

Required fields are shown with yellow backgrounds and asterisks.

Proposed Rule Change by NYSE MKT LLC.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *			
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
			Rule					
Pilot	Extension of Time Period for Commission Action *	Date Expires *	19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	19b-4(f)(6)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Proposal to amend Rule 123C 9 a 1 ii Equities to delete the requirement that the order acceptance cut off time cannot be past four thirty pm

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 * Clare	Last Name * Saperstein
Title * Vice President NYSE Regulation Inc	
E-mail * csaperstein@nyx.com	
Telephone * (212) 656-2355	Fax (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 11/20/2012

By Janet McGinness Corporate Secretary

(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.

Janet McGinness, jmcginness@nyx.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

Add Remove View

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

Add Remove View

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 MKT LLC (“NYSE MKT” or the “Exchange”) proposes to amend Rule 123C(9)(a)(1)(ii) - Equities to delete the requirement that the order acceptance cut-off time cannot be past 4:30 p.m. 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 in 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 by the Exchange is required to implement the proposed rule change. 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, Inc.
(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 Rule 123C(9)(a)(1)(ii) - Equities to delete the requirement that the order acceptance cut-off time cannot be past 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier close).¹

Background

Pursuant to Rule 123C(9)(a)(1) – Equities, the Exchange may suspend Rule 52 –

¹ The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC (“NYSE”). See SR-NYSE-2012-63.

Equities (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a Designated Market Maker (“DMM”) orally at or near the close. Rule 123C(9)(a)(1) - Equities was intended to be and has been invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price.

Pursuant to Rule 123C(9)(a)(1)(ii) - Equities, once it has been determined to suspend Rule 52 and solicit offsetting interest, the Exchange is responsible for soliciting such offsetting interest from both on-Floor and off-Floor participants. Such solicitation requests include, at a minimum, the security symbol, the imbalance amount and side, the last sale price, and an order acceptance cut-off time. The Exchange designates the order acceptance cut-off time, but the Rule currently provides that in no event shall the order acceptance cut-off time be later than 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier close).

Currently, the Exchange uses Trader Updates to solicit interest from off-Floor participants. The Exchange’s Trader Updates are posted on the Exchange’s website and are distributed both by RSS feed and by email to anyone who subscribes to receive such free updates.

Since January 3, 2011, when the Rule, which was previously operated on a pilot bases, became a permanent rule, the Exchange and NYSE, which has an identical rule, have invoked the relief available pursuant to the Rule only once, on September 21, 2012. In 2010, Rule 123C(9)(a)(1) - Equities was invoked only three times on both markets.

Proposed Amendment

The Exchange proposes to amend Rule 123C(9)(a)(1)(ii) - Equities to delete the requirement that the order acceptance cut-off time shall be no later than 4:30 p.m., or in the case of an early scheduled close, 30 minutes after the closing time. The Exchange believes it is appropriate to delete the bright-line cut off time because it hinders the ability of the Exchange to ensure a fair and orderly close if adhering to the 4:30 p.m. order acceptance cut-off time is not possible under the particular circumstances.

In particular, the Exchange notes that for two of the four times that the rule has been invoked since 2010 on both the Exchange and the NYSE, the NYSE has extended the order acceptance cut-off time past 4:30 p.m. The reasons for the extensions differed, but the Exchange believes that given the rarity of the need to invoke the provisions of Rule 123C(9)(a)(1) – Equities in the first instance, together with what the NYSE has experienced in those few events with its parallel rule, it is appropriate to delete the bright-line 4:30 p.m. cut-off time.

For example, on February 12, 2010, due to corporate actions in Berkshire Hathaway (BRK) Class A and B securities, an NYSE-listed security, there was significant trading volume in those securities, including at the close. In the circumstances, it was determined that the most efficient manner to effect the close of trading in those securities was to effect the closing transaction in BRK-B before closing the BRK-A shares. After closing the BRK-B security at 4:19 p.m., the DMM assessed the shares eligible to be executed for the BRK-A close and determined that the imbalance was significant enough to invoke the procedures of NYSE Rule 123C(9)(a)(1). Due to the complexity of the situation, the NYSE was not able to issue its solicitation of offsetting interest until 4:27 p.m. Because three minutes was not sufficient time to receive incoming offsetting interest and close the security, the NYSE accepted order flow past the 4:30 p.m. order acceptance cut-off time. The NYSE filed with the Commission a rule proposal that permitted the temporary suspension of NYSE Rule 123C(9)(a)(1)(ii) 4:30 p.m. order acceptance cut-off time.²

More recently, on Friday, September 21, 2012, there was a buy imbalance in Weatherford International LTD (WFT), an NYSE-listed security, that could not be satisfied by sell orders on the Book. Accordingly, the NYSE invoked procedures pursuant to NYSE Rule 123C(9) to solicit interest from both off-Floor and on-Floor participants to offset that imbalance. While the Exchange initiated publication of solicitation for such offsetting interest immediately following 4:00 p.m., due to delays in the Exchange's web and email systems, the Exchange's two solicitations of interest, which were sent at 4:22 p.m. and 4:28 p.m., did not leave Exchange systems until 4:29 p.m. and 4:35 p.m., respectively, and were time-stamped accordingly. Because of these delays, the Exchange extended the order acceptance cut-off time to 4:35 p.m., which is past the time prescribed in NYSE Rule 123C(9)(a)(1)(ii). By extending the order acceptance cut-off time to 4:35 p.m., the Exchange was able to attract sufficient sell-side interest to offset the buy imbalance and the stock was closed shortly thereafter on a transaction of 7.822 million shares, unchanged from the last sale price of \$13.54.³

Although the NYSE did not have rule authority to extend the order acceptance cut-off time in the WFT closing situation to 4:35 p.m., the NYSE believes that it acted appropriately under the circumstances to ensure that WFT could close in a fair and orderly manner at a price that was not significantly dislocated from the last sale price. In particular, the issue that the NYSE experienced with respect to its web and email system was unanticipated and the NYSE sought to respond in a

² See Securities Exchange Act Release No. 61549 (Feb. 19, 2010), 75 FR 9009 (Feb. 26, 2010) (SR-NYSE-2010-09).

³ On September 27, 2012, the NYSE published a Trader Update that provided the public with notice of this issue:
http://traderupdates.nyse.com/2012/09/weatherford_international ltd.html.

manner that protected investors and the public interest by ensuring a fair and orderly close.

The Exchange believes it is appropriate to provide the Exchange with authority to designate an order acceptance cut-off time that is tailored to the particular situation, rather than have to adhere to the 4:30 p.m. time frame. The Exchange's ultimate goal is to ensure a fair and orderly close in a manner that is as close to the official 4:00 p.m. closing time as possible. However, depending on the circumstances, whether because of the complexity of the closing process for a particular security or because of a system or technology issue, requiring a bright-line order acceptance time may not be appropriate.

Moreover, the Exchange believes that adhering to such a bright-line cut-off time could harm investors and the public. For example, in both the BRK-A and WFT closes, if the NYSE had adhered to the 4:30 p.m. cut-off time, the NYSE would not have been able to complete its solicitation of offsetting interest. Without such offsetting interest, the Exchange had two alternatives, either close the stock at a price significantly dislocated from the last sale price, or invoke an order imbalance halt and not hold a closing transaction. The Exchange does not believe that either alternative is in the best interest of investors or the public. Rather, the Exchange believes that ensuring that the closing price is not significantly dislocated from the last sale, even if that means a delayed closing time, would benefit investors and the public.⁴

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b)⁵ of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

In particular, the Exchange believes that providing the Exchange with the authority to designate the order cut-off time as appropriately tailored to the

⁴ The Exchange proposes to make clarifying changes to paragraphs (a)(1), (a)(1)(v), (a)(2), and (b) of Rule 123C(9) - Equities and Supplementary Material .20 and .30 to Rule 123C – Equities to either add the phrase "Equities" or delete the term "NYSE" in connection with references to other equity rules in the rule text.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

particular situation removes impediments to and perfects the mechanism of a free and open market because it enables the Exchange to complete the process to solicit interest to offset an imbalance at the close that would otherwise result in a significant price dislocation. Without the relief requested herein, the Exchange may not be able to complete the process to solicit offsetting interest, which would result in either the stock closing at a dislocated price, or require the Exchange to invoke an order imbalance halt in the security. The Exchange believes such solutions could harm investors and the public because of either an unnecessarily dislocated closing price, or in the case of an imbalance halt, orders intended for the closing transaction would not be executed. The Exchange further believes that the proposed rule change would protect investors and the public interest because it would enable the Exchange to complete the process to ensure that the closing price that may be closer to the last sale price, rather than a closing price that is significantly dislocated from the last sale price.

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

Not applicable.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

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. Additionally, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

description and text of the proposed rule change, at least five business days prior to the date of the filing, or such shorter time as designated by the Commission.⁹

The Exchange believes that the proposed rule change will not significantly affect the protection of investors or the public interest because as proposed, the rule change will provide the Exchange with greater authority to ensure a fair and orderly closing process in situations where there is a significant price dislocation at the close, and due to the particular situation for a security, the Exchange would be unable to meet the 4:30 order acceptance cut-off time currently set forth in Rule 123C(9)(a)(1)(ii). In addition, the Exchange believes that the proposed rule change will not impose any significant burden on competition because the rule already provides authority for the Exchange to extend the hours of operation under Rule 52 to solicit interest to offset a significant order imbalance at the close and the proposed rule change will only provide the Exchange with additional flexibility to meet the goals of Rule 123C(9)(a)(1) by designating an order acceptance cut-off time that is tailored to the particular situation.

The Exchange further respectfully requests that the Commission waive the 30-day delayed operative date so that the proposed rule change may become effective and operative immediately. While it remains rare for the Exchange to invoke the procedures set forth in Rule 123C(9)(a)(1) to solicit interest to offset a significant imbalance on the close, the Exchange believes that by immediately implementing this rule change, the Exchange will have the tools to ensure a fair and orderly close should a situation similar to what occurred on the NYSE either on September 21, 2012 or February 12, 2010 be repeated in the near future on the Exchange. For the foregoing reasons, the Exchange believes that this rule filing qualifies for a waiver of the 30-day delayed operative date so that the proposed rule change may become effective and operative immediately pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.¹² At any time within 60 days of the filing of the proposed rule change, the Commission

⁹ The Exchange notes that it timely provided the Commission with written notice of its intent to file the proposed rule change through the Commission’s prefile system as NYSEMKT-2012-32P. However, due to technological issues that the Exchange experienced in the aftermath of Hurricane Sandy, the pre-filing for this rule proposal was inadvertently attached to another Exchange rule filing. See Securities Exchange Act Release No. 68138 (Nov. 1, 2012) (SR-NYSEMKT-2012-59).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6).

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.

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

Not applicable.

9. Exhibits

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

Exhibit 5 – Text of the Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION
 (Release No. 34- ; File No. SR-NYSEMKT-2012-65)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 123C(9)(a)(1)(ii) - Equities to Delete the Requirement that the Order Acceptance Cut-Off Time Cannot be past 4:30 p.m.

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 November 20, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 Rule 123C(9)(a)(1)(ii) - Equities to delete the requirement that the order acceptance cut-off time cannot be past 4:30 p.m. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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 Rule 123C(9)(a)(1)(ii) - Equities to delete the requirement that the order acceptance cut-off time cannot be past 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier close).⁴

Background

Pursuant to Rule 123C(9)(a)(1) – Equities, the Exchange may suspend Rule 52 – Equities (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a Designated Market Maker (“DMM”) orally at or near the close. Rule 123C(9)(a)(1) - Equities was intended to be and has been invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price.

Pursuant to Rule 123C(9)(a)(1)(ii) - Equities, once it has been determined to suspend Rule 52 and solicit offsetting interest, the Exchange is responsible for soliciting such offsetting interest from both on-Floor and off-Floor participants. Such solicitation

⁴ The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC (“NYSE”). *See* SR-NYSE-2012-63.

requests include, at a minimum, the security symbol, the imbalance amount and side, the last sale price, and an order acceptance cut-off time. The Exchange designates the order acceptance cut-off time, but the Rule currently provides that in no event shall the order acceptance cut-off time be later than 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier close).

Currently, the Exchange uses Trader Updates to solicit interest from off-Floor participants. The Exchange's Trader Updates are posted on the Exchange's website and are distributed both by RSS feed and by email to anyone who subscribes to receive such free updates.

Since January 3, 2011, when the Rule, which was previously operated on a pilot bases, became a permanent rule, the Exchange and NYSE, which has an identical rule, have invoked the relief available pursuant to the Rule only once, on September 21, 2012. In 2010, Rule 123C(9)(a)(1) - Equities was invoked only three times on both markets.

Proposed Amendment

The Exchange proposes to amend Rule 123C(9)(a)(1)(ii) - Equities to delete the requirement that the order acceptance cut-off time shall be no later than 4:30 p.m., or in the case of an early scheduled close, 30 minutes after the closing time. The Exchange believes it is appropriate to delete the bright-line cut off time because it hinders the ability of the Exchange to ensure a fair and orderly close if adhering to the 4:30 p.m. order acceptance cut-off time is not possible under the particular circumstances.

In particular, the Exchange notes that for two of the four times that the rule has been invoked since 2010 on both the Exchange and the NYSE, the NYSE has extended the order acceptance cut-off time past 4:30 p.m. The reasons for the extensions differed,

but the Exchange believes that given the rarity of the need to invoke the provisions of Rule 123C(9)(a)(1) – Equities in the first instance, together with what the NYSE has experienced in those few events with its parallel rule, it is appropriate to delete the bright-line 4:30 p.m. cut-off time.

For example, on February 12, 2010, due to corporate actions in Berkshire Hathaway (BRK) Class A and B securities, an NYSE-listed security, there was significant trading volume in those securities, including at the close. In the circumstances, it was determined that the most efficient manner to effect the close of trading in those securities was to effect the closing transaction in BRK-B before closing the BRK-A shares. After closing the BRK-B security at 4:19 p.m., the DMM assessed the shares eligible to be executed for the BRK-A close and determined that the imbalance was significant enough to invoke the procedures of NYSE Rule 123C(9)(a)(1). Due to the complexity of the situation, the NYSE was not able to issue its solicitation of offsetting interest until 4:27 p.m. Because three minutes was not sufficient time to receive incoming offsetting interest and close the security, the NYSE accepted order flow past the 4:30 p.m. order acceptance cut-off time. The NYSE filed with the Commission a rule proposal that permitted the temporary suspension of NYSE Rule 123C(9)(a)(1)(ii) 4:30 p.m. order acceptance cut-off time.⁵

More recently, on Friday, September 21, 2012, there was a buy imbalance in Weatherford International LTD (WFT), an NYSE-listed security, that could not be satisfied by sell orders on the Book. Accordingly, the NYSE invoked procedures pursuant to NYSE Rule 123C(9) to solicit interest from both off-Floor and on-Floor

⁵ See Securities Exchange Act Release No. 61549 (Feb. 19, 2010), 75 FR 9009 (Feb. 26, 2010) (SR-NYSE-2010-09).

participants to offset that imbalance. While the Exchange initiated publication of solicitation for such offsetting interest immediately following 4:00 p.m., due to delays in the Exchange's web and email systems, the Exchange's two solicitations of interest, which were sent at 4:22 p.m. and 4:28 p.m., did not leave Exchange systems until 4:29 p.m. and 4:35 p.m., respectively, and were time-stamped accordingly. Because of these delays, the Exchange extended the order acceptance cut-off time to 4:35 p.m., which is past the time prescribed in NYSE Rule 123C(9)(a)(1)(ii). By extending the order acceptance cut-off time to 4:35 p.m., the Exchange was able to attract sufficient sell-side interest to offset the buy imbalance and the stock was closed shortly thereafter on a transaction of 7.822 million shares, unchanged from the last sale price of \$13.54.⁶

Although the NYSE did not have rule authority to extend the order acceptance cut-off time in the WFT closing situation to 4:35 p.m., the NYSE believes that it acted appropriately under the circumstances to ensure that WFT could close in a fair and orderly manner at a price that was not significantly dislocated from the last sale price. In particular, the issue that the NYSE experienced with respect to its web and email system was unanticipated and the NYSE sought to respond in a manner that protected investors and the public interest by ensuring a fair and orderly close.

The Exchange believes it is appropriate to provide the Exchange with authority to designate an order acceptance cut-off time that is tailored to the particular situation, rather than have to adhere to the 4:30 p.m. time frame. The Exchange's ultimate goal is to ensure a fair and orderly close in a manner that is as close to the official 4:00 p.m.

⁶ On September 27, 2012, the NYSE published a Trader Update that provided the public with notice of this issue:
http://traderupdates.nyse.com/2012/09/weatherford_international_ltd.html.

closing time as possible. However, depending on the circumstances, whether because of the complexity of the closing process for a particular security or because of a system or technology issue, requiring a bright-line order acceptance time may not be appropriate.

Moreover, the Exchange believes that adhering to such a bright-line cut-off time could harm investors and the public. For example, in both the BRK-A and WFT closes, if the NYSE had adhered to the 4:30 p.m. cut-off time, the NYSE would not have been able to complete its solicitation of offsetting interest. Without such offsetting interest, the Exchange had two alternatives, either close the stock at a price significantly dislocated from the last sale price, or invoke an order imbalance halt and not hold a closing transaction. The Exchange does not believe that either alternative is in the best interest of investors or the public. Rather, the Exchange believes that ensuring that the closing price is not significantly dislocated from the last sale, even if that means a delayed closing time, would benefit investors and the public.⁷

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁸ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove

⁷ The Exchange proposes to make clarifying changes to paragraphs (a)(1), (a)(1)(v), (a)(2), and (b) of Rule 123C(9) - Equities and Supplementary Material .20 and .30 to Rule 123C – Equities to either add the phrase “Equities” or delete the term “NYSE” in connection with references to other equity rules in the rule text.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

In particular, the Exchange believes that providing the Exchange with the authority to designate the order cut-off time as appropriately tailored to the particular situation removes impediments to and perfects the mechanism of a free and open market because it enables the Exchange to complete the process to solicit interest to offset an imbalance at the close that would otherwise result in a significant price dislocation. Without the relief requested herein, the Exchange may not be able to complete the process to solicit offsetting interest, which would result in either the stock closing at a dislocated price, or require the Exchange to invoke an order imbalance halt in the security. The Exchange believes such solutions could harm investors and the public because of either an unnecessarily dislocated closing price, or in the case of an imbalance halt, orders intended for the closing transaction would not be executed. The Exchange further believes that the proposed rule change would protect investors and the public interest because it would enable the Exchange to complete the process to ensure that the closing price that may be closer to the last sale price, rather than a closing price that is significantly dislocated from the last sale price.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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 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)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

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-NYSEMKT-2012-65 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-NYSEMKT-2012-65. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference 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 website 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-NYSEMKT-2012-65 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

Additions underscored

Deletions [bracketed]

NYSE MKT LLC Rules

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Rule 123C - Equities. The Closing Procedures

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(9) Extreme Order Imbalances at or Near the Close

- (a) 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 following:
 - (1) The hours of operation to permit the solicitation and entry of orders into Exchange systems (Rule 52 - Equities), provided that:
 - (i) Such orders are solicited solely to offset any imbalance in a security that may exist as of 4:00 p.m.;
 - (ii) The Exchange solicits such offsetting interest from both on-Floor and off-Floor participants. Such solicitation requests shall include, at a minimum, the security symbol, the imbalance amount and side, the last sale price, and an order acceptance cut-off time. The order acceptance cut-off time will be a time period designated by the Exchange. [In no event will the order acceptance cut-off time be later than 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier close)];
 - (iii) Any interest entered in response to such solicitations must be: (A) entered no later than the order acceptance cut-off time indicated in the solicitation request; (B) offsetting interest as indicated in the solicitation request; (C) a limit order priced no worse than the last sale; and (D) irrevocable;
 - (iv) The DMM will close the security the earlier of the order acceptance cut-off time or if the imbalance is paired off at or reasonably contiguous to the last sale price. For purposes of this Rule, a price reasonably contiguous to the last sale price is within cents of the last sale price and would be a price point that during a regular closing auction would not be considered a dislocating closing price as compared to the last sale price. All offsetting interest solicited pursuant to this section of the Rule will trade on parity; and
 - (v) A Floor broker may represent offsetting interest pursuant to this rule without

first entering the details of the order into a designated Exchange database, as required by [NYSE] Rule 123 - Equities, so long as such orders are entered into a designated Exchange database on an "as of" basis immediately following execution of the order.

(2) The prohibition on canceling or reducing an MOC or LOC order after 3:58 p.m. Rule 123C(3) - Equities, provided that:

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

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

(b) Only the DMM assigned to a particular security may request a temporary suspension under section (9)(a) of this Rule. A determination to declare such a temporary suspension may be made after 4 p.m. (or earlier, in the case of an earlier scheduled close) and will be made on a security-by-security basis. Such determination, as well as any entry or cancellation of orders or closing of a security under section (9)(a) of this Rule, must be supervised and approved by either an Executive Floor Governor or a qualified NYSE Euronext employee, as defined under Rule 46(b)(v) - Equities, and supervised by a qualified Exchange Officer, as defined in [NYSE] Rule 48(d) - Equities. Factors that may be considered when making such a determination include, but are not limited to, when the order(s) that impacted the imbalance were entered into Exchange systems or orally represented to the DMM, the impact of such order(s) on the closing price of the security, the volatility of the security during the trading session, and the ability of the DMM to commit capital to dampen the price dislocation.

(c) A temporary suspension under section (9)(a) of this Rule is in effect only for the particular security for which such suspension has been granted and for that trading day.

Supplementary Material:

.20 For purposes of Rule 123C(7)(b) - Equities, short sale orders for a covered security during a period when a Short Sale Price Test (as provided for in Rule 440B - Equities) is in effect, shall be treated as orders that have tick restrictions. The term "covered security" shall have the same meaning as such term has in Rule 201 of Regulation SHO.

.30 During a Short Sale Period (as provided for in Rule 440B(d) - Equities), 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) - Equities. During a Short Sale Period, in addition to the interest specified in Rule 123C(4)(a)(vi)(A) - Equities, all Sell Short MOC and LOC interest priced equal to or below the last sale price will be included to offset the Buy Imbalance.

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