

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61072; File No. SR-NYSE-2009-106)

November 30, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Rule 70 in Order to Update d-Quote Functionality and Provide for e-Quotes to Peg to the National Best Bid or Offer

I. Introduction

On October 26, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 70 in order to update d-Quote functionality and provide for e-Quotes to peg to the National best bid or offer. The proposed rule change was published for comment in the Federal Register on November 3, 2009.³ NYSE filed Amendment No. 1 to the proposed rule change on November 19, 2009.⁴ The Commission received no comment letters on the proposed rule change. This notice and order provides notice of filing of Amendment No. 1 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1. The text of the proposed rule change is attached as Exhibit 5 and is available at www.nyse.com.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60888 (October 27, 2009), 74 FR 56902 (“Notice”).

⁴ The text of Amendment No. 1 is available on the Exchange’s Web site (www.nyse.com), at the Exchange, and at the Commission’s Public Reference Room.

⁵ See infra note 13.

II. Description of the Proposed Rule, as Modified by Amendment No. 1

Background⁶

Rule 70.25 governs the entry, validation, and execution of bids and offers represented electronically by a Floor broker on the Floor of the Exchange that include discretionary instructions as to size and/or price.⁷ The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price range within which the e-Quote may trade and the number of shares to which the discretionary price instruction applies. D-Quote functionality is available for both displayed and reserve interest.

In particular, Rule 70.25(a) provides that d-Quotes are eligible for execution only when they are at or join the existing Exchange BBO, would establish a new Exchange BBO, or at the opening and closing transactions. Under current rules, d-Quotes at or joining the Exchange BBO may be displayed or undisplayed interest. In addition, Rule 70.25(d)(ii) currently provides that, once it has been activated, a d-Quote will automatically execute against a contra-side order if the contra-side order's price is within the discretionary pricing instructions and the contra-side order's size meets any minimum or maximum size requirements that have been set for the d-Quote.

Rule 70.26 provides for the entry, validation, and execution of an e-Quote that remains available for execution at the Exchange BBO as the Exchange BBO moves. Floor brokers are able to designate a range of prices within which their e-Quotes and d-Quotes will peg and, as

⁶ The Notice contains additional discussion and examples regarding the current operation of d-Quotes and e-Quotes. See supra note 3.

⁷ For purposes of these rules, floor broker agency interest files (that is, electronic bids or offers from the Floor) are referred to as "e-Quotes." E-quotes that include discretionary instructions are referred to a "d-Quotes."

long as the Exchange BBO is within that range, the e-Quote and d-Quote will be included in the quote.

Proposed Amendments⁸

D-Quotes Active When their Filed Price is Not at the Exchange BBO

The Exchange proposes to amend Rule 70.25(a)(ii) to provide that d-Quotes would be active and available to execute whenever incoming interest satisfies the discretionary instructions, without regard to whether the d-Quote's filed price is or becomes the Exchange BBO.

The Exchange also proposes to add clarifying language to Rule 70.25(a)(i) to provide that d-Quotes that exercise discretion would be considered non-displayable interest for purposes of Rule 72, and to amend Rule 70.25(d)(i) (as proposed Rule 70.25(e)(i)) to provide that a d-Quote with discretionary pricing instructions above the best bid if a buy order or below the best offer if a sell order would seek to secure the largest execution for the d-Quote using the least amount of price discretion to exercise at or above the bid if a buy order or at or below the offer if a sell order. The Exchange proposes to further clarify that a d-Quote with discretionary pricing instructions equal to or less than the best bid if a buy order or equal to or greater than the best offer if a sell order would extend to its maximum discretion.

The Exchange states that the proposed d-Quote functionality would provide Floor brokers with functionality that is similar to functionality that was previously available to Floor brokers, via CAP-DI orders, when the Exchange operated in a manual auction.⁹ In addition, the Exchange notes that the proposed functionality would allow d-Quotes to interact with interest

⁸ The Notice contains additional discussion and examples regarding the proposed operation of d-Quotes and e-Quotes. See supra note 3.

⁹ The Notice contains a discussion regarding CAP-DI orders. See supra note 3.

(such as fully dark reserve interest) that did not exist when d-Quotes were first introduced, and which would otherwise be unable to easily interact with under the current rules. The Exchange believes that the d-Quote functionality proposed in this rule filing therefore would enable d-Quotes to trade with all willing contra-side liquidity, including reserve interest. In this way, the Exchange believes that the proposed changes will allow the brokers' tools to keep pace with the ways in which trading on the Exchange has evolved.

Minimum Trade Size ("MTS") Instruction for d-Quotes

The Exchange also proposes to add a new subsection to Rule 70.25 to provide that a Floor broker may include additional discretionary instructions with a d-Quote such that the d-Quote would only execute if the designated MTS is met. Currently, d-Quotes may include instructions of a minimum size requirement that would trigger discretionary pricing, but such requirement would not guarantee a minimum execution size (e.g., if there is other interest on the same side as the d-Quote that can trade with a contra-side order that meets the d-Quote's minimum size requirement). As proposed, if the amount of an execution that would be allocated to a d-Quote is less than the MTS quantity, the d-Quote would not be eligible to participate in the execution and will not compete with other same-side interest from other Floor brokers. Additionally, MTS instructions would not be active at the open or close.

Rule 70.25(a)(vi) provides that same-side d-Quotes from the same Floor broker do not compete with each other for executions allocated to that Floor broker, as they would if from different Floor brokers, when the d-Quote with the most aggressive price range executes first. The Exchange proposes to add new paragraph (d)(ii) to Rule 70.25 such that when a Floor broker designates an MTS for a d-Quote, such d-Quote may compete with other same-side d-Quotes from the same Floor broker by improving the price if necessary to satisfy its MTS.

Pegging to the NBBO

Currently, a pegging e-Quote or d-Quote is activated at the Exchange BBO and, subject to its price range, moves when the Exchange BBO moves. Under current rules, pegging e-Quotes and d-Quotes cannot be the sole interest at the Exchange BBO, but must peg to other non-pegging interest at the Exchange BBO. Accordingly, under current rules and functionality, pegging e-Quotes are unable to set the Exchange BBO.

The Exchange proposes that pegging e-Quotes and d-Quotes would peg to the NBBO rather than the Exchange BBO. As a result, a pegging e-Quote or d-Quote may set the Exchange BBO, even if there is no other displayed bid or offer at the Exchange at that price. Accordingly, the Exchange proposes to amend Rule 70.26(vi) to provide that pegging e-Quotes or d-Quotes may be entitled to priority pursuant to Rule 72 if such e-Quote or d-Quote sets the Exchange BBO. Under the Exchange's proposal and similar to its current rule, if the NBBO moves, the pegging e-Quote or d-Quote would move to follow the NBBO, provided that the NBBO is in the price range of the pegging e-Quote or d-Quote. In addition, a pegging e-Quote or d-Quote would never set the NBBO.

III. Discussion and Commission's Findings

After careful review of the proposed rule change, as amended, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that exchange rules be designed to prevent fraudulent and manipulative acts and practices, 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, protect investors and the public interest. The Exchange stated in its filing that it believes that the updates to Floor broker functionality meet such goals because they should ensure that customer orders eligible to trade will execute against willing contra-side liquidity. In particular, d-Quotes that are active outside the Exchange BBO provide Floor brokers with functionality to replace the now defunct CAP-DI functionality and permit d-Quotes to better participate in sweeps or to execute against reserve interest. The addition of the MTS instruction provides investors with the ability to ensure that an execution will not be fragmented and therefore should promote larger-sized executions. In addition, the Exchange stated in its filing that it believes that the proposed change to provide for e-Quotes and d-Quotes to peg to the NBBO should ensure that investors' orders will be executed in the best market because more liquidity will be available at the NBBO.

The Commission notes that the proposal to allow d-Quotes to be active when their filed price is inferior to the BBO should contribute to market depth by making the Floor brokers' d-Quote liquidity available for execution in a greater number of situations. The proposal to permit

¹⁰ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

minimum trade size instructions for d-Quotes should allow Floor brokers additional flexibility in the handling of their orders without adversely affecting the executions of other market participants, since Floor brokers would remain subject to the existing parity allocation rules.¹² Finally, the proposal to peg d-Quotes to the NBBO rather than the BBO should contribute to market quality by providing additional liquidity at the NBBO, thus encouraging the tightening of spreads to the NBBO on the Exchange. For the foregoing reasons, the Commission finds the proposed rule change is consistent with the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 No. SR-NYSE-2009-106 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-106. 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

¹² See NYSE Rule 72.

of the submission¹³, 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-NYSE-2009-106 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as modified by Amendment No. 1

The Commission also finds good cause to approve the proposed rule change, as modified by Amendment No.1, prior to the thirtieth day after publication in the Federal Register. The Commission notes that no comments were received during the 21-day comment period allotted for the initial proposal. The Commission notes that the Exchange's representation that the proposal seeks to replace functionality that was previously eliminated. In addition, in this case, accelerated approval of the proposed rule change will permit the Exchange to implement systems changes related to the proposed rule change in a timely fashion.

In addition, the changes proposed in Amendment No. 1, discussed in Part III above, seek to clarify the proposed handling of d-Quotes with a filed price outside the BBO. The proposal as

¹³ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

modified by Amendment No. 1 does not differ materially from the proposal as described in the Notice and the Commission believes the revision helps clarify the proposed operation of d-Quotes.

In light of the foregoing, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁴ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹⁴ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSE-2009-106), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).