

interest. The Exchange has requested that the Commission waive the 30-day operative date, to enable the Exchange to utilize the proposed appointment cost for VXX options before the commencement of trading in that option class. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. For these reasons, the Commission designates the proposal to be operative upon filing.<sup>9</sup>

#### 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-2010-053 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-2010-053. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10

am and 3 pm. 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-2010-053 and should be submitted on or before July 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62303; File No. SR-NYSEAmex-2010-53]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending Its Rules To Incorporate the Receipt and Execution of Odd-Lot Interest Into the Round Lot Market and Decommission the Use of the "Odd-Lot System"

June 16, 2010.

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 June 10, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the use of the "Odd-lot System". The text of the proposed rule change is available at the Exchange, on the Commission's Web site at <http://www.sec.gov>, the

Commission's Public Reference Room, and <http://www.nyse.com>.

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

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

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

1. *Purpose.* The Exchange proposes to amend its rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the use of the "Odd-lot system."<sup>4</sup>

##### Background

Round lot interest on the Exchange is executed by Display Book<sup>®</sup> pursuant to NYSE Amex Equities Rule 72 on a priority or parity basis.<sup>5</sup> Odd-lot interest, however, is processed in an Exchange system designated solely for handling and execution of odd-lot

<sup>4</sup> The Exchange notes that parallel changes are proposed to be made to the rules of the New York Stock Exchange LLC ("NYSE"). See SR-NYSE-2010-43.

<sup>5</sup> The Display Book system is an Exchange order management and execution facility. The Display Book system receives and displays interest to the DMM, provides the data feed for NYSE Amex OpenBook<sup>®</sup> that is available to market participants, contains order information and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems. NYSE Amex OpenBook provides subscribers a real-time view of the Exchange's limit-order book for all NYSE-Amex traded securities.

<sup>6</sup> NYSE Amex Equities Rule 72 provides that all market participants receive an allocation of executed shares on an equal basis ("parity") with other interest available at that price. In addition, where there is more than one bidder (offerer) participating in an execution and one of the bids (offers) was clearly established as the first made at a particular price and such bid or offer is the only interest when such price is or becomes the best bid or offer published by the Exchange (the "Setting Interest"), that [sic] the displayed portion of such Setting Interest is entitled to priority. In order to qualify as Setting Interest, it must have been the only interest quoted at a price. Only the quoted (*i.e.*, displayed) portion of the Setting Interest is entitled to priority ("Priority Interest").

<sup>9</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<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.

interest (the “Odd-lot System”).<sup>7</sup> The Odd-lot System is a separate system from the Display Book that executes odd-lot interest and the odd-lot portion of part of round lot (“PRL”) interest.<sup>8</sup>

NYSE Amex Equities Rule 124 governs handling and execution of odd-lot interest and the odd-lot portion of PRL interest in the Odd-lot System. Pursuant to the provisions of NYSE Amex Equities Rule 124 all odd-lot interest and odd-lot portion of PRL interest is executed against the DMM as the contra party.<sup>9</sup> NYSE Amex Equities Rule 124 outlines the complex pricing formula used to determine the price of odd-lot executions. Generally, the execution price of odd-lot interest is determined based on: (i) The price of executions in the round lot market; (ii) whether the odd-lot interest was marketable or non-marketable upon receipt in the Odd-lot system; and (iii) in certain instances the Exchange system that initially received the interest.<sup>10</sup>

<sup>7</sup> See NYSE Amex Equities Rule 124(a).

In connection with the NYSE Euronext acquisition of The Amex Membership Corporation (“AMC”) pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the “Merger”), 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”) on December 1, 2008. 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. See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03) (implementing the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10) (adopting amendments to NYSE Amex Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11) (adopting amendments to Rule 62—NYSE Amex Equities to track changes to corresponding NYSE Rule 62).

<sup>8</sup> PRL orders are for a size within the standard unit (round-lot) of trading, which is 100 shares for most stocks, but contains a portion that is smaller than the standard unit of trading, e.g. 199 shares. See Supplementary Material .40 of NYSE Amex Equities Rule 124.

<sup>9</sup> See NYSE Amex Equities Rule 124(a).

<sup>10</sup> For a fuller discussion of the operation of the current odd-lot system see, Securities Exchange Act Release No. 56551 (September 27, 2007), 72 FR 56415 (October 3, 2007) (SR-NYSE-2007-82) (NYSE modifications to methodology of pricing and executing orders in the Odd-lot system). See also Securities Exchange Act Release No. 59614 (March 20, 2009), 74 FR 13501 (March 27, 2009) (NYSE Alternext-2009-27) (modification to pricing and execution methodology to execute odd-lot portion of the PRL orders pursuant to pricing structure in

Proposed Amendments To Incorporate Odd-Lots and Odd-Lot Portion of PRL Interest in the Round Lot Market

The Exchange is proposing to terminate the Odd-lot System and incorporate odd-lot interest and the odd-lot portion of PRL interest into the round lot market thus enabling such interest to interact with all other market interest and be priced in accordance with overall supply and demand dynamics. Pursuant to the proposed rule change, odd-lot interest and odd-lot portion of PRL interest will be accepted and executed in the Display Book.

In order to incorporate interest for fewer than 100 shares into the round lot market, the Exchange proposes that the new unit of trading for all securities be 1 share.<sup>11</sup> Although the new unit of trade will be 1 share, the concepts of round lots and odd-lots remain for the purposes of quoting as explained in more detail below.

There will no longer be a separate execution pricing structure for odd-lot interest and the odd-lot portion of PRL interest. Further, because the trading of odd-lot interest and the odd-lot portion of PRL interest is being incorporated in the round lot market the Exchange no longer needs the DMM to act in the capacity of odd-lot dealer. The DMM will no longer be the contra party to all odd-lot executions except for odd-lot size quantity that pursuant to Exchange rules is to be executed in the opening, re-opening and closing transactions that remain unpaired.<sup>12</sup> The Exchange therefore seeks to rescind rules that govern odd-lot dealers and the distinct pricing for odd-lot interest and the odd-

NYSE Amex Equities Rule 124(c) and (d).); Securities Exchange Act Release No. 60139 (June 18, 2009), 74 FR 30342 (June 25, 2009) (SR-NYSEAmex-2009-18) (Clarification of the pricing methodology for the odd-lot portion of a PRL order and the systems capable of accepting PRL and Good ‘Til Cancelled Orders during the implementation of Exchange system enhancements).

<sup>11</sup> See Proposed NYSE Amex Equities Rule 55 and 56. In addition, proposed NYSE Amex Equities Rule 55 retains the ability of the Exchange to designate securities to be quoted in less than 100 shares. Investors may subscribe to an NYSE market data product to obtain information on the securities designated to quote in less than 100 share increments. Securities so designated pursuant to NYSE Amex Equities Rule 65 are to “be dealt in as provided in NYSE Amex Equities Rules 64.” Because the other provisions of NYSE Amex Equities Rule 65 no longer apply when odd-lots are incorporated into the round lot market, the Exchange further proposes to incorporate this concept into the provisions of proposed NYSE Amex Equities Rule 55 and delete the provision of NYSE Amex Equities Rule 65 in its entirety. The Exchange further proposes to amend Supplementary Material subparagraph (2)(c) of NYSE Amex Equities Rule 115A (“Orders at Opening or in Unusual Situations”) to change the term “unit of trading” to one round lot.

<sup>12</sup> See Proposed NYSE Amex Equities Rule 104(e).

lot portion of PRL interest. Specifically, the Exchange proposes to rescind the provisions of NYSE Amex Equities Rules 99 (“Round-Lot Transactions of Odd-Lot Dealer and Broker”) 99 Former (“Round-Lot Transactions of Odd-Lot Dealer and Broker”), 100 (Round-Lot Transactions of Odd-Lot Dealer or Broker Affecting Odd-Lot Orders”), 101 (“Registration of Odd-Lot Dealers and Brokers”) and 124 (“Odd-Lot Orders”) and retain the rule numbers as reserved. Similarly, the Exchange proposes to delete all references to Odd-Lot Dealers in NYSE Amex Equities Rules 94 (“Designated Market Markers or Odd-Lot Dealers Interest in Joint Accounts”) and 108 (“Limitation on Members’ Bids and Offers”).

Odd-lot interest and the odd-lot portion of PRL interest will be generally subject to all the provisions of Exchange rules that heretofore applied only to interest executed in the round lot market except as described herein. The Exchange therefore seeks to delete current subparagraph (e) of NYSE Amex Equities Rule 13 under the Auto Ex Order and make conforming changes to the lettering. The inclusion of odd-lot interest and the odd-lot portion of PRL interest in the round lot market will obviate the need for a specific provision authorizing automatic execution for the round lot portion of a PRL order. In addition, the Exchange proposes to delete the provisions of current subparagraph (f) of NYSE Amex Equities Rule 14, which restricts non-regular way settlement instructions solely to round lot and PRL interest. Floor brokers will now be permitted to accept orders containing non-regular way settlement instructions in odd-lot quantities because they will be able to represent them in the round lot market. Current subparagraph (g) of NYSE Amex Equities Rule 14 will be amended to become new subparagraph (f) of proposed NYSE Amex Equities Rule 14.

Order Handling, Execution, Allocation

In order to incorporate odd-lot interest and the odd-lot portion of PRL interest into the round lot market, the Exchange must amend rules governing order handling, execution and allocation to reflect that odd-lot quantities will not be displayed as the Exchange quotation and odd-lot executions are not published to the Consolidated Tape.

The Exchange proposes to amend NYSE Amex Rule 61 to delete: (i) The requirement that odd-lot orders be executed via the Odd-lot System; and (ii) references to rescinded rule text. The Exchange further proposes to re-order the remaining substantive provisions of

the rule and update the rule text with currently recognized references, for example wordy descriptions of PRL will be replaced with part of round lot or PRL.

Pursuant to the instant proposal Display Book will aggregate all interest at each limit price, including odd-lot

interest and the odd-lot portion of PRL interest. Interest will be quoted if it is equal to or greater than a round lot when the price point becomes the Exchange best bid and offer (“Exchange BBO”). For example, Table 1 below depicts the Exchange BBO as 200 shares bid at \$20.05 and 200 shares offered at

\$20.10. The quoted offer includes two non-reserve orders for 100 shares each; however, the quoted bid includes one non-reserve order to buy for 100 shares and two odd-lot non-reserve orders for 50 shares each. The 50 shares at the price point of \$20.07 are not quoted because it is less than a round lot.

TABLE 1

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0 .....	0	0	\$20.10	200	100, 100
50 .....	0	\$20.07	0	0	0
50, 50, 100 .....	200	\$20.05	0	0	0

Display Book will continue publishing the Exchange BBO which may now include aggregated odd-lot interest and the odd-lot portion of PRL interest. The Exchange therefore proposes to amend NYSE Amex Equities Rule 60 to include a fuller citation to Regulation National Market System (“Reg. NMS”) and clarify that a bid or offer may also be the aggregation of odd-lot interest and the odd-lot portion of PRL interest, the sum of which is equal to or greater than a round lot.<sup>13</sup> The Exchange BBO will still be quoted in round lots.<sup>14</sup> The Exchange proposes to include odd-lot interest and the odd-lot portion of PRL interest in the Exchange BBO only when such odd-lot interest may be aggregated with other interest at the price point resulting in a sum that would be equal to or greater than a round lot.<sup>15</sup>

Because odd-lot interest and the odd-lot portion of PRL interest will be eligible for inclusion in the Exchange BBO such interest will be considered “displayable” interest for the purposes of execution and allocation pursuant to the provisions of NYSE Amex Equities Rule 72. Consistent with the current operation of NYSE Amex Equities Rule 72, interest will not be considered displayable when such interest is affirmatively designated as excluded interest (e.g. reserve interest).

In addition, consistent with the current logic of priority and parity, incoming single odd-lot interest will never be eligible to be the Priority Interest because it can never be the only interest quoted at the price point.<sup>16</sup> For example, Table 2 and 3 below depict the Exchange BBO in XYZ security. Initially, the Exchange BBO is 200

shares bid at \$20.05 and 100 shares offered at \$20.11. The quoted offer includes two non-reserve orders for 50 shares each and the quoted bid includes one non-reserve order to buy for 150 shares and two odd-lot non-reserve orders for 50 shares each.<sup>17</sup> There is no Priority Interest in the Exchange BBO because none of the orders were the only independently displayable interest quoted at the price point when it became the Exchange BBO. Subsequently an order to sell 200 shares at \$20.10 is received. Table 3 shows the Exchange BBO is updated to reflect 200 shares offered at \$20.10 and 200 shares bid at \$20.05. The 200 share order at \$20.10 is Priority Interest because it was the only independently displayable interest capable of being quoted at the price point when the price point became the Exchange BBO.

TABLE 2

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0 .....	0	0	\$20.11	100	50, 50
0 .....	0	0	\$20.10	0	0
0 .....	0	\$20.09	\$20.09	0	0
0 .....	0	\$20.08	0	0	0
10, 20, 30 .....	0	\$20.07	0	0	0
10, 10, 25, 50 .....	0	\$20.06	0	0	0
50, 50, 150 .....	200	\$20.05	0	0	0

<sup>13</sup> NYSE Amex Equities Rule 60 currently provides that the terms “bid” or “offer” shall have the meaning given to them in § 242.600(b) (“Rule 602”) of Regulation NMS. Reg. NMS, Rule 600 provides that: *Bid or offer* means the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.

The Exchange proposes to amend the citation in NYSE Amex Equities Rule 60 to: Section 242.602

(“Rule 602”) of Regulation National Market System (“Reg. NMS”), 17 CFR part 242.

<sup>14</sup> See Consolidated Tape Plan (“CTA Plan”) Second Restatement of Plan Submitted to The Securities and Exchange Commission Pursuant to Rule 11Aa3-1 Under the Securities Exchange Act of 1934 at page 26 section VI.(d)(iv). See also Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (order approving CTA Plan). The most recent restatement of the CTA Plan was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a “transaction reporting plan” under Rule 601 under the Act, 17

CFR 242.601, and a “national market system plan” under Rule 608 under the Act, 17 CFR 242.608. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>15</sup> See Proposed NYSE Amex Equities Rule 72(a).

<sup>16</sup> See *supra*, note 11.

<sup>17</sup> It is also important to note that in this example although the total number of shares bid on the Exchange at the Exchange best bid is 250 shares the quoted bid is 200 shares consistent with the provisions of proposed NYSE Amex Equities Rule 55. See also *supra*, note 11.

TABLE 3

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0 .....	0	0	\$20.11	100	50, 50
0 .....	0	0	\$20.10	200	200
0 .....	0	\$20.09	\$20.09	0	0
0 .....	0	\$20.08	0	0	0
10, 20, 30 .....	0	\$20.07	0	0	0
10, 10, 25, 50 .....	0	\$20.06	0	0	0
50, 50, 150 .....	200	\$20.05	0	0	0

For the same reason, single odd-lot interest at a price point may not prevent single displayable round lot or PRL interest from establishing itself as Priority Interest. When single round lot or PRL interest joins odd-lot interest at a price point and the sum of the odd-lot interest is not equal to a round lot, the single round lot or PRL that is published as the Exchange BBO is considered the setting interest and has established priority at that price point.<sup>18</sup> For example, Table 4 and 5 below

depict the Exchange BBO in XYZ security. Initially, the Exchange BBO is 200 shares bid at \$20.05 and 100 shares offered at \$20.11. The quoted offer includes two non-reserve orders for 50 shares each and the quoted bid includes one non-reserve order to buy for 100 shares and two odd-lot non-reserve orders for 50 shares each. There is no Priority Interest in the Exchange BBO because none of the displayable orders were the only independently displayable interest quoted at the price

point when the price point became the Exchange BBO. Subsequently an order to sell 150 shares at \$20.10 is received. Table 5 shows the Exchange BBO is updated to reflect 200 shares offered at \$20.10 and 200 shares bid at \$20.05. The 150 share order at \$20.10 is entitled to be Priority Interest because it was the only independently displayable interest capable of being quoted at the price point when it became the Exchange BBO.

TABLE 4

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0 .....	0	.....	\$20.11	100	50, 50
0 .....	0	.....	\$20.10	0	50
0 .....	0	\$20.09	\$20.09	0	0
0 .....	0	\$20.08	0	0	0
10, 20, 30 .....	0	\$20.07	0	0	0
10, 10, 25, 50 .....	0	\$20.06	0	0	0
50, 50, 100 .....	200	\$20.05	0	0	0

TABLE 5

Displayable interest available	Quoted interest	Bid price	Offer price	Quoted interest	Displayable interest available
0 .....	0	0	\$20.11	100	50, 50
0 .....	0	0	\$20.10	200	50, 150
0 .....	0	\$20.09	\$20.09	0	0
0 .....	0	\$20.08	0	0	0
10, 20, 30 .....	0	\$20.07	0	0	0
10, 10, 25, 50 .....	0	\$20.06	0	0	0
50, 50, 100 .....	200	\$20.05	0	0	0

PRL interest that is established as Priority Interest, establishes priority for the full quantity of the PRL interest. For example, a 199 share buy limit order with no designated reserve quantity that is the only interest available at the price point when it is quoted will constitute 199 shares of Priority Interest although the Exchange Bid will only quote 100 shares. Moreover, and consistent with the handling of Priority Interest of

round lot interest, PRL interest will retain its Priority Interest status even if subsequent executions of the original interest decrement the quantity of the shares remaining in the interest to less than a round lot. Priority Interest will only lose its priority status if it is cancelled, executed in full or routed away for execution and returned unexecuted.<sup>19</sup>

Display Book as the matching engine for the Exchange will be responsible for the execution of all incoming interest regardless of the share size consistent with all applicable Exchange rules and Federal securities laws. All incoming interest will be eligible to be executed against eligible contra side interest.

<sup>18</sup> See Proposed NYSE Amex Equities Rule 72(a)(iv).

<sup>19</sup> See Proposed NYSE Amex Equities Rule 72(b)(iv). Priority of the setting interest is not

retained on any portion of Priority Interest that routes to an away market and is returned unexecuted unless, such returned Priority Interest is greater than a round lot and there is no other

interest available at the price point or any other interest available at the price point is less than a round lot.

DMM CCS interest will be accessed to fill or partially fill<sup>20</sup> incoming interest except, that Display Book will not access DMM CCS interest to provide an execution for an incoming odd-lot order. The Exchange proposes to amend NYSE Amex Equities Rule 1000 (d)(i) to clarify that DMM CCS interest will be accessed in reaction to incoming contra side interest that is equal to or greater than one round lot. As is the case today, DMM CCS interest must be for a minimum of a round lot however, a DMM will be allowed to provide interest in PRL quantities.<sup>21</sup> For example, today a DMM unit may be willing to provide 150 shares of additional liquidity at the price point. Pursuant to current NYSE Amex Equities Rule 1000 the DMM unit is only allowed to provide 100 shares or must go past its risk tolerance to provide 200 shares. Pursuant to the proposal DMM CCS interest may be designated at the price point in any amount equal to or greater than a round lot, (*i.e.* 150 shares in the previous example).

Executions will be printed to the Consolidated Tape in round lots or PRL quantities. *Transactions that result in executions of less than a round lot will not:* (i) Print to the Consolidated Tape;<sup>22</sup> (ii) be considered the last sale; and (iii) elect buy minus, sell plus or stop interest for execution.<sup>23</sup> The Exchange therefore proposes to amend NYSE Amex Equities Rule 1004 to clarify that buy minus, sell plus and stop interest are elected by executions that are reported to the Consolidated Tape.<sup>24</sup> Moreover, because liquidity replenishment points (“LRP”) values are calculated based on the last sale on the Exchange, NYSE Amex Equities Rule 1000 will be amended to clarify that for automatic executions, Exchange systems will recalculate LRP values after executions that are reported to the Consolidated Tape.

Display Book will continue to allocate executed shares in round lots; however, if the quantity of shares to be allocated to a specific participant is for a quantity

less than a round lot, the Display Book will allocate to the participant the specific number of shares bid or offered. The Exchange proposes to amend NYSE Amex Equities Rule 72(c)(viii) to state that shares are allocated in round lots or the size of the order if less than one round lot.

*Below see specific trading examples demonstrating the execution logic employing priority parity rules:*<sup>25</sup>

(A) On each trading day, the allocation wheel for each security is set to begin with the participant whose interest is entered or retained first on a time basis. Thereafter, participants are added to the wheel as their interest joins existing interest at a particular price point. If a participant cancels his, her or its interest and then rejoins, that participant joins as the last position on the wheel at that time.

Parity Example 1

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant established as Priority Interest. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants, listed in time order, as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant Floor Broker 1 Participant A DMM Participant B Floor Broker 2 Participant C Floor Broker 3 Participant D

A market order for 300 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A and Participant B above. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. Those shares will be allocated to Participant C, Participant D, and Book Participant (Public Order #2).

(B) The allocation wheel will move to the next participant when an odd-lot allocation completely fills the interest of such participant.

Parity Example 2

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant having priority. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant Floor Broker 1 Participant A 50 shares DMM Participant B 50 shares Floor Broker 2 Participant C 300 shares Floor Broker 3 Participant D 300 shares

A market order for 200 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A will receive 50 shares, Participant B above will receive 50

shares. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. Those shares will be allocated to Participant C, Participant D, and Book Participant (Public Order #2).

Parity Example 3

Assume there is interest of the Book Participant (representing orders entered by two different public customers), three Floor brokers and the DMM are bidding at the same price, with no participant having priority. An order to sell is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Public Order #1 100 shares and Public Order #2 100 shares Book Participant Floor Broker 1 Participant A 50 shares DMM Participant B 75 shares Floor Broker 2 Participant C 300 shares Floor Broker 3 Participant D 300 shares

A market order for 200 shares to sell entered in Exchange systems will allocate 100 shares to the Book Participant (Public Order #1), Participant A will receive 50 shares, Participant B above will receive 50 shares. Subsequently, another order to sell 300 shares at the same price is received by Exchange systems. The allocation wheel will start with Participant B. Participant B is allocated 25 shares, Participant C is allocated 100 shares, Participant D is allocated 100 shares, and Book Participant (Public Order #2) is allocated 75 shares. Exchange systems will retain Book Participant (Public Order #2) as the participant eligible to receive the next allocation at that price point.

(C) The allocation wheel will also move to the next participant where Exchange systems execute remaining displayable odd-lot interest prior to replenishing the displayable quantity of a participant.

Parity Example 4

Assume the available bid interest on the Exchange consists of a single Book Participant and two Floor brokers listed below in order of their position on the allocation wheel None of the participants have priority.

Floor Broker 1 Participant A—200 shares displayed and 4800 shares reserve Book Participant Public Order #1 Participant B—500 shares displayed Floor Broker 2 Participant C—500 shares displayed

An order to sell 350 shares is received by the Exchange. Exchange systems will divide the allocations among the participants as follows:

Participant A—150 shares Book Participant—100 shares Participant C—100 shares

Each participant receives a round lot allocation. The Allocation wheel returns to Participant A as the first participant on the wheel and allocates the remaining 50 shares. The allocation wheel remains on Participant A. The remaining interest of the three participants is as follows:

Floor Broker 1 Participant A—50 shares displayed and 4800 shares reserve Book Participant Public Order #1 Participant B 400 shares displayed Floor Broker 2 Participant C 400 shares displayed

<sup>20</sup> CCS interest shall be accessed by Exchange systems to partially fill incoming Regulation NMS-compliant Immediate or Cancel Order, Exchange Immediate or Cancel Order and any order whose partial execution will result in a remaining unfilled quantity of less than one round lot even if such CCS interest is not designated for partial execution. See proposed NYSE Amex Equities Rule 1000(e)(iii)(A)(4).

<sup>21</sup> See Proposed NYSE Amex Equities Rule 1000(d)(ii).

<sup>22</sup> See *supra*, note 11.

<sup>23</sup> See Proposed NYSE Amex Equities Rules 13 and 61.

<sup>24</sup> The Exchange further proposes to amend NYSE Amex Equities Rule 1004 to remove legacy references to Percentage Orders, which are no longer order types accepted on the Exchange.

<sup>25</sup> See Proposed NYSE Amex Equities Rules 72(c).

Prior to the system replenishing the displayed quantity of Participant A, an order to sell 100 shares is received by Exchange systems. The system will allocate 50 shares to Participants A and B. The next allocation at the price point will begin with Participant B.

#### Miscellaneous Amendments

*The Exchange proposes to amend the section title for the grouped NYSE Amex Equities Rules 99–114 to delete:* (i) Legacy references to specialists and registered traders; and (ii) the reference to Odd-lot Dealers. The amended title will read, “Designated Market Makers’ (“DMMs”) and Member Organizations’ Dealings on the Floor”. The Exchange also proposes to make conforming amendments to other Exchange rules that refer to odd-lot systems and dealers, including NYSE Amex Equities Rules 92, 94, and 104.

In addition, the Exchange proposes to amend Rule 411 to delete the requirement that when a person gives, either for his own account, for various accounts in which he has an actual monetary interest, or for accounts over which such person is exercising investment discretion, buy or sell odd-lot orders that aggregate 100 shares or more, such odd-lot orders must be consolidated into round lots. The Exchange proposes to delete this requirement as moot now that Exchange systems will receive odd-lot orders in the same system that handles round lot orders.

#### Additional New Systemic Capabilities

The system changes required to decommission the Odd-lot System will also enable the Exchange to expand its price fields. Previous constraints on the number of characters that could be included in a price field required a ten cent (\$.10) minimum price variation for quoting and order entry in securities priced at or greater than \$100,000. As a result of the new systemic capability to include additional characters in the price fields, the Exchange proposes to amend NYSE Amex Equities Rules 62 (“Variations”) to remove the requirement that \$.10 be the minimum variation for securities priced at or greater than \$100,000. Specifically, the Exchange proposes to amend Supplementary Material .10 of NYSE Amex Equities Rule 62 to state that the minimum price variation for quoting and entry of interest in securities priced at or greater than a \$1.00 will be a penny (“\$.01”).

In addition, the incorporation of odd-lot interest and the odd-lot portion of PRL interest into Display Book will provide Exchange market data systems access to odd-lot volumes. Market participants will therefore benefit from

additional transparency because the depth of book information published by the Exchange via its market data systems will now include those quantities. NYSE Amex OpenBook® will publish in shares the total volume of interest available at each price point.<sup>26</sup>

#### Implementation of Proposed Amendments<sup>27</sup>

Subject to Commission approval, the Exchange intends to progressively implement these systemic changes on a security by security basis as it gains experience with the new technology until it is operative in all securities traded on the Floor. During the implementation, the Exchange will identify on its Web site which securities have been transitioned to the new system. In addition, the Exchange will provide information to its constituents about any modifications to the start or end date related to the implementation of such proposal via its Trader Update Notices that are sent via e-mail to subscribers and posted on the Exchange Web site.

2. *Statutory basis.* The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)<sup>28</sup> 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 instant proposal is in keeping with these principles in that it removes timing restrictions on the execution of odd-lot interest and the odd-lot portion of PRL interest by allowing such interest, if marketable to be immediately and automatically executed. It further promotes the interaction of such interest with all other market interest and enables it to be priced in accordance with supply and demand dynamics.

#### 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

<sup>26</sup> NYSE Amex OpenBook provides subscribers a real-time view of the Exchange’s limit-order book for all NYSE-traded securities. NYSE OpenBook shows the aggregate limit-order volume at every bid and offer price, thus responding to customer demand for more depth-of-market data and raising the NYSE Amex market to an even greater level of transparency.

<sup>27</sup> See e-mail from Clare F. Saperstein, Managing Director, NYSE Regulation, Inc., to Nathan Saunders, Special Counsel, and Gary Rubin, Attorney, Commission, dated June 14, 2010.

<sup>28</sup> 15 U.S.C. 78f(b)(5).

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.

#### 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 Exchange 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–NYSEAmex–2010–53 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–NYSEAmex–2010–53. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2010-53 and should be submitted on or before July 14, 2010.

Dated: June 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

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

[FR Doc. 2010-15133 Filed 6-22-10; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62294; File No. SR-Phlx-2010-81]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. To List Options on Trust Issued Receipts in \$1 Strike Intervals

June 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 10, 2010, NASDAQ OMX PHLX, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>29</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.

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

The Exchange proposes to amend Exchange Rule 1012 to allow the Exchange to list options on Trust Issued Receipts in \$1 strike price intervals.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov>, 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 Exchange 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. The Exchange 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 1012, Series of Option Contracts Open for Trading, by adding additional text to Commentary .05(a)(vi) to allow the Exchange to list options on the Trust Issued Receipts ("TIRs"), including HOLDing Company Depository Receipts ("HOLDERS"), as defined under Commentary .05(a)(iv) to Rule 1012, in \$1 or greater strike price intervals, where the strike price is \$200 or less and \$5 or greater where the strike price is greater than \$200.<sup>3</sup>

Currently, the strike price intervals for options on TIRs are as follows: (1) \$2.50 or greater where the strike price is \$25.00 or less; (2) \$5.00 or greater where the strike price is greater than \$25.00; and (3) \$10.00 or greater where the strike price is greater than \$200.<sup>4</sup>

The Exchange is seeking to permit \$1 strikes for options on TIRs (where the

<sup>3</sup> HOLDERS are a type of Trust Issued Receipt and the current proposal would permit \$1 strikes for options on HOLDERS (where the strike price is less than \$200).

<sup>4</sup> See Exchange Rule 1012, Commentary .05(a)(iii). See also Securities Exchange Act Release No. 44709 (August 16, 2001), 66 FR 44194 (August 22, 2001) (SR-Phlx-2001-71).

strike price is less than \$200) because TIRs have characteristics similar to exchange-traded funds ("ETFs"). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and held on behalf of the holders of the TIRs. TIRs, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of TIRs is similar to that of ETFs which also may be created on any business day upon receipt of the requisite securities or other investment assets comprising a creation unit. The trust only issues receipts upon the deposit of the shares of the underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender TIRs in a round-lot and round-lot multiples of 100 receipts.

Strike prices for ETF options are permitted in \$1 or greater intervals where the strike price is \$200 or less and \$5 or greater where the strike is greater than \$200.<sup>5</sup> Accordingly, the Exchange believes that the rationale for permitting \$1 strikes for ETF options equally applies to permitting \$1 strikes for options on TIRs.

The Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary system capacity to handle the additional traffic associated with the listing and trading of \$1 strikes, where the strike price is less than \$200, for options on TIRs.

##### 2. Statutory Basis

The Exchange believes that its proposal 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 is 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, by allowing the Exchange to list options on TIRs at \$1 strike price intervals. The Exchange believes that the marketplace

<sup>5</sup> See Exchange Rule 1012, Commentary .05 (permitting \$1 strikes for options on Units covered under Commentary .05, also known as ETF options).

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

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