

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change will help generate greater complex order flow for the Exchange and provide additional incentives for Market-Makers to trade with that order flow, which in turn adds depth and liquidity to CBOE's markets.

### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 Exchange consents, the Commission will:

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

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

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-070 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-CBOE-2009-070. 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 such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2009-070 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-24078 Filed 10-6-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60756; File No. SR-NYSE-2009-100]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Operation of Its New Market Model Pilot and Supplemental Liquidity Providers Pilot, Until the Earlier of Securities and Exchange Commission Approval to Make Such Pilots Permanent or November 30, 2009

October 1, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 30, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to extend the operation of its New Market Model Pilot and Supplemental Liquidity Providers Pilot, until the earlier of Securities and Exchange Commission approval to make such pilots permanent or November 30, 2009. 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

The Exchange proposes to extend the operation of its New Market Model Pilot<sup>4</sup> ("NMM Pilot") and Supplemental Liquidity Providers Pilot<sup>5</sup> ("SLP Pilot") approved by the Securities and Exchange Commission ("SEC" or "Commission") to operate until October 1, 2009, until the earlier of Securities and Exchange Commission approval to make such pilots permanent or November 30, 2009.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Amex LLC.<sup>6</sup>

Background<sup>7</sup>

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model. These changes were implemented through pilots.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.<sup>8</sup> The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement<sup>9</sup> in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.<sup>10</sup>

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is

willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS").<sup>11</sup> CCS provides the Display Book<sup>®</sup><sup>12</sup> with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange BBO. CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's best bid or Exchange's best offer. During the operation of the NMM Pilot orders or portions thereof that establish priority<sup>13</sup> retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

Separately, the NYSE established a pilot of SLPs. Through the operation of the SLP Pilot, NYSE also established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.<sup>14</sup> Unlike DMMs, SLPs do not have affirmative obligations; may only enter orders electronically from off the Floor of the Exchange, and may only enter such orders directly into Exchange systems and facilities designated for this purpose. Similar to DMMs, SLPs have quoting requirements,<sup>15</sup> may only enter orders for their proprietary account of the SLP member organization and may not handle orders from public customers or otherwise act on an agency basis in their capacity as an SLP.

A member organization that acts as an SLP is not permitted to act as a DMM on the Floor of the Exchange in the same security. Thus, a member organization that acts as a DMM on the Floor may not also act as an SLP in those securities registered to the DMM unit.

The NMM Pilot and the SLP Pilot are scheduled to end operation on October 1, 2009 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the above described changes permanent but does not expect that filing to be completed and approved by the Commission before October 1, 2009.

Proposal To Extend the Operation of the NMM Pilot and SLP Pilot

The NYSE established both the NMM Pilot and the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and add new competitive market participants. The Exchange believes that both the NMM Pilot and the SLP Pilot allow the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot and the SLP Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot and the SLP Pilot until November 30, 2009, in order to allow the Exchange to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the NMM Pilot and the SLP Pilot provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of each individual Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot and the SLP Pilot permanent; (ii) public notice and comment; and (iii)

<sup>4</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

<sup>5</sup> See Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108) (establishing the SLP Pilot). See also Securities Exchange Act Release No. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR-NYSE-2009-46) (extending the operation of the SLP Pilot to October 1, 2009).

<sup>6</sup> See SR-NYSE Amex-2009-65.

<sup>7</sup> The information contained herein is a summary of the NMM Pilot and the SLP Pilot, for a fuller description of those pilots see *supra* notes 4 and 5.

<sup>8</sup> See NYSE Rule 103.

<sup>9</sup> See NYSE Rules 104.

<sup>10</sup> See NYSE Rule 60; see also NYSE Rules 104 and 1000.

<sup>11</sup> See NYSE Rule 1000.

<sup>12</sup> The Display Book<sup>®</sup> system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the 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.

<sup>13</sup> See NYSE Rule 72(a)(ii).

<sup>14</sup> See NYSE Rule 107B.

<sup>15</sup> See NYSE Rule 107B Section (f) and NYSE Rule 107B Section (i)(1)(C)(iii).

completion of the 19b-4 approval process.

#### *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 Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> 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.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>20</sup> 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.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The

Commission notes that because the pilot programs will expire on October 1, 2009, waiver of the operative delay is necessary so that no interruption of the pilot programs will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilots to allow the Exchange time to formally request permanent approval for the pilots. Therefore, the Commission designates the proposal operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-100 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-2009-100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2009-100 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-24083 Filed 10-6-09; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60751; File No. SR-NYSEAmex-2009-67]

### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders from Archipelago Securities LLC**

September 30, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on September 30, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to extend the pilot period of the Exchange's prior approvals to receive inbound routes of orders from Archipelago Securities LLC

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.