



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65887; File No. SR-NYSEAmex-2011-91)

December 5, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 72 Priority of Bids and Offers and Allocation of Executions

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 November 21, 2011, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) 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 the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 NYSE Amex Equities Rule 72 (Priority of Bids and Offers and Allocation of Executions). The text of the proposed rule change is available at the Exchange, at www.nyse.com, at the Commission’s Public Reference Room, and at www.sec.gov.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 NYSE Amex Equities Rule 72 (Priority of Bids and Offers and Allocation of Executions).⁵

As provided under NYSE Amex Equities Rule 72(a)(ii), a bid or offer is considered the “setting interest” when it is established as the only displayable bid or offer made at a particular price and is the only displayable interest when such price is or becomes the Exchange best bid or offer (“BBO”). Setting interest is entitled to priority for allocation of executions at that price, as

⁵ The provisions of NYSE Amex Equities Rule 72 are in effect during a pilot (“New Market Model Pilot”) that is set to end on January 31, 2012. The Exchange adopted the New Market Model Pilot pursuant to its merger with the New York Stock Exchange LLC (“NYSE”). See Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10). See also Securities Exchange Act Release Nos. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR-NYSEAmex-2009-65) (extending Pilot to November 30, 2009); 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR-NYSEAmex-2009-83) (extending Pilot to March 30, 2010); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR-NYSEAmex-2010-28) (extending Pilot to September 30, 2010); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR-NYSEAmex-2010-86) (extending Pilot to January 31, 2011); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR-NYSEAmex-2010-123) (extending Pilot to August 1, 2011); and 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR-NYSEAmex-2011-43) (extending Pilot to January 31, 2012).

provided for under NYSE Amex Equities Rule 72. In this regard, and as currently provided for under NYSE Amex Equities Rule 72(a)(ii)(G), if non-pegging interest is the setting interest, it retains its priority even if joined at that price by a pegging e-Quote.⁶ If, however, at the time non-pegging interest becomes the Exchange BBO, an e-Quote is pegging to such non-pegging interest, all such interest is considered to be entered simultaneously and, therefore, no interest is considered the setting interest.

Since implementing this rule as part of the New Market Model Pilot, the Exchange has determined that NYSE Amex Equities Rule 72(a)(ii) may currently disincentivize aggressive displayed quoting by permitting pegging e-Quotes to eliminate the priority to which a non-pegging e-Quote might otherwise be entitled. Specifically, because pegging interest is not displayed until it joins non-pegging interest, the participant entering the non-pegging interest is unaware that one or more pegging e-Quotes at that price may exist. Because the goal of the setting interest, and related priority given to such interest, is to create an incentive for participants to display aggressive prices, a participant may be reluctant to enter such displayed interest if a non-displayed pegging e-Quote could impede such displayed interest from receiving priority. The Exchange therefore proposes to amend NYSE Amex Equities Rule 72(a)(ii)(G) to reflect that non-pegging interest that becomes the Exchange BBO will be considered the setting interest even if an e-Quote is pegging to such non-pegging interest.⁷ In this regard, the Exchange believes that this proposed change would enhance the New Market Model's positive impact on the Exchange's market, on the Exchange's members, and on investors generally.

⁶ See Rule 70.26 - Pegging for d-Quotes and e-Quotes.

⁷ Non-pegging interest that is the setting interest will continue to retain its priority even if joined at that price by a pegging e-Quote. See id.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date and related roll-out schedule, if applicable, via Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change meets these requirements because it would permit non-pegging interest that sets a new BBO to be considered the setting interest and therefore retain priority, as provided for under NYSE Amex Equities Rule 72, over a pegging e-Quote that reacts and pegs to such non-pegging interest. Accordingly, the proposal is designed to incentivize and reward aggressive displayed quoting by market participants, which contributes to the market quality of the Exchange. In this regard, the Exchange believes that this proposed change would enhance the New Market Model’s positive impact on the Exchange’s market, on the Exchange’s members, and on investors generally.

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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2011-91 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-2011-91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2011-91 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2011-31602 Filed 12/08/2011 at 8:45 am; Publication Date: 12/09/2011]

¹² 17 CFR 200.30-3(a)(12).