

### 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>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</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>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</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>15</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, because such waiver will enable the Exchange to immediately implement new Rule 5290—NYSE Amex Equities to prevent any regulatory gaps between the NYSE Amex and FINRA rules. In addition, as noted by the Exchange, Rule 5290—NYSE Amex Equities is consistent with FINRA Rule 5290, which was previously approved by the Commission.<sup>16</sup>

Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing with the Commission. 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*. Please include File Number SR-NYSEAmex-2010-72 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-2010-72. 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 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 publicly available. All submissions should refer to File Number SR-

NYSEAmex-2010-72 and should be submitted on or before August 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62578; File Nos. SR-NYSE-2010-43 and SR-NYSEAmex-2010-53]

### Self-Regulatory Organizations; New York Stock Exchange LLC and NYSE Amex LLC; Order Approving Proposed Rule Changes Amending the Exchanges' 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"

July 27, 2010.

### I. Introduction

On June 9, 2010 and June 10, 2010 respectively, the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex" and, with NYSE, each an "Exchange" and collectively, the "Exchanges") each filed with the Securities and Exchange Commission (the "Commission"), 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> a proposed rule change 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 proposed rule changes were published for comment in the **Federal Register** on June 23, 2010.<sup>3</sup> The Commission received one comment letter in support of NYSE's proposal.<sup>4</sup> This order approves the proposed rule changes.

### II. Description of the Proposals

The Exchanges seek to amend their rules to incorporate the receipt and execution of odd-lot interest into the round lot market and decommission the

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> See *id.* In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(iii).

<sup>16</sup> See *supra* note 4. For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Securities Exchange Act Release Nos. 62302 (June 16, 2010), 75 FR 35856; and 62303 (June 16, 2010), 75 FR 35865 (each a "Notice" and collectively, the "Notices").

<sup>4</sup> See Letter from John N. Jacobs, Chief Operations Officer, Lime Brokerage LLC, dated June 28, 2010 ("Lime Letter"). The Lime Letter generally endorsed the incorporation of odd lots and the odd lot portion of partial round lots into the round lot system.

system designated solely for handling and execution of odd-lot interest (the "Odd-lot System").<sup>5</sup> Round lot interest on the Exchanges is executed by Display Book® pursuant to Rule 72.<sup>6</sup> The Odd-lot Systems are separate from the Display Book that executes odd-lot interest and the odd-lot portion of "part of round lot" or "PRL" interest (that is, interest that is larger than one round lot, but is not a multiple of a round lot). Under the Odd-lot Systems, all odd-lot interest and the odd-lot portion of PRL interest is executed against the DMM as the contra party.<sup>7</sup> Pursuant to the proposed rule changes, odd-lot interest and odd-lot portion of PRL interest would be accepted and executed in the Display Book, enabling such interest to interact with all other market interest and be priced in accordance with overall supply and demand dynamics. Odd-lot interest and the odd-lot portion of PRL interest would be generally subject to all the provisions of the Exchanges' rules that apply to interest executed in the round lot market.

In order to incorporate interest for fewer than 100 shares into the round lot market, the new unit of trading for all securities would be one share.<sup>8</sup> Although the new unit of trade would be one share, the concepts of round lots and odd-lots would remain for the purposes of quoting. In addition, there would 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 DMM would no longer be the contra party to all odd-lot executions, except for odd-lot size quantity that is to be executed in the opening, re-opening, and closing transactions but remains unpaired.<sup>9</sup>

#### *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 Exchanges propose to amend their rules governing order handling, execution,

<sup>5</sup> For a more detailed discussion of the operation of the prior odd-lot system, see the Notices.

<sup>6</sup> References to the rules herein refer to both the relevant NYSE and NYSE Amex Equities rules unless otherwise noted. In general, all market participants with displayed interest at a given price receive allocations on parity; however, "Setting Interest" at a particular price point is entitled to priority. For a detailed description, see Rule 72.

<sup>7</sup> See Rule 124(a). Rule 124 also outlines the complex pricing formula used to determine the price of odd-lot executions.

<sup>8</sup> See proposed Rules 55 and 56. In addition, proposed Rule 55 retains the ability of the respective Exchange to designate securities to be quoted in less than 100 shares.

<sup>9</sup> See proposed Rule 104(e).

and allocation to reflect that odd-lot quantities would not be displayed as the respective Exchange quotation and odd-lot executions would not be published to the Consolidated Tape.

Display Book would aggregate all interest at each price point, including odd-lot interest and the odd-lot portion of PRL interest. Aggregated interest would be quoted and published by Display Book if it were equal to or greater than a round lot when the price point becomes the respective Exchange best bid or best offer ("Exchange BBO"). Although a bid or offer may 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>10</sup> the respective Exchange BBO would still be quoted in round lots.

Because odd-lot interest and the odd-lot portion of PRL interest would be eligible for inclusion in the respective Exchange BBO, such interest would be considered "displayable" interest for the purposes of execution and allocation.<sup>11</sup> Interest would 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 would never be eligible to be the Priority Interest because it can never be the only interest quoted at the price point. Similarly, 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 all such odd-lot interest is less than a round lot, the single round lot or PRL that is published as the Exchange BBO would be considered the setting interest and have established priority at that price point.<sup>12</sup> PRL interest that is Priority Interest would establish priority for the full quantity of the PRL interest, and thus would retain its Priority Interest status even if subsequent executions of the original interest decremented its quantity to less than a round lot. Priority Interest would only lose its priority status if it were cancelled, executed in full, or routed away for execution and returned unexecuted.<sup>13</sup>

<sup>10</sup> See proposed Rule 60.

<sup>11</sup> See proposed Rule 72.

<sup>12</sup> See proposed Rule 72(a)(iv).

<sup>13</sup> See proposed 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.

As the matching engine for each Exchange, Display Book would be responsible for the execution of all incoming interest regardless of the share size. All incoming interest would be eligible to be executed against eligible contra side interest.

DMM CCS interest would not be accessed to fill or partially fill an incoming odd-lot order, but only in reaction to incoming contra side interest that is equal to or greater than one round lot.<sup>14</sup> As is the case today, DMM CCS interest would be required to be for a minimum of a round lot. However, a DMM would be allowed to provide CCS interest in PRL quantities.<sup>15</sup>

Executions would be printed to the Consolidated Tape in round lots or PRL quantities. Transactions that result in executions of less than a round lot would not: (i) Print to the Consolidated Tape; (ii) be considered the last sale; or (iii) elect buy minus, sell plus, or stop interest for execution.<sup>16</sup> The Exchanges therefore propose to amend Rule 1004 to clarify that buy minus, sell plus, and stop interest are elected only by executions that are reported to the Consolidated Tape. Moreover, because liquidity replenishment points ("LRP") values are often calculated based on the last sale on the Exchanges, Rule 1000 would be amended to clarify that only new sales that are reported to the Consolidated Tape would trigger this requirement.

Display Book would continue to allocate executed shares in round lots; however, if the quantity of shares to be allocated to a specific participant were for a quantity less than a round lot, the Display Book would allocate to the participant the specific number of shares bid or offered.

#### *Additional New Systemic Capabilities*

The system changes required to decommission the Odd-lot System would enable the Exchanges to expand their price fields. The Exchanges propose to amend Rule 62 ("Variations") to remove the requirement that \$.10 be the minimum variation for securities priced at or greater than \$100,000 and replace it with a requirement that the minimum price variation for quoting and entry of interest in securities priced at or greater than \$1.00 be a penny ("\$.01").

In addition, the incorporation of odd-lot interest and the odd-lot portion of PRL interest into Display Book would provide the Exchanges' market data systems access to odd-lot volumes.

<sup>14</sup> See proposed Rule 1000(d)(i).

<sup>15</sup> See proposed Rule 1000(d)(ii).

<sup>16</sup> See proposed Rules 13 and 61.

Following implementation of this proposal, depth of book information published by the Exchanges via their market data systems would include those quantities. NYSE OpenBook and NYSE Amex OpenBook would publish in shares the total volume of interest available at each price point.<sup>17</sup>

#### *Implementation of Proposed Amendments*

The Exchanges intend 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 Exchanges would identify on their Web sites which securities have been transitioned to the new system. In addition, the Exchanges would provide information to their constituents about any modifications to the start or end date related to the implementation of such proposal via their Trader Update Notices that are sent via e-mail to subscribers and posted on the Exchanges' Web sites.

#### **III. Discussion and Commission Findings**

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>18</sup> In particular, they are consistent with Section 6(b)(5) of the Act,<sup>19</sup> which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule changes are consistent with the provisions of Section 6(b)(8) of the Act,<sup>20</sup> which require that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission notes that Display Book would aggregate all interest at

each price point, including odd-lot interest and the odd-lot portion of PRL interest. Because such interest would be eligible for inclusion in the respective Exchange's BBO, it would be considered "displayable" interest for the purposes of execution and allocation, unless designated as excluded interest.

Aggregated displayable interest at a given price point would be quoted if its size is equal to or greater than one round lot when that price point becomes the respective Exchange BBO. Due to restrictions in the Consolidated Tape Plan, however each respective Exchange's quote would continue to only be disseminated in round lots. However, all interest at the BBO would participate at that price point, even where the aggregate interest is rounded down for dissemination. Thus, the proposal should increase market liquidity and efficiency by making odd lot interest available for execution in Display Book.

The Commission also notes that incoming odd-lot orders would never be eligible to be the priority interest. Even if received earlier, undisplayed odd lot interest would not prevent a displayable round lot or PRL order from establishing itself as priority interest when such interest is the sole independently displayable order at that price point if it becomes the BBO. Odd-lot orders could never be the only interest quoted at a specific price point under the Exchange's rules. However, PRL interest that is established as priority interest would have priority for the full quantity of the PRL interest. As a result, the proposal should not reduce the incentive to quote aggressively to narrow the BBO that is provided by the Priority Interest rule.

The Commission notes that, as a result of the proposed rule change, DMMs would no longer act in the capacity of odd-lot dealer and would no longer be the designated contra-party to all odd-lot executions. However, the DMM would be obligated to be the contra party to any unpaired odd-lot size interest that is to be executed in the opening, re-opening, and closing transactions. In addition, DMM CCS interest would be available to incoming contra side interest that is equal to or greater than one round lot, but not to incoming odd-lot orders. The DMM would be allowed to enter CCS interest in PRL quantities, but, as is currently the case, DMM CCS interest entered at each price point must be for a minimum of one round lot. Since the one round lot minimum size requirement is maintained both for CCS interest and for incoming interest that may execute against CCS interest, the Commission

believes that the changes to the rules regarding the CCS do not materially alter the operation of the CCS or the benefits afforded to DMMs by the CCS.

The Commission further notes that Display Book would allocate executed shares in round lots or the size of the order, if less than one round lot. Odd-lot allocations would not move the allocation wheel to the next participant unless such odd-lot allocation completely fills the interest of the participant who received it. Executions would be printed to the Consolidated Tape in round lots or PRL quantities. Again, due to restrictions in the Consolidated Tape Plan, odd-lot quantities would not be printed to the Consolidated Tape. The incorporation of odd-lot and PRL interest into Display Book would allow the odd-lot volumes to be included in each Exchange's market data, which should enhance the transparency of odd-lot and PRL executions on the Exchanges. The Commission believes this is a reasonable integration of Display Book's new capacity for odd lot interest with the Exchanges' rules regarding allocation and reporting.

The Commission believes that the proposed changes are consistent with the Act because, taken as a whole, they should enhance efficiency, transparency, and fairness in the treatment of odd-lot and partial round lot customer orders, without significantly altering the benefits and obligations of DMMs and other market participants.

#### **IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule changes (SR-NYSE-2010-43 and SR-NYSEAmex-2010-53) be, and they hereby are, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>17</sup> NYSE OpenBook and NYSE Amex OpenBook show the aggregate limit-order volume at every bid and offer price.

<sup>18</sup> In approving these proposed rule changes, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78f(b)(8).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

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