

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60288; File No. SR-NYSEAmex-2009-40)

July 10, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 72 to Eliminate Parity Allocations for DMM Interest Added Intra Day During a Slow Quote or When Verbally Trading with Floor Brokers at the Point of Sale

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 9, 2009, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (“SEC” or the “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.

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 to eliminate parity allocations for DMM interest added intra day during a slow quote or when verbally trading with Floor brokers at the point of sale. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

NYSE Amex proposes to amend NYSE Amex Equities Rule 72 to eliminate parity executions for DMM interest added intra-day during a slow quote or when verbally trading with Floor brokers at the point of sale ("slow trading condition"). Through this proposal Exchange systems' allocation logic will be modified so that DMM interest added intra day during a slow trading condition yield to all other interest present at the price point. As such, all other interest eligible to receive an execution at the price will receive share allocation in full before any shares are allocated to the additional DMM interest. If shares remain, then the DMM interest added at the price point during the slow trading condition would receive an allocation. If no shares remain then the DMM interest will not be allocated any shares in the transaction and would be cancelled by operation of the proposed rule.

The Exchange notes that parallel changes are proposed to be made to the rules of the New York Stock Exchange LLC.⁴

a. Background

Currently market participants' interest for round-lot executions on the Exchange is allocated on an equal basis, (i.e. parity) among the participants at a price point unless one of the participants has established priority,⁵ that is, the participant was the only interest at the price point when that price point was quoted. Individual Floor brokers and the Designated Market Maker ("DMM") registered in the security each constitute a single market participant and all Off-Floor orders entered in Exchange systems at the Exchange BBO together constitute a single market participant ("Off-Floor Participant") for the purpose of share allocation.

When allocating shares based on parity, Exchange systems divide the size of the executing order by the number of participants. The total number of shares to be allocated to each participant is distributed equally among the participants where possible. Within the single Off-Floor Participant, shares executed are allocated in order of time priority of receipt of Off-Floor Participant Interest into Exchange systems. Executions are allocated in round-lots.

⁴ See SR-NYSE-2009-69.

⁵ See NYSE Amex Equities Rule 72(a). A participant that is the only interest displayed at the price point when such price is or becomes the best bid or offer published by the Exchange is entitled to priority for the displayed portion of his or her order (Priority Interest). Priority Interest is allocated the first 15% of any execution (a minimum of one round lot). For the remainder of that execution, the participant that established priority receives a parity allocation with other interest available at that price. Exchange systems repeat the allocation logic for the participant that established priority until the participant's order is completely executed or cancelled. Any non Priority Interest of the participant that established priority is executed on parity.

Example Simple Parity Allocation

Display Book has displayed two bids from Off-Floor Participants for a total volume of 200 shares; the DMM and one Floor broker are bidding at the same time for 100 shares each.

Order#1 100 shares & Order #2 100 shares	Off-Floor Participant
DMM 100 shares	Participant A
Floor Broker 1 100 shares	Participant B

A market order for 300 shares to sell being automatically executed by Exchange systems will allocate 100 shares to Off-Floor Participant Order #1, Participant A and Participant B.

In the event the number of shares to be executed at the price point is insufficient to allocate round-lots to all the participants eligible to receive an execution at the price point, the Exchange systems creates an allocation wheel of the eligible participants at the price point and the available shares are distributed to the participants in turn.

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.

Example Parity Allocation Distributed to Multiple Participants

Display Book has displayed two bids from Off-Floor Participants for a total volume of 200 shares, the DMM and three Floor brokers are bidding at the same time for 100 shares each.

Order#1 100 shares & Order #2 100 shares	Off-Floor Participant
DMM 100 shares	Participant A
Floor Broker 1 100 shares	Participant B
Floor Broker 2 100 shares	Participant C
Floor Broker 3 100 shares	Participant D

A market order for 300 shares to sell being automatically executed by Exchange systems will allocate 100 shares to Off-Floor Participant Order #1, Participant A and Participant B.

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 Order #2 Off-Floor Participant.

DMM interest added during a slow trading condition pursuant to provisions of current NYSE Amex Equities Rule 72 also executes on parity. Pursuant to current rules, Exchange systems do not distinguish between the DMM interest added at the time of the slow trading condition and the s-Quotes representing DMM interest present on the Display book prior to the slow trading condition.

Example Current Parity Allocation of DMM Added Interest During a Slow Trading Condition

In the table below, the Exchange Market is 200 shares bid at the price of \$20.05 and 200 shares offered at a price of \$20.10. The price point of \$20.03 is designated as a Liquidity Replenishment Point (“LRP”).⁶ An order to sell 600 shares with a limit price of \$20.02 is received by Exchange systems. There are 100 shares bid at the prices of

⁶ LRPs are pre-determined price points that temporarily convert the automatic Exchange market to an auction market in order to dampen volatility when the market is experiencing a large price movement based on a security’s typical trading characteristics or market conditions over short periods of time during the trading day. LRPs allow for the solicitation of additional liquidity.

\$20.04 and \$20.03. Additionally, there are 200 shares bid at the price of \$20.02 and \$20.01.

Display Book Prior to Execution

Protected Bid	Bid Size	Bid Price	Offer Price	Offer Size
			\$20.10	200
	200	\$20.05		
	100	\$20.04		
	100	\$20.03 ^{LRP}		
	200	\$20.02		
	200	\$20.01		

Given the information above, the order will execute 200 shares at the bid price of \$20.05 leaving 400 shares. At the next price of \$20.04 it will execute an additional 100 leaving 300 shares. The order will then execute an additional 100 shares at the LRP price of \$20.03 and have 200 shares of the incoming limit order remaining.

Display Book After Initial Executions

Protected Bid	Bid Size	Bid Price	Offer Price	Offer Size	Residual
			\$20.10	200	
		\$20.05			
		\$20.04			
200		\$20.03 ^{LRP}			
	200	\$20.02			200
	200	\$20.01			

After the execution at the LRP price of \$20.03, Exchange systems enter a slow trading condition because the previous executions have traded down to an LRP prior to the order's limit price of \$20.02. There are now 200 shares of away market interest bid at a price of \$20.03. The DMM needs to: (i) clear the crossed market created by the away market interest bid at the price of \$20.03 that is crossed against the residual at \$20.02; and (ii) trade the residual against the 200 shares bid at the price of \$20.02 to clear the

internal lock on the Exchange. The DMM enters an additional 200 shares of DMM interest to sell at the price point of \$20.02 below the LRP price point in order to facilitate the clearing of the locked/crossed market. However, when the DMM hits the enter button to consummate the trade, the away market bid is no longer available. The residual 200 shares of the sell limit order will be executed at the price of \$20.02 with 100 shares allocated to the interest on the Display Book and 100 shares allocated to the DMM interest added during the slow trading condition. 100 shares of the interest to sell on the Display Book remains unexecuted at the price of \$20.02. The remaining 100 shares of sell interest becomes the Exchange’s offer and the best available bid which is 200 shares at the price of \$20.01 will be quoted as illustrated in the table below.

Display Book After LRP Cleared

Protected Bid	Bid Size	Bid Price	Offer Price	Offer Size
			\$20.02	100
	200	\$20.01		

b. Proposed Amendment to NYSE Amex Equities Rule 72

The Exchange proposes to amend its allocation logic to have DMM interest added intra day during a slow trading condition yield to all other interest present at the price point. If shares remain after allocation to all other eligible interest, then the DMM interest added at the price point would receive an allocation. If no shares remain then the DMM interest will not be allocated any shares in the transaction.

Example Proposed Parity Allocation During a Slow Trading Condition

In the table below, the Exchange Market is 200 shares bid at the price of \$20.05 and 200 shares offered at a price of \$20.10. The price point of \$20.03 is designated as an

LRP. An order to sell 600 shares with a limit price of \$20.02 is received by Exchange systems. There are 100 shares bid at the prices of \$20.04 and \$20.03. Additionally, there are 200 shares bid at the price of \$20.02 and \$20.01.

Display Book Prior to Execution

Protected Bid	Bid Size	Bid Price	Offer Price	Offer Size
			\$20.10	200
	200	\$20.05		
	100	\$20.04		
	100	\$20.03 ^{LRP}		
	200	\$20.02		
	200	\$20.01		

Given the information above, the order will execute 200 shares at the bid price of \$20.05 leaving 400 shares. At the next price of \$20.04 it will execute an additional 100 leaving 300 shares. The order will then execute an additional 100 shares at the LRP price of \$20.03 and have 200 shares of the incoming limit order remaining.

Display Book After Initial Executions

Protected Bid	Bid Size	Bid Price	Offer Price	Offer Size	Residual
			\$20.10	200	
		\$20.05			
		\$20.04			
200		\$20.03 ^{LRP}			
	200	\$20.02			200
	200	\$20.01			

After the execution at the LRP price of \$20.03, Exchange systems enter a slow trading condition because the previous executions have traded down to an LRP prior to the order's limit price. There are now 200 shares of away market interest bid at a price of \$20.03. The DMM needs to: (i) clear the crossed market created by the away market interest bid at the price of \$20.03 that is crossed against the residual at \$20.02; and (ii)

trade the residual against the 200 shares bid at the price of \$20.02 to clear the internal lock on the Exchange. The DMM enters an additional 200 shares of DMM interest to sell at the price point of \$20.02 below the LRP price point in order to facilitate the clearing of the locked/crossed market. However, when the DMM hits the enter button to consummate the trade, the away market bid is no longer available. Exchange systems will execute the 200 shares of the limit buy order at the price of \$20.02. Pursuant to the proposed rule modification, Exchange systems will allocate 200 shares to the interest on the Display Book and no shares will be allocated to the DMM interest added during the slow trading condition. Pursuant to the proposed rule, the DMM interest will be cancelled. Exchange systems will further update the quote to the best bid available on the Exchange, 200 shares bid at the price of \$20.01 and 200 shares offered at the price of \$20.10.

Display Book After LRP Cleared

Bid Size	Bid Price	Offer Price	Offer Size
		\$20.02	100
200	\$20.01		

DMM interest entered at the price point prior to the DMM adding interest during a slow trading condition will continue to receive an allocation pursuant to the current parity rule.

Example Proposed Parity Allocation During a Slow Trading Condition With Previously Entered DMM s-Quotes representing DMM interest

In the table below, the Exchange Market is 200 shares bid at the price of \$20.05 and 200 shares offered at a price of \$20.10. The price point of \$20.03 is designated as an

LRP. An order to sell 800 shares with a limit price of \$20.02 is received by Exchange systems. There are 100 shares bid at the prices of \$20.04 and \$20.03. Additionally, there are 300 shares of non DMM interest and 100 shares of DMM interest bid at the price of \$20.02.

Display Book Prior to Execution

Bid Size		Bid Price	Offer Price	Offer Size
DMM s-Quotes	Non DMM			
			\$20.10	200
	200	\$20.05		
	100	\$20.04		
	100	\$20.03 ^{LRP}		
100	300	\$20.02		
	100	\$20.01		

Given the information above, the order will execute 200 shares at the bid price of \$20.05 leaving 600 shares. At the next price of \$20.04 it will execute an additional 100 leaving 500 shares. The order will then execute an additional 100 shares at the LRP price of \$20.03 and have 400 shares of the incoming limit order remaining.

Display Book After Initial Executions

Bid Size		Bid Price	Offer Price	Offer Size	Protected Offer	Residual
DMM s-Quotes	Non DMM					
			\$20.10	200		
		\$20.05				
		\$20.04				
		\$20.03 ^{LRP}				
100	300	\$20.02				400
	100	\$20.01			200	

After the execution at the LRP price of \$20.03, Exchange systems enter a slow trading condition because the previous executions have traded down to an LRP prior to the order's limit price. There are also 200 shares of away market interest now offered at

a price of \$20.01. The DMM needs to clear the internal lock on the Exchange at the price of \$20.02 and the cross market condition created by the Exchange's bid at \$20.02 and the protected offer at the price of \$20.01. To accomplish this, the DMM enters 200 additional shares of DMM interest to buy at the price point of \$20.02 below the LRP price point in order to facilitate the clearing of the locked/crossed market. However, when the DMM hits the enter button to consummate the trade, the away market offer is no longer available. Exchange systems will execute the remaining 400 shares of the limit order at the price of \$20.02. Pursuant to the proposed rule modification, Exchange systems will allocate 300 shares to the Non DMM Interest on the Display Book and 100 shares to the DMM s-Quote interest originally present at the price point of \$20.02 will be fully executed. Pursuant to the proposed rule, the additional DMM interest added during the slow trading condition at the time of the trade is not allocated anything in the trade and is cancelled. Exchange systems will further update the quote to reflect 100 shares bid at the price of \$20.01 and 200 shares offered at the price of \$20.10.

Display Book After LRP Cleared

Bid Size	Bid Price	Offer Price	Offer Size
		\$20.10	200
100	\$20.01		

As outlined by the examples above, the Exchange proposes to amend NYSE Amex Equities Rule 72 to add subparagraph (c)(xi) to restrict DMM interest added during a slow trading condition intra day from receiving an allocation on parity; rather, such interest will yield to all other interest at the price point. Pursuant to proposed NYSE Amex Equities Rule 72(c)(xi) DMM interest added during a slow trading condition will

be allocated shares only after all other interest eligible to receive an execution at the price point is executed in full and if not executed will be cancelled. Proposed NYSE Amex Equities Rule 72 (c)(xi) will further provide that DMM interest present at the price point prior to the entry of DMM interest during the slow trading condition will continue to be allocated on a parity basis.

The Exchange will commence implementation of the systemic changes to allow Exchange systems to will be modified so that DMM interest added intra day during a slow trading condition yield to all other interest present at the price point on or about July 10, 2009. The Exchange intends to progressively implement this systemic change for DMM interest added intra day 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 website which securities have been transitioned to the new system.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Act”)⁷ for these proposed rule changes is the requirement under Section 6(b)(5)⁸ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that eliminating parity allocations for DMM interest added intra day during a slow quote or when verbally trading with Floor brokers at the point of sale is consistent with the above principles because it will increase the possibility of executions for the

⁷ 15 U.S.C. 78a.

⁸ 15 U.S.C. 78f(b)(5).

public orders on the Exchange in those situations where DMMs add interest to facilitate an execution.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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.

¹¹ 17 CFR 240.19b-4(f)(6).

operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹² 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 Exchange has requested that the Commission waive the 30-day operative delay in order to permit the Exchange to immediately implement modifications to its systems to require certain DMM interest to yield to other interest on the Display Book during slow trading conditions, as discussed in full above, which should increase the quality of executions on the Exchange, including public customer orders. The Commission believes such waiver is consistent with the protection of investors and the public interest.¹³ Accordingly, the Commission designates the proposed rule change 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:

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 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. See 15 U.S.C. 78c(f).

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-2009-40 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-2009-40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit

personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2009-40 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.¹⁴

Elizabeth M. Murphy
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).