prior to the close of trading.

[15] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains order information, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[16] *See* NYSE Rule 123C(2).

[17] In the case of a regulatory halt, MOC orders may be entered until 3:50 p.m. or until the stock reopens, whichever occurs first, even if an imbalance publication occurred prior to the regulatory halt.

[18] *See* Securities Exchange [sic] Release No. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSE–2009–18) (approving the ability of the Exchange to temporarily suspend certain requirements related to the closing of securities on the Exchange with the provisions of NYSE Rule 123(C)(8)(a)(1) operating as a pilot scheduled to end on October 12, 2009); *See also* Securities Exchange [sic] Release No. 60809. (October 9, 2009), 74 FR 53532 (October 19, 2009) (SR–NYSE–2009–104) (extending the Exchange ability to temporarily suspend certain requirements related to the closing of securities on the Exchange with the provisions of NYSE Amex Equities [sic] Rule 123(C)(8)(a)(1) operating as a pilot scheduled to end on December 31, 2009). Pursuant to 123C(8), to avoid closing price dislocation that may result from an order entered into Exchange systems or represented to a DMM orally at or near the close, the Exchange may temporarily suspend the hours during which the Exchange is open for the transaction of business pursuant to NYSE Rule 52. A determination to declare such a temporary suspension is made on a security-by-security basis. The determination, as well as any entry or cancellation of orders or closing of a security pursuant to NYSE Rule 123C(8)(a) must be supervised and approved by either an Executive Floor Governor or a qualified NYSE Euronext employee, as defined under NYSE Rule 46(b)(v), and supervised by a qualified Exchange Officer, as defined in NYSE Rule 48(d).

[19] Pursuant to NYSE Rule 123C(8)(a)(2), with approval of an Executive Floor Governor or a qualified NYSE Euronext employee, MOC/LOC orders may be cancelled or reduced if:

(i) The cancellation or reduction is necessary to correct a legitimate error; and

(ii) (ii) [sic] Execution of such an MOC or LOC order would cause significant price dislocation at the close.

[20] *See* NYSE Rules 116.40(B) and 123C(3)(A).

[21] *See* NYSE Rule 123C(1), (2) and (5). Imbalance publications pursuant to these provisions of the rule are interpreted as the mandatory publications.

[22] At 3:50 p.m., a ''no imbalance message'' indicates that the subsequent imbalance of shares, is less than 50,000 shares and is not significant in relation to the average daily trading volume in the security.

[23] *See* Securities Exchange [sic] Release Nos. 57862 (May 23, 2008), 73 FR 31174 (May 30, 2008) (SR–NYSE–2008–41) and 57861 (May 23, 2008), 73 FR 31905 (June 4, 2008) (SR–NYSE–2008–42). The text of NYSE Rule 123C(6) (to be entitled proposed NYSE Rule 123C paragraphs (1)(g) (Definition: Order Imbalance Information) and (6) (Publication of Order Imbalance Information) was not changed in this rule filing.

[24] *See* NYSE Rule 123C(6). Pursuant to NYSE Rule 15, the Exchange also distributes information about imbalances in real-time at specified intervals prior to the opening transaction. The pre-opening Order Imbalance Information data feed is disseminated (i) every five minutes between 8:30 a.m. and 9 a.m.; (ii) every one minute between 9 a.m. and 9:20 a.m.; and (iii) every 15 seconds between 9:20 a.m. and the opening (or 9:35 a.m. if the opening is delayed).

[25] On any day that the scheduled close of trading on the Exchange is earlier than 4 p.m., the dissemination of Order Imbalance Information prior to the closing transaction will commence 20 minutes before the scheduled closing time. Order Imbalance Information will be disseminated every fifteen seconds for approximately 10 minutes. Thereafter, the Order Imbalance Information will be disseminated ever [sic] five seconds until the scheduled closing time.

[26] This type of Floor broker agency interest contains discretionary instructions as to size and/ or price of an e-Quote. *See* NYSE Rule 70 Supplementary Material .25.

[27] Floor brokers are permitted to represent orders electronically through the use of e-Quotes. *See* NYSE Rule 70(a)(i).

instructions[28] eligible to participate in the closing transaction.[29]

The Order Imbalance Information data feed prior to the close calculates the reference price, when the last sale price does not fall within the best bid and the best offer on the Exchange at the time that the Exchange calculates a closing imbalance for a security,[30] as follows:

• If the last sale price is lower than the Bid price, then the Bid Price will serve as the Reference Price.

• If the last sale price is higher than the Offer price, then the Offer Price will serve as the Reference Price.

• If the last sale price falls within the Exchange's best bid and offer for the security, the last sale price will serve as the Reference Price.

Examples:

(1) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the data feed is 100 shares bid at a price of $15.02 and 500 shares offered at a $15.20. The reference price for the NYSE Order Imbalance data feed in XYZ security will be $15.02.

(2) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the data feed is 100 shares bid at a price of $14.91 and 500 shares offered at a $14.99. The reference price for the NYSE Order Imbalance data feed in XYZ security will be $14.99.

(3) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the data feed is 100 shares bid at a price of $14.98 and 500 shares offered at a $15.02. The reference price for the NYSE Order Imbalance data feed in XYZ security will be $15.00.

Only the mandatory indications published pursuant to NYSE Rule 123C(1) control whether a party may enter MOC/LOC interest to offset an imbalance publication.

In executing the closing transaction, Exchange systems calculate the shares of MOC and marketable LOC orders on each side of the market. Where there is an imbalance, the shares constituting the imbalance are executed against the offer side (in case of a buy imbalance) or the bid side (in the case of a sell imbalance).[31] The remaining MOC and marketable LOC buy and sell orders are paired off against each other at the price at which the imbalance shares were executed.[32] The imbalance and the pair off transaction are reported to the Consolidated Tape as a single transaction.[33]

If there is no imbalance, the aggregate buy and sell MOC and marketable LOC orders are paired off at the price of the last sale on the Exchange prior to the close of trading in the security.[34] This transaction is reported to the Consolidated Tape as a single transaction.[35]

Any stop orders that are elected by the closing price in a particular security are automatically and systemically converted into market orders and are included in the total number of MOC orders to be executed at the close for that security.[36]

Interest executed in the closing transaction is allocated pursuant to NYSE Rule 72 (''Priority of Bids and Offers and Allocation of Executions'') and consistent with the hierarchy of interest which currently is only codified in the NYSE Floor Official Manual.[37] In the hierarchy of allocation, better priced interest must receive an execution in whole or in part[38] (''must execute interest'') in order for the security to close. Included in this category are MOC orders without tick restrictions, MOC orders with tick restrictions that are eligible to be executed at a price better than the closing price, better priced limit orders, better priced LOC orders with or without tick restrictions that are eligible for execution at a better price than the closing price and Crowd interest.[39] After the ''must execute interest'' is satisfied, then any limit orders represented in Display Book at the closing price may be used to offset the remaining imbalance. It should be noted that DMM interest, including better priced DMM interest entered into the Display Book prior to the closing transaction, eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction. Next eligible for execution in the hierarchy of allocation for the closing transaction are LOC orders without tick restrictions limited to the closing price, then MOC orders that have tick restrictions which limit the order's price to the price of the closing transaction,[40] followed by LOC orders limited to the price of the closing transaction that have tick restrictions and finally ''G'' orders,[41] including all better priced ''G'' orders.

[28] This type of Floor broker agency interest contains a distinct instruction that may be used in conjunction with an e-Quote and/or a d-Quote. *See* NYSE Rule 70, Supplementary Material .26. This type of instruction allows the Floor broker to maintain his/her interest in the Exchange Best Bid or Offer (''BBO'') if the quote moves from the orders initial quote price. Pegged interest moves with the Exchange BBO within the designated range. Any discretionary instructions associated with that interest will continue to be applied as long as it is within the Floor broker's designated price range. Buy side e-Quotes will peg to the best bid and sell side e-Quotes will peg to the best offer. The Exchange filed a proposal with the SEC to amend NYSE Rule 70.25 to permit d-Quotes to be active throughout the trading day and to provide for discretionary instructions that a d-Quote will execute only if a minimum trade size (''MTS'') requirement is met, and to amend NYSE Rule 70.26 to provide for e-Quotes and d-Quotes to peg to the National best bid or offer (''NBBO'') rather than the Exchange best bid or offer (''BBO''). See Securities and Exchange [sic] Release No. 60888 (October 27, 2009), 74 FR 56902 (November 3, 2009) (SR–NYSE–2009–106).

[29] Similarly, in the case of the pre-opening Order Imbalance Information data feed, all interest eligible to trade in the opening transaction, excluding odd-lot orders and the odd-lot portion of partial round-lot orders, are included in the data feed. Floor broker interest includes all interest except non-displayed reserve interest marked do not display. Customer interest includes all interest except for non-displayed reserve interest. DMM interest is not included in the pre-opening Order Imbalance Information data feed.

[30] The reference price for the pre-opening Order Imbalance Information data feed is equal the last sale (previous closing price) or the price indication published under the Rule 15 or 123D. Therefore, when the Exchange publishes a pre-opening indication in a security pursuant to the provisions of paragraphs (a) and (b) of NYSE Rule 15 or NYSE Rule 123D, the reference price will be determined as follows:

If the Bid Price from the indication (the lower price) is higher than the last sale, the Reference Price will be the Bid.

If the Offer Price from the indication (the higher price) is lower than the last sale, the Reference Price will be the Offer.

If the Last Sale is within the indication range, the Book will use the Last Sale as the Reference Price.

If multiple indications have been published, the last indication that the Exchange makes available will be used as the Reference Price.

[31] *See* NYSE Rules 123C(3) and 116.40(B).

[32] *See* NYSE Rules 123C(3).

[33] *See* NYSE Rules 123C(3) and 116.40(C).

[34] *See* NYSE Rules 116.40(C) and 123C(3)(B).

[35] *See Id.*

[36] *See* NYSE Rules 116.40(A) and 123C(3)(A).

[37] *See* New York Stock Exchange Inc., Floor Official Manual, 214–215 (June 2004 Edition). The Exchange ceased publication of the Floor Official Manual after this edition. The proposed amendments herein seek to add transparency to the closing process and will incorporate the hierarchy of allocation into the proposed rule text.

[38] MOC orders must be executed in its entirety at the closing price. Marketable limit orders receive an execution subject to the availability of contra side volume.

[39] As used herein, Crowd interest means verbal Floor broker interest at the market entered by the DMM to interact with orders in the Display Book.

[40] For example, the last sale on the Exchange was at a price of $46.00 on a minus tick, the closing price is $46.01, all sell plus MOC orders are limited to the closing price of $46.01 because the closing transaction would be the next plus tick.

[41] Section 11(a)(1) of the Act generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. *See* 15 U.S.C. 78k(a)(1). Subsection (G) of Section 11(a)(1) provides an exemption allowing an exchange member to have its own floor broker execute a proprietary transaction (''G order''). A g-Quote is an electronic method for Floor brokers to represent G orders. G

Continued

Once the last sale in the security occurs, the DMM organizes the closing transaction by considering Crowd interest, interest available to participate on the close and his own trading interest (consistent with affirmative obligations).[42] Pursuant to the DMM's affirmative obligation, the DMM should minimize price dislocation caused by disparity between supply and demand. At that point, he or she must assess potential imbalances (if any) at various potential closing price points in order to price the close. The DMM will generally close the security by picking a price point that he or she believes is an appropriate price based on supply and demand and may insert DMM trading interest.

Example of a Current Close Including the Imbalance Publications

Example #1

XYZ security has an average daily trading volume of approximately 450,000 shares. At 3:10 p.m. XYZ receives a buy MOC order for 45,000 shares. Shortly thereafter, in consultation with a Floor Official, the DMM publishes an Informational Imbalance. By 3:40 p.m. the buy imbalance has increased to 150,000 shares and the DMM disseminates a mandatory imbalance publication showing the updated amount. Also at 3:40 the Order Imbalance Information data feed commences and is disseminated every 15 seconds thereafter.

By 3:50 p.m. the DMM has received 50,000 shares of sell MOC interest to offset the 150,000 share buy imbalance. At 3:50 p.m. the DMM disseminates another mandatory imbalance publication updating the imbalance to a 100,000 share buy imbalance.

Also at 3:50 the Order Imbalance information data feed increases the frequency of its publications to every 5 seconds. Beginning at 3:55 p.m. the Order Imbalance data feed includes d-Quotes and all other e-Quotes containing pegging instructions that are eligible to participate in the closing transaction based on current execution prices.

The DMM did not receive any additional offsetting interest between 3:50 and 4 p.m. (official closing time) so the imbalance remained at 100,000 shares to buy.

The last bid in XYZ security prior to the closing transaction was $19.85 and the offer was $20.00. The last sale prior to 4 p.m. (official closing time) was at $19.85.

The sell interest on the Display Book leading into the closing transaction consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of public limit orders at $20.24;
4. 10,000 shares of tick sensitive LOC interest at $20.24;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;
6. 40,000 shares LOC interest at $20.25;
7. 10,000 shares of non-MOC ''G'' market orders.

Given this interest available in Display Book, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 10,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4:00 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:[43]

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares.

The remaining imbalance of 100,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–5 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 95,000 share buy imbalance;
2. 5,000 shares of Crowd market interest which leaves a 90,000 share buy imbalance;
3. 10,000 shares of public limit orders at $20.24, which leaves an 80,000 share buy imbalance; and [sic]
4. 10,000 shares of tick sensitive LOC interest at $20.24 which leaves a 70,000 share buy imbalance;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 60,000 share buy imbalance;[44]

The remaining 60,000 share buy imbalance will be offset at the price of $20.25 as follows:

6. 10,000 shares of DMM interest, which leaves a 50,000 share buy imbalance;
7. 40,000 shares LOC interest at $20.25, which leaves a 10,000 share buy imbalance; and
8. 10,000 shares of non-MOC ''G'' orders.

Example number 1 above is a simple closing transaction that demonstrates all interest eligible to receive an execution in the closing transaction being executed in full. In the above example, the offsetting interest was equal to the size of the actual buy imbalance; however, in the event that any one type of offsetting interest with precedence in the hierarchy is sufficient to fill the imbalance, that interest will be filled and the remaining interest lower in the hierarchy will receive a report of ''nothing done.'' Example number 2 below demonstrates this principle and further illustrates the operation of parity allocations in the closing transactions.

Example #2

Assuming the same imbalance publication information and receipt of offsetting interest in Example #1. The last sale in the security is at the price of $19.85. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of tick sensitive LOC interest at $20.24;
4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;
5. 20,000 shares e-Quote interest from a single Floor broker at $20.25;
6. 50,000 shares of public limit orders at $20.25;
7. 40,000 shares LOC interest at $20.25;

orders on NYSE yield priority, and parity to all other non-G orders.

[42] DMMs [sic] trading interest is determined in part by risk management goals. DMMs may manage risk by trading on the same side of the imbalance if consistent with his or her affirmative obligation under NYSE Rule 104 and other NYSE and SEC rules. If the DMM participates on the same side of an order imbalance in a security such that the price of the security moves significantly, this may raise a concern as to whether the DMM is meeting his or her affirmative obligation and other regulatory requirements.

[43] The execution occurs as a single transaction. The logic described in the text refers to how the Display book allocates shares, not the order of execution.

[44] Any super-marketable d-Quote interest that exercises its maximum discretion becomes better priced limit interest for the purposes of the hierarchy of execution and is included in the closing transaction as must execute interest.

8. 10,000 shares of non-MOC ''G'' market orders.

Given this interest available in Display Book, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 50,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4:00 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares.

The remaining imbalance of 100,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–4 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 95,000 share buy imbalance;

2. 5,000 shares of Crowd market interest, which leaves a 90,000 share buy imbalance;

3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves an 80,000 share buy imbalance;

4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 70,000 shares buy imbalance;

The remaining 70,000 shares of the buy imbalance will be offset at the price of $20.25 as follows:

5. 20,000 shares of e-Quote interest at $20.25, which leaves a 50,000 share buy imbalance;

6. 25,000 shares of at-priced DMM interest, which leaves a 25,000 shares buy imbalance;

7. 25,000 shares of public limit orders at $20.25, which fills the remaining 25,000 shares of the imbalance.

The remaining 25,000 shares of at-priced DMM interest and the 25,000 shares of public limit orders at $20.25 will not be executed.[45] Additionally, the 40,000 shares LOC interest priced at $20.25 and 10,000 shares of ''G'' orders will also remain unexecuted and receive reports of ''nothing done.''[46]

Example #3

Example #3 further illustrates a DMMM [sic] facilitation of the closing transaction and demonstrates that the DMM may enter his or her interest on the same side of the MOC/LOC imbalance when effecting the closing transaction.

Assuming the same imbalance publication information and receipt of offsetting interest in Example #1. The last sale in the security in this Example #3 is at the price of $20.23. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;

2. 5,000 shares of Crowd market interest;

3. 10,000 shares of tick sensitive LOC interest at $20.24;

4. 50,000 shares of public limit orders at $20.25;

5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;

6. 20,000 shares of LOC interest at $20.25.

In addition, while arranging the closing transaction after 4:00 p.m. the DMM enters 20,000 shares of DMM interest to buy for the dealer account.[47] There is additional sell interest on the Display Book that would accommodate the DMM's additional interest as follows:

7. 10,000 shares of public limit orders to sell at $20.26;

8. 10,000 shares of public limit orders to sell at $20.27;

Based on the interest available in Display Book on both sides of the market, the DMM has determined to close trading in XYZ security at a price of $20.27.

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the current 170,000 shares of the buy imbalance at a price of $20.27, leaving a buy imbalance of 120,000 shares (including DMM interest).

The remaining imbalance of 120,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.27. As interest priced better than the closing price, numbers 1–7 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 115,000 share buy imbalance;

2. 5,000 shares of Crowd Market interest, which leaves a 110,000 share buy imbalance;

3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves an 100,000 share buy imbalance;

4. 50,000 shares of public limit orders at $20.25, which leaves a 50,000 share buy imbalance;

5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 40,000 share buy imbalance;

6. 20,000 shares LOC interest at $20.25, which leaves a 20,000 share buy imbalance;

7. 10,000 shares of public limit orders at $20.26, which leaves a 10,000 share buy imbalance; and

8. 10,000 shares of public limit orders at $20.27 are executed against the remaining 10,000 share buy imbalance.

Additional Procedures Governed by NYSE Rule 123C

In addition to current Market on the Close procedures, NYSE Rule 123C prescribes the Expiration Friday[48] Auxiliary Procedures for the Opening. The provisions of the rule govern the time of entry and the marking of orders related to expiring index contracts.[49]

[45] Interest represented in numbers 5–7 received an allocation of shares that is less than their full quantity consistent with NYSE Rule 72 which requires the shares to be allocated on a parity basis. Specifically, DMM interests, individual e-Quotes interests and public limit order interests each represent a distinct parity group which and the available shares are divided among the parity groups.

[46] DMM interest is considered at price interest and is therefore higher in the hierarchy of execution than at priced LOC interest which are not guaranteed an execution pursuant to the provisions of 123C(2). It should be noted that DMM interest participating in the closing transaction is executed as if it were priced equal to the closing transaction. This includes DMM interest entered in Display Book prior to the closing transaction at better price points that are eligible to participate in the closing transaction.

[47] *See supra* note 42. As previously noted DMM trading must be consistent with his or her affirmative obligation under NYSE Rule 104 and other NYSE and SEC rules particularly in this example where the DMM is participating on the same side of the imbalance.

[48] An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (*e.g.*, the Options Clearing Corporation). The twelve expiration days are ''expiration Fridays'' which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month.

[49] NYSE Rule 123C(7) requires, among other things, that orders related to index contracts whose settlement pricing is based upon the ''Expiration Friday'' opening prices must be received by 9 a.m. Orders not related to index contracts whose settlement is not based on opening prices may be received before or after 9:00 a.m. It further requires orders relating to opening-price settling contracts be identified ''OPG'' and sets forth procedures for firms that are unable to comply with the marking requirement.

Proposed New Closing Procedures [50]

The Exchange seeks to build on the changes the NYSE began this year as noted above, to simplify its closing procedures in order to provide customers with a more efficient closing process. The closing transaction on the Exchange continues to be a manual auction in order to facilitate greater price discovery and allow for the maximum interaction between market participants. While the Exchange currently provides DMM units with tools to facilitate an efficient closing process, the Exchange believes that changes proposed herein will maximize the use of those electronic tools and allow for an even more efficient closing process.

Order Entry, Cancellation, Mandatory MOC/LOC Imbalance and Informational Imbalance Publications

In order to optimize the efficient operation of the closing process, the Exchange proposes to amend NYSE Rule 123C to require electronic entry of all MOC and LOC orders, including those entered to offset imbalances.[51] The Exchange believes that the electronic entry of MOC and LOC orders will allow the DMM to maximize the Display Book capability to continuously update and provide the DMM and trading community with imbalance information, thus enhancing the DMM's ability to efficiently manage the closing process and customers with the ability to interact appropriately.

The electronic entry of MOC and LOC interest will obviate the need to have an imbalance publication at 3:40 p.m. and 3:50 p.m. because the DMM will not have to manually keep track of the MOC/LOC interest; rather, Exchange systems will track the electronically entered MOC/LOC interest. Exchange systems will therefore be able to provide more accurate and timely imbalance information to all market participants systemically. The Exchange's customers have expressed that in the current more electronic environment two imbalance publications ten minutes apart are not useful. Accordingly, the Exchange proposes to modify the order information available prior to the closing transaction as described more fully below and amend NYSE Rule 123C to provide for a single imbalance publication as soon as practicable after 3:45 p.m., to be referred to as the ''Mandatory MOC/LOC Imbalance Publication,'' (herein ''Mandatory MOC/LOC Imbalance'') when there is an imbalance: (i) of 50,000 shares or more; or (ii) of less than 50,000 shares that is deemed to be ''significant'' [52] (*i.e.,* significant in relation to the average daily volume of the security).[53] The last sale price at 3:45 p.m. will serve as the basis for the Mandatory MOC/LOC Imbalance.

The Exchange intends to retain the current ability to publish an Informational Imbalance of any size. The Exchange seeks to extend the time for the publication of such imbalance from 3:40 p.m. until 3:45 p.m. in order to provide a mechanism for an imbalance publication prior to any Mandatory MOC/LOC Imbalance if the DMM in consultation with a Floor Official or qualified NYSE Euronext employee as defined in Supplementary Material .10 of NYSE Rule 46 deems that such imbalance publication is warranted for the security. In extending the time to 3:45 p.m., the proposed rule will provide that a Mandatory MOC/LOC Imbalance or ''no imbalance'' notice must occur as soon as possible after 3:45 p.m.[54]

The proposed new rule will further explicitly state that the entry of MOC/LOC orders in response to a Mandatory MOC/LOC Imbalance after 3:45 p.m. may be entered only to offset the published imbalance.[55] In the case of a ''no imbalance'' notification, no offsetting MOC/LOC interest may be entered at all after 3:45 p.m.[56]

Given that MOC/LOC orders will be entered electronically, Exchange systems will keep track of the available interest thus making it more readily available for the DMM. The Exchange therefore further proposes to allow customers to cancel or reduce MOC/LOC orders in the case of legitimate errors [57] between 3:45 p.m. and 3:58 p.m.[58] Systemic tracking of MOC/LOC interest makes it entirely feasible for the DMM to review in two minutes the interest eligible to participate in the closing transaction and facilitate the execution of the closing transaction. After 3:58 p.m., cancellations or reduction in the size of MOC/LOC orders, even in the event of legitimate error, will not be permitted.[59]

The Exchange further proposes to provide all market participants an additional method to offset a published imbalance and proposes to create a conditional-instruction limit-type order that will be eligible to participate in the closing transaction to offset an order imbalance at the close, the CO order. The CO order will not be guaranteed to participate in the closing transaction. CO orders will be eligible to participate in the closing transaction when there is an imbalance of orders to be executed on the opposite side of the market from the CO order and there is no other interest remaining to trade at the closing price. This order type must yield to all other eligible interest.

Unlike MOC/LOC orders, CO orders may be entered on any side of the market at anytime prior to the close.[60] CO orders will not be included in the

[50] On May 19, 2004, the Securities and Exchange Commission (''Commission'' or ''SEC'') approved amendments to NYSE Rule 123C, subject to technology upgrades to the electronic entry systems for MOC and LOC orders (the ''2004 Amendments''). The 2004 Amendments included, among other things, changes to the time of imbalance publications and the mechanism by which MOC and LOC orders could be entered. *See* Securities Exchange Act Release No. 49682 (May 11, 2004), 69 FR 28969 (May 19, 2004) (SR–NYSE–2004–09).

The Exchange continually reviewed the approved amendments in keeping with the evolution of its market and the technological upgrades required. As a result of its review the Exchange did not implement the approved changes; rather, in May 2008, the Exchange informed the Commission that it intended to formally submit the instant revised proposal to modify its closing procedures. *See* Securities Exchange Act Release No. 57862 (May 23, 2008), 73 FR 31174 (May 30, 2008) (SR–NYSE–2008–41).

[51] In the event a Floor broker's handheld device malfunctions, the DMM should assist the Floor broker by entering or cancelling MOC/LOC orders on the Floor broker's behalf. DMMs perform this administrative function on a best efforts basis. *See,* NYSE Information Memos 09–26 (June 18, 2009); NYSE Member Education Bulletin 05–24 (December 9, 2005).

[52] Mandatory MOC/LOC Imbalance publications for less than 50,000 shares may only be published with the prior approval of a Floor Official or qualified NYSE Euronext employee as defined in Supplementary Material .10 of NYSE Rule 46.

[53] *See* proposed NYSE Rule 123C paragraphs (1)(d) (Definition: Mandatory MOC/LOC Imbalance) and (4) Calculation of MOC Imbalances.

[54] *See* proposed NYSE Rule 123C paragraphs (1)(b) (Definition: Informational Imbalance) and (4) Calculation and Publication of MOC Imbalances) [sic]. In the event that an Informational Imbalance is disseminated prior to 3:45 and thereafter there is no Mandatory MOC/LOC Imbalance, the DMM will be required to manual [sic] disseminate a ''no imbalance'' notification.

[55] *See* proposed NYSE Rule 123C paragraphs (2)(b)(i) (Order entry).

[56] *See* proposed NYSE Rule 123C paragraphs (2)(b)(ii) (Order entry).

[57] Through the instant filing, the Exchange seeks to clarify what is meant by legitimate error as it applies to the closing process. The Exchange proposes to define a legitimate error in the proposed definition section of 123C. Specifically, a [sic] pursuant to proposed NYSE Rule 123C(1)(c), a legitimate error means an error in any term of an MOC or LOC order, such as price, number of shares, side of the transaction (buy or sell) or identification of the security.

[58] *See* proposed NYSE Rule 123C(3) (Cancellation of MOC and LOC orders). The Exchange anticipates that DMMs will have sufficient time to perform the requisite calculations for the closing transaction while affording customers the ability to cancel or reduce in size an MOC/LOC order until 3:58 p.m.

[59] Current NYSE Rule 123C(8)(a)(2) permits the Exchange to temporarily suspend the prohibitions on canceling or reducing an MOC or LOC order if there is an extreme order imbalance at or near the close. This filing would renumber that rule as proposed NYSE Rule 123C(9).

[60] *See* proposed NYSE Rule 123C(2)(b)(iv).

calculation of the Mandatory MOC/LOC Imbalance and Informational Imbalance. The Exchange proposes that the time periods to cancel a CO order be consistent with the cancellation requirements for MOC and LOC orders. As such, proposed NYSE Rule 123(C)(3) will provide that up to 3:45 p.m., a CO order may be cancelled or reduced for any reason. Between 3:45 p.m. and 3:58 p.m., a CO order may be cancelled or reduced only in the case of a legitimate error as that term is defined by proposed NYSE Rule 123C(1)(c). After 3:58 p.m., a CO order, like MOC/LOC orders, may not be cancelled for any reason.

CO orders will be eligible to participate in the closing transaction only to offset an imbalance and do not add to or flip the imbalance. If there is an imbalance at the close and the price of the closing transaction is at or within the limit of the CO order, the CO order will be eligible to participate in the closing transaction, subject to strict time priority of receipt in Exchange systems among such eligible CO orders and after yielding to all other interest in the closing execution, including MOCs, marketable LOCs, ''G'' orders, DMM interest, and at-priced LOCs. CO orders deemed eligible to participate in the close will be executed at the price of the closing transaction. If the number of shares represented by CO orders is larger than the number of shares required to offset the imbalance, Exchange systems will execute only those shares of CO orders required to complete the execution of the imbalance in full based on the time priority of receipt in Exchange systems of the CO orders. CO orders therefore will not be allowed to swing an imbalance to the opposite side of the market. Accordingly, if there is a 50,000 share buy imbalance and 100,000 shares of CO orders eligible to sell at the closing price, the first 50,000 shares of CO orders that were entered into Exchange systems throughout the trading day will participate in the closing transaction. The remaining 50,000 shares of CO orders will not participate and will be cancelled.

Modifications to Order Imbalance Information Data Feed Prior to the Closing and Opening Transaction

The Exchange further proposes to modify the Order Imbalance data feed prior to closing transaction to commence at 3:45 p.m., the same time as the Mandatory MOC/LOC Imbalance. Pursuant to proposed NYSE Rule 123C(6)(a)(iii), the Order Imbalance data feed will be disseminated approximately every five seconds between 3:45 p.m. and 4:00 p.m.

Moreover, to increase transparency of order information prior to the execution of the closing transaction, the Exchange proposes to expand the order information included in the Order Imbalance Information data feed. Currently the pre-closing Order Imbalance Information data feed includes the: (i) Reference price; (ii) MOC/LOC imbalance and the side of the market; (iii) d-Quotes and all other e-Quotes containing pegging instructions eligible to participate in the closing transaction; and (iv) MOC/LOC paired quantity at reference price. The proposed new data feed will continue to provide that information but also additionally include (i) CO orders on the opposite side [61] of the imbalance and (ii) at-priced LOC interest eligible to offset the imbalance.

The proposed Order Imbalance Information data feed prior to the closing transaction will also make available two new data fields. The proposed new data fields will provide subscribers with a snap shot of the prices at which interest eligible to participate in the closing transaction would be executed in full against each other at the time data feed is disseminated. It will also provide subscribers with the price at which closing-only interest (*i.e.,* MOC orders, marketable LOC orders, and CO orders on the opposite side of the imbalance) may be executed in full and the price at which orders in the Display Book (*e.g.,* Minimum Display Reserve Orders, Floor broker reserve e-Quotes not designated to be excluded from the aggregated agency interest information available to the DMM (''do not display''), d-Quotes pegged e-Quotes,[62] and Stop orders) will be executed in full.

Only those CO orders on the opposite side of the imbalance will be included in the calculation of the new data fields. In order to avoid compromising the reserve interest at price points between the quote, if the price at which all closing orders in the Display Book may be executed in full is at or between the quote, then both data fields indicating imbalance information will publish the price at which the closing-only interest (*i.e.,* MOC orders, marketable LOC orders, and CO orders) may be executed in full.

Similarly the Exchange proposes to conform the pre-opening Order Imbalance Information data feed to provide its market participants with more information prior to the opening transaction. As such, the pre-opening Order Imbalance Information data feed will include the price at which all the interest eligible to participate in the opening transaction may be executed in full.[63] The Exchange does not propose to modify the time periods pursuant to NYSE Rule 15 when the pre-opening Order Imbalance data feed is disseminated. Moreover, the calculation of the reference price will also remain the same.

Execution of the Closing Transaction

The Exchange proposes to maintain its current execution logic and codify the hierarchy of allocation logic applied to interest participating in the closing transaction. Proposed NYSE Rule 123C(7) will list all the interest that must be executed or cancelled as part of the closing transaction and the hierarchy of the interest that may be used to offset the closing imbalance. Moreover, proposed NYSE Rule 123C(7) will add the CO order as the last interest eligible to participate in the closing transaction to offset an imbalance.

The codification of hierarchy of allocation logic applied to interest participating in the closing transaction pursuant to proposed NYSE Rule 123C(7) will only slightly modify the execution of a closing transaction on the Exchange because it will now incorporate the new proposed CO order type into the closing transaction where it is eligible to participate.

Example of a Close Including the Imbalance Publications Pursuant to Proposed NYSE Rule 123C [64]

Example #4

XYZ security has an average daily trading volume of approximately 450,000 shares. At 3:10 p.m. XYZ receives a buy MOC order for 45,000 shares. Shortly thereafter, in consultation with a Floor Official, the DMM publishes an Informational Imbalance. By 3:45 p.m. the buy imbalance has increased to 150,000 shares and the DMM disseminates a mandatory imbalance publication showing the updated amount. Also at

[61] In the case of a buy imbalance, CO orders to sell at a price equal to or lower than the reference price are to be included in the imbalance. In the case of a sell imbalance, CO orders to buy at a price equal to or higher than the reference price are to be included in the imbalance.

[62] d-Quotes and pegged e-Quotes included in this new data field of the Order Imbalance Information data feed are included at the price indicated on the order as the base price to be used to calculate the range of discretion and not at prices within their discretionary pricing instructions.

[63] *See* Proposed NYSE Rule 15.

[64] Example numbers 4–6 mirror example numbers 1–3 above in that all the examples illustrate the execution of the closing transaction based on the principles explained above; however, example numbers 4–6 also incorporate the proposed new CO order type.

3:45 the Order Imbalance Information data feed commences and is disseminated every 5 seconds thereafter.

Beginning at 3:55 p.m. the Order Imbalance data feed includes d-Quotes and all other e-Quotes containing pegging instructions that are eligible to participate in the closing transaction based on current execution prices.

The DMM received offsetting interest between 3:50 and 4 p.m. (official closing time) reducing the buy imbalance to 100,000 shares.

The last bid in XYZ security prior to the closing transaction was $19.85 and the offer was $20.00. The last sale prior to 4 p.m. (official closing time) was at $19.85.

The sell interest on the Display Book leading into the closing transaction consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;

2. 5,000 shares of Crowd market interest;

3. 10,000 shares of public limit orders at $20.24;

4. 10,000 shares of tick sensitive LOC interest at $20.24;

5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;

6. 40,000 shares of LOC interest at $20.25;

7. 5,000 shares of non-MOC ''G'' market orders; and

8. 5,000 shares of CO orders.

Given this interest available in Display Book on both sides of the market, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 10,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares.

The remaining imbalance of 100,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–5 above are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 95,000 share buy imbalance;

2. 5,000 shares of Crowd market interest which leaves a 90,000 share buy imbalance;

3. 10,000 shares of public limit orders at $20.24, which leaves an 80,000 share buy imbalance; and [sic]

4. 10,000 shares of tick sensitive LOC interest at $20.24 which leaves a 70,000 share buy imbalance;

5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 60,000 share buy imbalance; [65]

The remaining 60,000 share buy imbalance will be offset at the price of $20.25 as follows:

6. 10,000 shares of DMM interest, which leaves a 50,000 share buy imbalance;

7. 40,000 shares LOC interest at $20.25, which leaves a 10,000 share buy imbalance;

8. 5,000 shares of non-MOC ''G'' orders which leaves a 5,000 share buy imbalance; and

9. 5,000 shares of CO orders fill the 5,000 share remaining of the buy imbalance.

In the above example, the offsetting interest was equal to the size of the actual buy imbalance; however, in the event that any one type of offsetting interest with precedence in the hierarchy is sufficient to fill the imbalance that interest will be filled and the remaining interest lower in the hierarchy will receive a report of ''nothing done.''

Example #5

Assuming the same imbalance publication information and receipt of offsetting interest in Example #4. The last sale in the security is at the price of $19.85. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;

2. 5,000 shares of Crowd market interest;

3. 10,000 shares of tick sensitive LOC interest at $20.24;

4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;

5. 20,000 shares of e-Quote interest from a single Floor broker at $20.25;

6. 50,000 shares of public limit orders at $20.25;

7. 40,000 shares LOC interest at $20.25;

8. 10,000 shares of non-MOC ''G'' market orders;

9. 10,000 shares of CO orders.

Given this interest available in Display Book, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 50,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4:00 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares.

The remaining imbalance of 100,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–4 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 95,000 share buy imbalance;

2. 5,000 shares of Crowd market interest, which leaves a 90,000 share buy imbalance;

3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves an 80,000 share buy imbalance;

4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 70,000 shares buy imbalance;

The remaining 70,000 shares of the buy imbalance will be offset at the price of $20.25 as follows:

5. 20,000 shares of e-Quote interest at $20.25, which leaves a 50,000 share buy imbalance;

6. 25,000 shares of at-priced DMM interest, which leaves a 25,000 shares buy imbalance;

7. 25,000 shares of public limit orders at $20.25, which fills the remaining 25,000 shares of the imbalance.

The remaining 25,000 shares of at-priced DMM interest and the 25,000 shares of public limit orders at $20.25 will not be executed.[66] Additionally, the 40,000 shares LOC interest priced at $20.25, 10,000 shares of ''G'' orders and 10,000 shares of CO orders will also remain unexecuted and receive reports of ''nothing done.'' [67]

Example #6

Assuming the same imbalance publication information and receipt of

[65] *See supra* text accompanying note 44.

[66] *See supra* text accompanying note 45.

[67] *See supra* text accompanying note 46.

offsetting interest in Example #4. The last sale in the security in this Example #6 is at the price of $20.23. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of tick sensitive LOC interest at $20.24;
4. 50,000 shares of public limit orders at $20.25;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;
6. 10,000 shares of LOC interest at $20.25;
7. 10,000 shares of CO orders.

In addition, while arranging the closing transaction after 4:00 p.m. the DMM enters 20,000 shares of DMM interest to buy.[68] There is additional sell interest on the Display Book that would accommodate the DMM's additional interest as follows:

8. 10,000 shares of public limit orders to sell at $20.26;
9. 10,000 shares of public limit orders to sell at $20.27;

Based on the interest available in Display Book on both sides of the market, the DMM has determined to close trading in XYZ security at a price of $20.27.

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the current 170,000 shares of the buy imbalance at a price of $20.27, leaving a buy imbalance of 120,000 shares (including DMM interest).

The remaining imbalance of 120,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.27. As interest priced better than the closing price, numbers 1–7 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 115,000 share buy imbalance;
2. 5,000 shares of Crowd market interest, which leaves a 110,000 share buy imbalance;
3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves an 100,000 share buy imbalance;
4. 50,000 shares of public limit orders at $20.25, which leaves a 50,000 share buy imbalance;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 40,000 share buy imbalance;
6. 10,000 shares LOC interest at $20.25, which leaves a 30,000 share buy imbalance;
7. 10,000 shares of public limit orders at $20.26, which leaves a 20,000 share buy imbalance;
8. 10,000 shares of public limit orders at $20.27 which leaves a 10,000 share buy imbalance; and
9. 10,000 shares of CO orders fill the remaining 10,000 shares of the buy imbalance.

Trading Halts

The Exchange further proposes to amend NYSE Rule 123C to make ''trading halt'' a defined term whose meaning is consistent with a halt in trading in any security pursuant to the provisions of NYSE Rule 123D (''Trading Halt'').[69] Further, pursuant to the proposed rule, where a Trading Halt is in effect at 3:45 p.m., a Mandatory MOC/LOC Imbalance will be published as close to the resumption of trading as possible if the Trading Halt is lifted prior to the close of trading. In this event, MOC/LOC orders may be entered to offset the published imbalance. If the Trading Halt is not lifted, the entry of MOC/LOC interest, including offsetting interest, is prohibited.

Where a Trading Halt occurs in a security *after* a Mandatory MOC/LOC Imbalance is published (*i.e.,* after 3:45 p.m.), MOC/LOC orders may be entered to offset the published imbalance.[70] Where a Trading Halt occurs after 3:45 p.m. and there is no Mandatory MOC/LOC Imbalance in the security, the entry of MOC/LOC interest will not be allowed.[71]

Unlike MOC/LOC orders, the entry of CO orders on both sides of the market will be permitted when a Trading Halt occurs in a security, but is lifted prior to the close of trading in the security. Because CO orders are the interest of last resort in the closing transaction, entry of such orders is not restricted to offsetting the Mandatory MOC/LOC Imbalance.

Rescission of Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements

The Exchange further proposes to amend NYSE Rule 123C to rescind the provisions governing ''Expiration Friday Auxiliary Procedures for the Opening''. The provisions governing Expiration Friday are vestigial in that they were created to facilitate a fair and orderly opening transaction in light of the additional order flow on Expiration Fridays. Today, modifications to Exchange systems allow the DMM to accommodate for such fluctuation in volume, thus rendering the provisions of this section unnecessary. Moreover, the order marking provisions (*i.e.,* appending the indicator ''OPG'') were an accommodation to member organizations whose systems were unable to electronically affix the OPG designation. Today, all Exchange member organizations are capable of affixing appropriate order designations rendering these provisions unwarranted. For these reasons the Exchange believes that the rescission of the Expiration Friday Auxiliary Procedures for the Opening is appropriate.

In keeping with the above amendments, the Exchange further seeks to make the provisions of NYSE Rule 123C govern solely Market and Limit ''on the Close'' Policy. Therefore, the Exchange proposes to delete the ''Due Diligence Requirements'' from this rule as they are redundant provisions that are codified in NYSE Rule 405 (''Diligence as to Accounts'').

Conclusion

The Exchange believes that requiring MOC/LOC interest to be electronically entered will increase the efficiency at the point of sale. It will provide accurate information faster to market participants and allow the DMM greater control in active trading crowds. Furthermore, the Exchange believes that moving the cut-off time for the entry of MOC/LOC orders from 3:40 p.m. to 3:45 p.m. will allow Exchange participants greater control of the handling of their orders to be executed in the closing transaction and greater participation in active markets. The Exchange further believes that the proposed amendments to create the CO order will add greater efficiency to the closing process by providing an additional source of liquidity to offset an imbalance going into the closing transaction. The proposed modifications will provide investors with a more accurate depiction of the market interest prior to the closing transaction thereby allowing them to make better informed trading decisions.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[72] in general, and furthers

[68] *See supra* text accompanying note 47.

[69] *See* proposed NYSE Rule 123C(1)(f).

[70] *See* proposed NYSE Rule 123C(2)(c)(i).

[71] *See* proposed NYSE Rule 123C(2)(c)(iii).

[72] 15 U.S.C. 78f(b).

the objectives of Section 6(b)(5) of the Act,[73] 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 proposed rule change will facilitate the timely and efficient closing of securities on the Exchange by increasing transparency and providing market participants with an additional method of offset imbalances prior to the closing transaction that ultimately serves 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register.** The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

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–2009–111 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–2009–111. 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, 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–2009–111 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

Florence E. Harmon,

Deputy Secretary.

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[73] 15 U.S.C. 78f(b)(5).

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60973; File No. SR–NYSEAmex–2009–81]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 123C To Modify the Procedures for Its Closing Process and Make Conforming Changes to NYSE Amex Equities Rules 13 and Rule 15

November 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 amendments to NYSE Amex Equities Rule 123C (Market On The Close Policy And Expiration Procedures) to modify the procedures for its closing process; and make conforming changes to NYSE Amex Equities Rule 13 (''Definitions of Orders'') and Rule 15. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.