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–2009–53 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–2009–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–2009–53 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13968 Filed 6–12–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60055; File No. SR–NYSEAmex–2009–24]

Self-Regulatory Organizations; NYSE Amex LLC, Notice of Filing of a Proposed Rule Change Amending Rule 70.25 To Permit All Available Contra-side Liquidity To Trigger the Execution of a d-Quote

June 5, 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 June 4, 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 and II below, which Items have been prepared by NYSE Amex. 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 70.25 to permit all available contra-side liquidity to trigger the execution of a d-Quote. 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.

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 70.25(c)(iii) to provide that all available contra-side liquidity within the possible execution range of a d-Quote will be considered when determining whether to activate a d-Quote.[3]

Background

As described more fully in a related rule filing,[4] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext and was renamed NYSE Amex LLC (''NYSE Amex'' or the ''Exchange''), and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act'').[5] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Amex Trading Systems'') are operated by the NYSE on behalf of the Exchange.[6]

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.[7] The NYSE

[3] The purpose of the proposed rule changes is to amend NYSE Amex Equities Rule 70.25 to conform with proposed amendments to corresponding NYSE Rule 70.25 submitted in a companion filing by the New York Stock Exchange LLC (''NYSE''). *See* SR–NYSE–2009–55, formally submitted June 2, 2009.

[4] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger).

[5] 15 U.S.C. 78f.

[6] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation).

[7] *See* Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008)

Continued

Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

NYSE Amex Equities Rule 70.25

Rule 70.25 governs the entry, validation, and execution of bids and offers represented by a Floor broker on the Floor of the Exchange via agency interest files (''e-Quotes'') that include discretionary instructions as to size and/or price (''d-Quotes''). The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price at which the d-Quote may trade and the number of shares to which the discretionary price instruction applies.

Rule 70.25(c) provides that a Floor broker may designate the amount of his or her e-Quote to which discretionary pricing instructions apply. Floor brokers may also designate a minimum or maximum size of contra-side volume with which the Floor broker is willing to trade using discretionary pricing instructions. However, under current Rule 70.25(c)(iii), Exchange systems currently look only at the contra-side displayed interest on the Display Book® [8] (''Book'') to determine whether the contra-side volume is within the d-Quote's discretionary size range. Therefore, the displayed bid or offer must meet the minimum volume of the d-Quote before a d-Quote can be activated.

For example, assuming the Exchange Best Bid and Offer (''BBO'') is .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote bidding for .05 with four cents of price discretion and a minimum share volume subject to such discretionary pricing instructions of 4,000 shares would not be activated because the displayed offer of 1,000 shares is not sufficient to fill the discretionary size instructions. Accordingly, that d-Quote would not trade.

Similarly, the d-Quote would not be activated even if the Book has contra-side undisplayed interest that could meet both the discretionary pricing and volume instructions of the d-Quote. Taking the same example as above, if Exchange systems have 3,000 shares offered at .09, which is not part of the displayed offer but is both within the discretionary pricing and volume instructions of the d-Quote (1,000 shares at the displayed offer at .08 plus 3,000 shares of contra-side volume at .09 meets the 4,000 minimum size and price instruction of the d-Quote), the d-Quote would not trade. Or, if in addition to the 1,000 shares offered at .08 that is displayed, there is an additional 3,000 shares offered at .08 in reserve interest, notwithstanding that the displayed offer and reserve interest at the .08 price point would meet the discretionary volume instructions of the d-Quote, the d-Quote would not trade.

The Exchange notes that decreasing the minimum discretionary size of the d-Quote would not permit the d-Quote to trade with the contra-side liquidity because the discretionary pricing instructions of a d-Quote are active only for that portion of an e-Quote that also has discretionary size instructions.[9] For example, if a d-Quote for 1,000 shares has a discretionary price range of .04 and a minimum volume of 100 shares, in the above example, only those 100 shares would trade against the displayed offer. The remaining 900 shares would be treated as an e-Quote bid for .05 and would not be eligible to trade with the displayed offer or any other interest within the discretionary price instructions.

Proposed Amendment

The Exchange proposes to amend Rule 70.25(c)(iii) to remove the restriction that only the displayed interest will be considered when determining whether the contra-side volume is within the discretionary pricing instructions of the d-Quote. The Exchange believes that all interest willing to trade at certain price points should be permitted to trade. Because Exchange systems have both displayed and undisplayed liquidity, considering only displayed contra-side liquidity does not take into account the true state of liquidity when determining whether to activate a d-Quote. The current rule therefore restricts which interest may be considered rather than allow willing interest to interact.

As proposed, if all available contra-side volume within the discretionary price and size instructions of a d-Quote is considered, such d-Quote will trade against such contra-side liquidity in the same manner that a market order or a marketable limit order would execute against such available contra-side liquidity. For example, assuming that the Exchange BBO is still .05 bid for 1,000 shares and offering 1,000 shares at .08, if a market order or marketable limit order to buy 4,000 shares entered Exchange systems, such order would trade not only with the displayed offer of .08, but would also trade with any reserve interest that is better than the displayed offer (*e.g.*, if there is non-displayed interest offered at .07), reserve interest at the price of the displayed offer, and if there is insufficient liquidity at the displayed offer price or better, the market order would sweep up the Book. Similarly, as proposed, if the d-Quote bid for .05 had four cents of price discretion for a minimum size of 4,000 shares, that d-Quote would interact with the market the same as a market order or a marketable limit order to buy 4,000 shares.

The Exchange notes that the d-Quote functionality sought with this rule proposal provides Floor brokers with functionality similar to that previously available to Floor brokers at the NYSE and Amex.[10] As permitted by former NYSE Rule 123A.30(a), a CAP–DI order was the elected or converted portion of a percentage order that was convertible on a destabilizing tick and designated for immediate execution or cancel election. When elected, a CAP–DI order would have automatically executed against any contra-side volume available at the electing price and was eligible to participate in a sweep. The Rule 70.25(c)(iii) limitation that only displayed interest is considered when determining whether the contra-side volume meets the d-Quotes discretionary size instructions was added during a time when Floor brokers still had the ability to enter CAP–DI orders.

In connection with the Next Generation Market Model, the NYSE eliminated CAP orders in part because the manner in which such orders were processed impeded the efficiency of the

(SR–Amex 2008–63); 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106); 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10); and 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11).

[8] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the Book, 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.

[9] *See* Rule 70.25(a)(iv) (''Discretionary instructions will be applied only if all d-Quoting prerequisites are met. Otherwise, the d-Quote will be handled as a regular e-Quote, notwithstanding the fact that the Floor broker has designated the e-Quote as a d-Quote.'').

[10] Historically, Amex Floor brokers also had convert-and-parity (''CAP'') functionality similar to the NYSE CAP functionality. Amex eliminated this functionality in connection with the implementation of Regulation NMS.

Book.[11] Accordingly, Floor brokers no longer have the capability to enter an order into Exchange systems that would be elected at certain price points and then be eligible to trade with any available contra-side liquidity. The Exchange notes that, when the NYSE eliminated CAP orders, it did not have the technology to permit d-Quotes to fully replicate the functionality of a CAP order. Moreover, when d-Quote functionality was introduced in October 2006, the NYSE did not offer the ability to enter fully dark reserve interest. Since that time, the NYSE and NYSE Amex have added two new order types, the Minimum Display Reserve Order and the Non-Displayable Reserve Order.[12] By restricting d-Quotes to be active only when the displayed interest meets the discretionary size instructions, d-Quotes are limited in their ability to interact with the type of liquidity that exists at the Exchange.

The Exchange therefore believes that the modernization of d-Quote functionality proposed in this rule filing enables willing interest to trade with all willing contra-side liquidity, including reserve interest, which will result in greater executed volume, better fill rates, new price improvement opportunities for incoming orders, and improved overall market quality. Additionally, the proposed functionality for d-Quotes is consistent with the initial purpose of providing Floor brokers with functionality to replicate the functionalities and characteristics that Floor brokers exercised in an auction-market model and to modernize such tools as the manner of trading at the Exchange evolves. As such, this enhancement does not expand functionality available to Floor brokers but merely restores functionality that previously existed, albeit in a slightly different format.

The Exchange further believes that providing this improved functionality provides customers with a greater array of execution and representation choices when routing an order to the Exchange. For example, a customer currently can choose, among others, to route an order directly to the Book electronically from an off-Floor location or route an order to a Floor broker for the Floor broker to represent on the Floor of the Exchange. These options provide different benefits for the customer. For example, routing an order directly to Exchange systems provides the benefit of an ultra low latency execution, which is particularly important for an algorithmically-driven trading strategy. Additionally, a customer may choose to use a Floor broker because that customer wants the benefit of that broker's expertise in managing complex orders, performing price discovery, and exercising discretion at the point of sale.

By modernizing d-Quote functionality, the Exchange is therefore not only replacing functionality that was previously eliminated, but is also providing customers who elect to use a Floor broker with functionality to meet the diverse needs of all customers.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act[13] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[14] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that permitting d-Quotes to consider all available contra-side liquidity when determining whether the discretionary size range of the d-Quote has been met meets such goals because it ensures that customer orders eligible to trade will execute against willing contra-side liquidity.

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 the 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–NYSEAmex–2009–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington,

[11] *See* Securities Exchange Act Release Nos. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR–NYSE–2008–46) and 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10).

[12] *See id.*

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–24 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13966 Filed 6–12–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60070; File No. SR–FINRA–2009–038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Repeal Incorporated NYSE Rule 134 (Differences and Omissions—Cleared Transactions) and NYSE Rule 440I (Records of Compensation Arrangements—Floor Brokerage) as Part of the Process To Develop the Consolidated FINRA Rulebook

June 8, 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 June 1, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) 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 FINRA. 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

FINRA is proposing to repeal Incorporated NYSE Rule 134 (Differences and Omissions—Cleared Transactions) and Incorporated NYSE Rule 440I (Records of Compensation Arrangements—Floor Brokerage), as part of the process of developing the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to repeal NYSE Incorporated Rule 134 (Differences and Omissions—Cleared Transactions) and NYSE Incorporated Rule 440I (Records of Compensation Arrangements—Floor Brokerage), to remove rules that are specific to the New York Stock Exchange, LLC (''NYSE'') marketplace and relate primarily to activities by floor brokers.

Incorporated NYSE Rule 134 (Differences and Omissions—Cleared Transactions)

The proposed rule change would repeal Incorporated NYSE Rule 134, which sets forth procedures for clearing member firms to identify uncompared transactions and resolve them by making any necessary additions, deletions or changes to their data on the facility system. The rule provides guidelines for the review of uncompared transactions by clearing member firms and details the manner and timing of notifications that must be provided and the types of records that must be maintained.

Further, NYSE Rule 134(d) requires floor brokers to maintain or participate in an error account in which all *bona fide* error transactions are processed and recorded. The rule defines an ''error'' to include an execution outside of an order's written instructions (e.g., wrong security, wrong side of the market, outside the limit price, over buying or selling, duplicate execution, etc.) or missing the market on a ''held'' order. In such cases, floor brokers use their error account to assume or acquire a position as a result of a legitimate error. Floor brokers are required pursuant to the rule to maintain a signed, time-stamped record, including supporting documentation of such error. The rule further requires every member not associated with a member organization, and every member associated with a member organization that derives at least 75% of its revenue from floor brokerage based on execution of orders on the floor to report to the NYSE error transactions in such member's or his or her member organization's account which result in a profit of more than $500 for any transaction, or for more than $3,000 in any calendar week. Such reports must contain a detailed record of the errors and liquidating transactions.

FINRA is proposing to delete Incorporated NYSE Rule 134 from the Transitional Rulebook and not adopt the rule into the Consolidated FINRA Rulebook because the rule is narrowly directed to the trading activities of NYSE floor brokers. FINRA believes that it is not necessary to transfer NYSE Rule 134 into the Consolidated FINRA Rulebook because the resolution of trading errors on the NYSE and recordkeeping of error accounts is specific to the NYSE.[4]

Incorporated NYSE Rule 440I (Records of Compensation Arrangements—Floor Brokerage)

The proposed rule change would also repeal Incorporated NYSE Rule 440I, which requires each member and member organization that is ''primarily engaged as an agent in executing transactions on the Floor of the Exchange'' (e.g., $2 brokers or

[15] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] In addition to being subject to SEC and FINRA rules, Dual Members also remain subject to the NYSE's rulebook. FINRA notes that the NYSE may determine to retain NYSE Rule 134 for its own purposes.