

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="22"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2012"/> - * <input type="text" value="07"/> Amendment No. (req. for Amendments *) <input type="text"/>
Proposed Rule Change by NYSE Amex LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>
Section 19(b)(2) * <input type="checkbox"/>		Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
Section 19(b)(3)(B) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>
Rule		
Pilot <input type="checkbox"/>		<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4)
Extension of Time Period for Commission Action * <input type="text"/>		<input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5)
Date Expires * <input type="text"/>		<input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>	
Description Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). <input type="text" value="Proposal to amend NYSE Amex Equities Rule 123C4 to provide for how certain interest is included in the calculation of MOC and LOC imbalances"/>		
Contact Information Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change. First Name * <input type="text" value="Clare"/> Last Name * <input type="text" value="Saperstein"/> Title * <input type="text" value="Vice President NYSE Regulation Inc"/> E-mail * <input type="text" value="csaperstein@nyx.com"/> Telephone * <input type="text" value="(212) 656-2355"/> Fax <input type="text" value="(212) 656-2223"/>		
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer. Date <input type="text" value="02/03/2012"/> By <input type="text" value="Sudhir Bhattacharyya"/> Vice President Legal (Name *) (Title *) NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. <input type="button" value="NYX Sudhir Bhattacharyya"/>		

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) NYSE Amex, LLC (“NYSE Amex” or “Exchange”) proposes to amend NYSE Amex Equities Rule 123C(4) to provide for how certain interest is included in the calculation of MOC and LOC imbalances. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website at www.nyse.com, at the Exchange’s principal office and at the Public Reference Room of the Securities and Exchange Commission (“Commission”).
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Clare Saperstein
Vice President
NYSE Regulation
(212) 656-2355

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

(a) Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 123C(4) to provide more specificity of how certain interest is treated for purpose of calculating MOC and LOC¹ imbalances. In particular, the Exchange proposes to amend Rule 123C(4)(a)(vi) to describe how LOC orders priced equal to the last sale are treated in the imbalance publication and to add new supplementary material to describe how sell short interest is treated in the imbalance publication during a Short Sale Period, as defined in NYSE Amex Equities Rule 440B.

¹ See NYSE Amex Equities Rule 13 for definitions of MOC and LOC orders.

I. Background

NYSE Amex Equities Rule 123C(4) describes how the Exchange calculates the MOC and LOC imbalances. The Exchange publishes MOC and LOC imbalance information as part of its Informational Imbalance Publication (as defined in Rule 123C(1)(b)), Mandatory MOC/LOC Imbalance Publication (as defined in Rule 123C(1)(d)), and Order Imbalance Information (as defined in Rule 123C(1)(e)), which are further described in Rule 123C(5) and (6). The MOC and LOC imbalance information is intended to provide market participants with a snapshot of the prices at which interest eligible to participate in the closing transaction would be executed in full against each other at the time the data feed is disseminated. The manner by which the imbalance is calculated takes into consideration the order of execution at the close, as set forth in Rule 123C(7). The goal of such transparency is to attract contra-side interest to offset order imbalances, thereby potentially minimizing price dislocation at the close.

II. Proposed Amendments

Because the MOC and LOC imbalance calculations under Rule 123C(4) are intended to provide an informational snapshot of what an imbalance may be at a particular time, and are intended to mirror how the imbalance is calculated for purposes of determining the closing price, the Exchange proposes to amend elements of Rule 123C(4) to describe with more specificity how the imbalance is calculated. The Exchange notes that these proposed rule change does not change how the Exchange currently calculates the imbalance information, but rather provides more detail in the rule text concerning the methodology for calculation.

First, the Exchange proposes to amend Rule 123C(4)(a)(vi) to describe with more specificity how LOC interest that is priced equal to the last sale is addressed in the MOC and LOC imbalance calculation. Because the Buy or Sell Imbalance is intended to be indicative of what the imbalance would be at the close, the Exchange seeks to reduce the Buy or Sell Imbalance by any closing interest that could potentially participate in the close, which is why the rule currently provides that tick sensitive MOC and LOC interest can reduce the Buy or Sell Imbalance to bring the imbalance quantity as close to zero as possible.

The Exchange proposes to amend Rule 123C(4)(a)(vi) to add that LOC orders priced equal to the last sale also reduce the Buy or Sell Imbalance. The Exchange proposes this change because, as set forth in Rule 123C(7)(b)(ii), LOC orders priced equal to the closing price may participate in the closing transaction. Because such interest may participate in the close, the Exchange believes that when calculating the imbalance, reducing the Buy or Sell Imbalance by the amount of LOC interest priced equal to the last sale provides a potentially more realistic indication of how the imbalance may be offset at the close.

Second, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B), which currently provide more detail of which tick sensitive interest is included to offset a Buy or Sell Imbalance, as provided for under Rule 123C(4)(a)(vi). Rule 123C(4)(a)(vi)(A) currently provides that of tick sensitive orders, only Sell Plus² MOC and Sell Plus LOC orders priced below the last sale will be included to offset the Buy Imbalance. Rule 123C(4)(a)(vi)(B) currently provides that of tick sensitive orders, only Buy Minus³ MOC and Buy Minus LOC orders priced above the last sale price will be included to offset the Sell Imbalance. Because the Exchange is proposing to amend Rule 123C(4)(a)(vi) to add that LOC interest priced equal to the last sale price can offset the Buy or Sell Imbalance, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B). Accordingly, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) to specify that Sell Plus LOC orders priced equal to or below the last sale price and Sell and Sell Short LOC orders priced equal to the last sale price will also be included to offset the Buy Imbalance. Similarly, the Exchange proposes to amend Rule 123C(4)(a)(vi)(B) to specify that Buy Minus LOC orders priced equal to or above the last sale price, and Buy LOC orders priced equal to the last sale will be included to offset the Sell Imbalance.

Third, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) and (B) to further specify that tick sensitive interest will be included to offset the Buy or Sell Imbalance only if such orders could be executed consistent with the terms of their

² As defined in NYSE Amex Equities Rule 13, a Sell Plus order is a market or limit order to sell a stated amount of stock for which the price to be obtained is not lower than the last sale if the last sale was a “plus” or “zero plus” tick, and is not lower than the last sale plus the minimal fractional change in the stock if the last sale was a “minus” or “zero minus” tick. The purpose of a Sell Plus order is to ensure that a market participant does not create a new low price with the sell order. For example, if the closing price is \$10.10, and the last sale prior to the closing transaction was \$10.11 or higher on a plus or zero plus tick, a Sell Plus LOC with a limit of \$10.09 would not participate in the closing transaction because it would be selling at a price lower than the last sale, which was on a plus or zero plus tick.

³ As defined in NYSE Amex Equities Rule 13, a Buy Minus order is a market or limit order to buy a stated amount of stock on the close for which the price to be obtained is not higher than the last sale if the last sale was a “minus” or “zero minus” tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a “plus” or “zero plus” tick. The purpose of a Buy Minus order is to ensure that a market participant does not create a new high price with the buy order. For example, if the closing price is \$10.10, and the last sale prior to the closing transaction was \$10.09 or below on a minus or zero minus tick, a Buy Minus LOC with a limit price of \$10.11 would not participate in the closing transaction because it would be buying at a price higher than the last sale, which was on a minus or zero minus tick.

tick restrictions. This proposed amendment is consistent with the rationale of how MOC and LOC imbalances are calculated, namely, to include interest that could participate in the closing price to offset the imbalance. If, by the terms of the tick restriction, an order could not participate in the close, such interest should not be used to offset the imbalance calculation. For example, if the Buy Imbalance is calculated based on a \$10.10 reference price, and the last sale prior to that reference price is \$10.11 on a plus or zero plus tick, Sell Plus MOCs and Sell Plus LOCs are not included to offset that Buy Imbalance because they would not participate if that were the closing price at that time. Likewise, if the last sale is \$10.09 on a minus or zero minus tick, and the Sell Imbalance is calculated based on a \$10.10 reference price, Buy Minus MOCs and Buy Minus LOCs priced below the last sale are not included to offset the Sell Imbalance because they would not participate if that were the closing price at that time.

Finally, the Exchange proposes to add supplementary material .30 to Rule 123C to specify how Sell Short interest is treated for purposes of calculating MOC and LOC imbalances during a Short Sale Period, as defined in Rule 440B(d). Rule 123C(4)(a)(iv) currently provides that Sell Short MOC and Sell Short LOC orders priced below the last sale price are included in the aggregation of the Sell side closing volume. During a Short Sale Period, if a security closes at a price equal to or lower than the last Exchange bid, sell short interest would not be eligible to participate in the closing transaction. Because a Sell imbalance publication is an indication that the security is more likely to close at a price that is equal to or lower than the bid, during a Short Sale Period, Sell Short MOC and LOC interest likely would not participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to exclude Sell Short MOC and LOC orders from the Sell side volume because such interest would likely not be eligible to participate in the closing transaction.

In addition, during a Short Sale Period, in addition to the interest specified in Rule 123C(a)(4)(vi)(A) that offsets the Buy Imbalance (as amended by this rule proposal), all Sell Short MOC and LOC interest priced equal to or below the last sale price will be included to offset the Buy Imbalance. During a Short Sale Period, if a security closes higher than the last Exchange bid, Sell Short MOC and LOC interest would be eligible to participate in the closing transaction. Because a Buy side imbalance publication is an indication that there may be upward price pressure on the closing sale price, and the security is more likely to close at a price that is above the bid, in such a situation, Sell Short MOC and LOC interest likely would participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to offset the Buy Imbalance with Sell Short MOC and LOC interest because such interest would likely participate in the closing transaction.

The Exchange notes that the manner by which the Exchange currently calculates the MOC and LOC imbalances is consistent with how such interest would participate if the closing transaction were to be based on the point in time at

which each MOC and LOC imbalance publication is calculated. The Exchange proposes these rule amendments to provide that level of specificity in how the rule text describes the manner by which the MOC and LOC imbalances are being calculated. The Exchange further notes that this rule change concerns only the manner by which the MOC and LOC imbalance is calculated for purposes of imbalance publications and does not change in any way the manner by which trading occurs at the Exchange or how interest is executed in the closing transaction.

(b) Statutory Basis

The basis under the Act for these proposed rule changes are the requirement under Section 6(b)(5)⁴ 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. Specifically, this rule proposal supports the objective of perfecting the mechanism of a free and open market as it provides transparency in the manner by which the Exchange calculates the MOC and LOC imbalance information that the Exchange publishes pursuant to NYSE Amex Equities Rule 123C(5) and (6) both during regular trading and during a Short Sale Period pursuant to NYSE Amex Equities Rule 440B. Specifically, these rule changes provide transparency of how LOC interest priced equal to the last sale price will be used to offset a Buy or Sell Imbalance and how Sell Short interest will be treated for the imbalance calculation during a Short Sale Period.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule changes were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

⁴

15 U.S.C. 78f(b)(5).

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act.⁵ The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, at least five business days prior to the instant filing, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change.

The Exchange believes that good cause exists to justify immediate effectiveness because the filing seeks to provide greater specificity to Rule 123C(4)(a)(vi) to reflect the manner by which the Exchange calculates the MOC and LOC imbalance information. The Exchange further notes that this proposal will not significantly affect the protection of investors or the public interest because it does not change how trading occurs at the Exchange. Rather, this rule proposal simply addresses how certain interest is treated for purposes of offsetting the MOC and LOC imbalance publication.

The Exchange respectfully requests that the Commission waive the 30-day delayed operative date so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6)⁷ thereunder. In particular, the Exchange believes that this proposed amendment should be effective immediately because it provides greater specificity to the rule text to describe the manner by which the Exchange calculates the MOC and LOC imbalance and therefore will provide greater transparency in the manner by which the Exchange currently calculates MOC and LOC imbalance information.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.⁸ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4.

⁸ 17 CFR 240.19b-4(f)(6).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of amended Rules

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEAMEX-2012-07)

[Date]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 123C(4) to Provide for How Certain Interest is Included in the Calculation of MOC and LOC Imbalances

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on February 3, 2012, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 123C(4) to provide for how certain interest is included in the calculation of MOC and LOC imbalances. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 123C(4) to provide more specificity of how certain interest is treated for purpose of calculating MOC and LOC⁴ imbalances. In particular, the Exchange proposes to amend Rule 123C(4)(a)(vi) to describe how LOC orders priced equal to the last sale are treated in the imbalance publication and to add new supplementary material to describe how sell short interest is treated in the imbalance publication during a Short Sale Period, as defined in NYSE Amex Equities Rule 440B.

I. Background

NYSE Amex Equities Rule 123C(4) describes how the Exchange calculates the MOC and LOC imbalances. The Exchange publishes MOC and LOC imbalance information as part of its Informational Imbalance Publication (as defined in Rule 123C(1)(b)), Mandatory MOC/LOC Imbalance Publication (as defined in Rule 123C(1)(d)), and Order Imbalance Information (as defined in Rule 123C(1)(e)), which are further described in Rule 123C(5) and (6). The MOC and LOC imbalance information is intended to provide market participants with a snapshot of the prices at

⁴ See NYSE Amex Equities Rule 13 for definitions of MOC and LOC orders.

which interest eligible to participate in the closing transaction would be executed in full against each other at the time the data feed is disseminated. The manner by which the imbalance is calculated takes into consideration the order of execution at the close, as set forth in Rule 123C(7). The goal of such transparency is to attract contra-side interest to offset order imbalances, thereby potentially minimizing price dislocation at the close.

II. Proposed Amendments

Because the MOC and LOC imbalance calculations under Rule 123C(4) are intended to provide an informational snapshot of what an imbalance may be at a particular time, and are intended to mirror how the imbalance is calculated for purposes of determining the closing price, the Exchange proposes to amend elements of Rule 123C(4) to describe with more specificity how the imbalance is calculated. The Exchange notes that these proposed rule change does not change how the Exchange currently calculates the imbalance information, but rather provides more detail in the rule text concerning the methodology for calculation.

First, the Exchange proposes to amend Rule 123C(4)(a)(vi) to describe with more specificity how LOC interest that is priced equal to the last sale is addressed in the MOC and LOC imbalance calculation. Because the Buy or Sell Imbalance is intended to be indicative of what the imbalance would be at the close, the Exchange seeks to reduce the Buy or Sell Imbalance by any closing interest that could potentially participate in the close, which is why the rule currently provides that tick sensitive MOC and LOC interest can reduce the Buy or Sell Imbalance to bring the imbalance quantity as close to zero as possible.

The Exchange proposes to amend Rule 123C(4)(a)(vi) to add that LOC orders

priced equal to the last sale also reduce the Buy or Sell Imbalance. The Exchange proposes this change because, as set forth in Rule 123C(7)(b)(ii), LOC orders priced equal to the closing price may participate in the closing transaction. Because such interest may participate in the close, the Exchange believes that when calculating the imbalance, reducing the Buy or Sell Imbalance by the amount of LOC interest priced equal to the last sale provides a potentially more realistic indication of how the imbalance may be offset at the close.

Second, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B), which currently provide more detail of which tick sensitive interest is included to offset a Buy or Sell Imbalance, as provided for under Rule 123C(4)(a)(vi). Rule 123C(4)(a)(vi)(A) currently provides that of tick sensitive orders, only Sell Plus⁵ MOC and Sell Plus LOC orders priced below the last sale will be included to offset the Buy Imbalance. Rule 123C(4)(a)(vi)(B) currently provides that of tick sensitive orders, only Buy Minus⁶ MOC and Buy Minus LOC orders priced above

⁵ As defined in NYSE Amex Equities Rule 13, a Sell Plus order is a market or limit order to sell a stated amount of stock for which the price to be obtained is not lower than the last sale if the last sale was a “plus” or “zero plus” tick, and is not lower than the last sale plus the minimal fractional change in the stock if the last sale was a “minus” or “zero minus” tick. The purpose of a Sell Plus order is to ensure that a market participant does not create a new low price with the sell order. For example, if the closing price is \$10.10, and the last sale prior to the closing transaction was \$10.11 or higher on a plus or zero plus tick, a Sell Plus LOC with a limit of \$10.09 would not participate in the closing transaction because it would be selling at a price lower than the last sale, which was on a plus or zero plus tick.

⁶ As defined in NYSE Amex Equities Rule 13, a Buy Minus order is a market or limit order to buy a stated amount of stock on the close for which the price to be obtained is not higher than the last sale if the last sale was a “minus” or “zero minus” tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a “plus” or “zero plus” tick. The purpose of a Buy Minus order is to ensure that a market participant does not create a new high price with the buy order. For example, if the closing price is \$10.10, and the

the last sale price will be included to offset the Sell Imbalance. Because the Exchange is proposing to amend Rule 123C(4)(a)(vi) to add that LOC interest priced equal to the last sale price can offset the Buy or Sell Imbalance, the Exchange proposes to make conforming amendments to Rules 123C(4)(a)(vi)(A) and (B). Accordingly, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) to specify that Sell Plus LOC orders priced equal to or below the last sale price and Sell and Sell Short LOC orders priced equal to the last sale price will also be included to offset the Buy Imbalance. Similarly, the Exchange proposes to amend Rule 123C(4)(a)(vi)(B) to specify that Buy Minus LOC orders priced equal to or above the last sale price, and Buy LOC orders priced equal to the last sale will be included to offset the Sell Imbalance.

Third, the Exchange proposes to amend Rule 123C(4)(a)(vi)(A) and (B) to further specify that tick sensitive interest will be included to offset the Buy or Sell Imbalance only if such orders could be executed consistent with the terms of their tick restrictions. This proposed amendment is consistent with the rationale of how MOC and LOC imbalances are calculated, namely, to include interest that could participate in the closing price to offset the imbalance. If, by the terms of the tick restriction, an order could not participate in the close, such interest should not be used to offset the imbalance calculation. For example, if the Buy Imbalance is calculated based on a \$10.10 reference price, and the last sale prior to that reference price is \$10.11 on a plus or zero plus tick, Sell Plus MOCs and Sell Plus LOCs are not included to offset that Buy Imbalance because they would not participate if that were the closing price at that time. Likewise, if

last sale prior to the closing transaction was \$10.09 or below on a minus or zero minus tick, a Buy Minus LOC with a limit price of \$10.11 would not participate in the closing transaction because it would be buying at a price higher than the last sale, which was on a minus or zero minus tick.

the last sale is \$10.09 on a minus or zero minus tick, and the Sell Imbalance is calculated based on a \$10.10 reference price, Buy Minus MOCs and Buy Minus LOCS priced below the last sale are not included to offset the Sell Imbalance because they would not participate if that were the closing price at that time.

Finally, the Exchange proposes to add supplementary material .30 to Rule 123C to specify how Sell Short interest is treated for purposes of calculating MOC and LOC imbalances during a Short Sale Period, as defined in Rule 440B(d). Rule 123C(4)(a)(iv) currently provides that Sell Short MOC and Sell Short LOC orders priced below the last sale price are included in the aggregation of the Sell side closing volume. During a Short Sale Period, if a security closes at a price equal to or lower than the last Exchange bid, sell short interest would not be eligible to participate in the closing transaction. Because a Sell imbalance publication is an indication that the security is more likely to close at a price that is equal to or lower than the bid, during a Short Sale Period, Sell Short MOC and LOC interest likely would not participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to exclude Sell Short MOC and LOC orders from the Sell side volume because such interest would likely not be eligible to participate in the closing transaction.

In addition, during a Short Sale Period, in addition to the interest specified in Rule 123C(a)(4)(vi)(A) that offsets the Buy Imbalance (as amended by this rule proposal), all Sell Short MOC and LOC interest priced equal to or below the last sale price will be included to offset the Buy Imbalance. During a Short Sale Period, if a security closes higher than the last Exchange bid, Sell Short MOC and LOC interest would be eligible to participate in the closing transaction. Because a Buy side imbalance publication is an

indication that there may be upward price pressure on the closing sale price, and the security is more likely to close at a price that is above the bid, in such a situation, Sell Short MOC and LOC interest likely would participate in the closing transaction. The Exchange therefore believes it is appropriate during a Short Sale Period to offset the Buy Imbalance with Sell Short MOC and LOC interest because such interest would likely participate in the closing transaction.

The Exchange notes that the manner by which the Exchange currently calculates the MOC and LOC imbalances is consistent with how such interest would participate if the closing transaction were to be based on the point in time at which each MOC and LOC imbalance publication is calculated. The Exchange proposes these rule amendments to provide that level of specificity in how the rule text describes the manner by which the MOC and LOC imbalances are being calculated. The Exchange further notes that this rule change concerns only the manner by which the MOC and LOC imbalance is calculated for purposes of imbalance publications and does not change in any way the manner by which trading occurs at the Exchange or how interest is executed in the closing transaction.

2. Statutory Basis

The basis under the Act for these proposed rule changes are the requirement under Section 6(b)(5)⁷ 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. Specifically, this rule proposal supports the objective of

⁷ 15 U.S.C. 78f(b)(5).

perfecting the mechanism of a free and open market as it provides transparency in the manner by which the Exchange calculates the MOC and LOC imbalance information that the Exchange publishes pursuant to NYSE Amex Equities Rule 123C(5) and (6) both during regular trading and during a Short Sale Period pursuant to NYSE Amex Equities Rule 440B. Specifically, these rule changes provide transparency of how LOC interest priced equal to the last sale price will be used to offset a Buy or Sell Imbalance and how Sell Short interest will be treated for the imbalance calculation during a Short Sale Period.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

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

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

NYSEAMEX-2012-07 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-NYSEAMEX-2012-07. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at www.nyse.com. 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-NYSEAMEX-2012-07 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).

Exhibit 5

Additions: Underscored

Deletions: [Bracketed]

Rule 123C – NYSE Amex Equities. The Closing Procedures

(4) Calculation of MOC and LOC Imbalances

(a) Calculation of Imbalances. MOC and LOC imbalances are calculated as follows:

- (i) For purposes of calculating the Mandatory MOC/LOC Imbalance Publication, the term “last sale price” in paragraph (4)(a)(iii) and (iv) below means the last sale in the subject security, as reported to the Consolidated Tape, prior to 3:45 p.m.
- (ii) For purposes of calculating Informational Imbalances and Order Imbalances, the term “last sale price” in paragraph (4)(a)(iii) and (iv) below means the last sale in the subject security, as reported to the Consolidated Tape prior to the calculation of the Informational Imbalance or the Order Imbalance.
- (iii) Buy side closing volume is determined by aggregating all Buy MOC orders and Buy LOC orders priced above the last sale price. Buy LOC orders that are equal to the last sale price are not included in the calculation.
- (iv) Sell side closing volume is determined by aggregating all Sell and Sell Short MOC orders and Sell and Sell Short LOC orders priced below the last sale price. Sell and Sell Short LOC orders that are equal to the last sale price are not included in the calculation.
- (v) The difference between the Buy side closing volume as determined in paragraph 4(a)(iii) above and the Sell side closing volume as determined in paragraph 4(a)(iv) above is the Buy or Sell Imbalance.
- (vi) Buy or Sell Imbalance as determined pursuant to paragraph (4)(a)(v) above will be reduced by the volume of tick sensitive MOC orders and LOC orders and LOC orders priced equal to the last sale to bring the imbalance quantity as close to zero as possible. The volume of tick sensitive MOC and LOC orders eligible to reduce the imbalance shall not cause the imbalance to change to the other side.

(A) In the event of a Buy Imbalance, only Sell Plus MOC orders, [and] Sell Plus LOC orders priced equal to or below the last sale price, and Sell and Sell Short LOC orders priced equal to the last sale will be included to offset the imbalance. Sell Plus MOC and Sell Plus LOC orders will be included to offset the imbalance only if such orders could be executed consistent with the terms of their tick restrictions.

(B) In the event of a Sell Imbalance, only Buy Minus MOC orders, [and] Buy Minus LOC orders priced equal to or above the last sale price, and Buy LOC orders priced equal to the last sale will be included to offset the imbalance. Buy Minus MOC and Buy Minus LOC orders will be included to offset the imbalance only if such orders could be executed consistent with the terms of their tick restrictions.

Supplementary Material

.10 No change.

.20 No change.

.30 During a Short Sale Period (as provided for in Rule 440B(d)), Sell Short MOC and LOC orders will not be included in the Sell side closing volume, as currently provided for in Rule 123C(4)(a)(iv). During a Short Sale Period, in addition to the interest specified in Rule 123C(4)(a)(vi)(A), all Sell Short MOC and LOC interest priced equal to or below the last sale price will be included to offset the Buy Imbalance.