SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60573; File No. SR-NYSE-2009-86)

August 26, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Length of Time that Exchange Systems Transmit Odd-Lot Order-by-Order Information to the DMM Unit Algorithm Prior to the Opening Transaction from August 31, 2009 to October 31, 2009

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on August 21, 2009, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange designated the proposal eligible for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[3] 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 extend the length of time that Exchange systems transmit odd-lot order-by-order information to the DMM unit algorithm prior to the opening transaction from August 31, 2009 to October 31, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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

[2]   17 CFR 240.19b-4.

[3]   15 U.S.C. 78s(b)(3)(A).

[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 the Statutory Basis for, the Proposed Rule Change

1.   Purpose

New York Stock Exchange LLC ("NYSE" or the "Exchange") proposes to extend the length of time that Exchange systems transmit odd-lot order-by-order information to the DMM unit algorithm prior to the opening transaction from August 31, 2009 to October 31, 2009.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).[5]

Background

On October 24, 2008, the Securities and Exchange Commission ("SEC or "Commission") approved the operation of a pilot for the Exchange's New Market Model ("Pilot").[6] As part of that filing, the Exchange explained that although the Designated Market Maker ("DMM") would no longer receive order-by-order information, there would continue to be certain times when human interaction was essential to market quality and maintaining a fair and orderly market.

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[5]   See SR-NYSE Amex-2009-58.

[6]   See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (approving certain rules to operate as a pilot scheduled to end October 1, 2009.)

Currently the DMM is responsible for facilitating the opening transaction and ultimately determines the price,[7] and executes the orders at that price to open the trading in his or her assigned securities. In order to effect a fair and orderly opening transaction, the individual DMM is provided aggregate order information.[8] DMMs have access to aggregate order information as it pertains to round-lot and odd-lot orders; however, the DMM unit algorithm receives odd-lot information on an order-by-order basis prior to the opening transaction. In order for the DMM unit algorithm to effectively facilitate an opening transaction, the DMM unit algorithm is provided odd-lot information prior to the opening. Constraints inherent to the Odd-lot System require that odd-lot information be transmitted to the DMM unit algorithm on an order-by-order basis prior to the opening. As such, prior to the opening, Exchange systems transmit to the DMM unit algorithm odd-lot order information[9] excluding odd-lot cancellations, Stop odd-lot orders and prior day Good 'til Cancel ("GTC") orders.[10] Once the security is

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[7]   In an opening and reopening trade, NYSE's Display Book® ("Display Book") will verify that all interest that must be executed in the opening or reopening trade can be executed at the price chosen by the DMM. If all the interest that must be executed in the transaction cannot be executed at that price, the Display Book will block the execution. In addition, when executing blocks (10,000 shares or more or value of $200,000 or more), trading out of a gap quote situation or an Liquidity Replenishment Point ("LRP") that locks or crossed the market, the Display Book may adjust the execution price if there is enough interest on the Display Book to complete the transaction at a better price.

The Display Book® is an order management and execution facility. The Display Book receives and displays orders to the DMM, contains order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book 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.

[8]   See NYSE Rule 104(a)(2).

[9]   See NYSE Rule 104 Supplementary Material .05.

[10] Odd-lot cancellations and GTC odd-lot orders are not included because of system constraints. Stop odd-lot orders are elected by the opening transaction which in turn commences the execution of orders in the Odd-lot System. The Stop odd-lot orders elected by the opening transaction are executed in the Odd-lot system pursuant to the rule

opened, Exchange systems do not provide any order-by-order odd-lot information to the DMM unit algorithm.

Proposed Amendment to NYSE Rule 104

The Exchange anticipated that the work required to modify its systems to transmit aggregate odd-lot information to DMM unit algorithms would have been completed by August 31, 2009; however, after the completion of several system modifications it is clear that the Exchange will require an extension to October 31, 2009, in order to complete these particular enhancements.

Since the commencement of the Pilot, the Exchange has completed several modifications to remove and enhance legacy systems. These enhancements are necessary to provide the foundation needed for Exchange systems to transmit aggregate odd-lot information to the DMM unit algorithm prior to the opening transaction.[11] The Exchange continues to enhance its systems to create a strong platform for technological growth that offers its customers the most comprehensive set of trading technology solutions to meet their needs and expectations. In furtherance of this goal, the Exchange must either upgrade or replace in its entirety legacy systems that accept, manage, execute and report executions.

The extensive nature of the modifications requires the Exchange to progressively implement these systemic changes on a security by security basis as it gains experience with the new technology until the new technology is operative in all securities traded on the Floor. Consequently, the modifications have progressed at a slower pace than initially anticipated. The

governing odd-lot executions. See NYSE Rule 124(e).

[11] See Securities and Exchange Act Release No 59592 (March 17, 2009), 74 FR 12417 (March 24, 2009) (SR-NYSE-2009-29) (Filing to, among other things, replace references to specific NYSE systems that perform particular functions and replace it with the phrase "Exchange systems" in order to keep pace with the enhancements to its technology).

next Exchange technology release will modify Exchange systems such that odd-lot information will be provided to the Display Book in aggregate prior to the opening transaction. Display Book in turn will provide aggregate order information to the DMM unit algorithm prior to the opening transaction to facilitate the ability of the DMM unit algorithm to electronically open trading in certain securities. It is anticipated that these modifications will be completed no later than October 31, 2009.

Given the above, the Exchange requests an extension to October 31, 2009, to complete the system modifications required to transmit aggregate odd-lot information to the DMM unit algorithms prior to the opening transaction.

2.   Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")[12] for these proposed rule changes is the requirement under Section 6(b)(5)[13] 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 proposed rule change supports these principles and serves to protect the investor and the public interest in that it seeks to continue providing DMM unit algorithms with the order by order odd-lot information required to facilitate the timely opening of securities on the Exchange until Exchange systems can be modified to provide such information in an aggregated format.

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.

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[12]   15 U.S.C. 78a.

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

C.   <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

No written comments were solicited or received with respect to the proposed rule change.

III.   <u>Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action</u>

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[14] and Rule 19b-4(f)(6) thereunder.[15]

The Exchange has requested 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 allow the Exchange to provide the DMM unit algorithms with order-by-order odd-lot information prior to the opening transaction without interruption until October 31, 2009, when the Exchange anticipates necessary modifications to its systems will be completed. Therefore, the Commission designates the proposal operative upon filing.[16]

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[14]   15 U.S.C. 78s(b)(3)(A).

[15]   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.

[16]   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. <u>See</u> 15 U.S.C. 78c(f).

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-NYSE-2009-86 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-2009-86. 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 10:00 am and 3:00 pm. 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-2009-86 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.[17]

Florence E. Harmon
Deputy Secretary

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[17]   17 CFR 200.30–3(a)(12).