

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60916; File No. SR-NYSEAmex-2009-78)

November 3, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Exchange Rule 62 to Support Quoting and Trading in a Minimum Price Variation Below \$.01 for Securities Traded on the Exchange for Orders or Interest Priced Below \$1.00 Per Share

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> notice is hereby given that on October 27, 2009, NYSE Amex LLC (“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. NYSE Amex has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 Exchange Rule 62 (Variations) to support quoting and trading in a minimum price variation below \$.01 for securities traded on the Exchange for orders or interest priced below a [sic] \$1.00 per share. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

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

<sup>3</sup> 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 is proposing to amend NYSE Amex Equities Rule 62 (Variations) to support quoting and trading in a minimum price variation below \$.01 for securities traded on the Exchange for orders or interest (“orders/interest”) priced below a [sic] \$1.00 per share. The proposed amendment to NYSE Amex Equities Rule 62 will enable the Exchange to quote and execute orders/interest in sub-penny increments of \$0.0001 for those securities that are priced below \$1.00 per share.

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

**Background**

NYSE Amex Equities Rules establish minimum price variations for quoting and entry of orders in equity securities depending on the price of the orders/interest. Currently, the minimum price variations range from ten cents (.10) for orders/interest priced \$100,000 or greater, to one cent for orders/interest priced between \$1.00 and \$99,999 and one one-thousandth

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<sup>4</sup> See SR-NYSE-2009-107.

of a cent (.0001) for orders/interest priced less than \$1.00.<sup>5</sup> Significantly for this rule filing, although Exchange systems accept orders/interest priced below \$1.00 in sub-penny increments, the Exchange does not quote or execute orders/interest in these increments.<sup>6</sup> Instead, the second paragraph of the Supplementary Material of NYSE Amex Equities Rule 62 sets forth the procedures for orders/interest that contains a sub-penny component.

Specifically, when an order/interest is received on NYSE Amex that contains a sub-penny component, the Exchange rounds the incoming order/interest either up or down to the nearest whole cent increment.<sup>7</sup> Thus, the price of an incoming bid is rounded down to the next round penny and the price of an incoming offer is rounded up to the next round penny. This rounding is completed before the order is quoted, traded, or routed to another market center, and the rounded price is used for all routing and execution decisions. In fact, the rounded price assigned to the order or quotation is used for all order handling purposes including when the order is sent to Exchange trading systems and the Consolidated Quotation System.

**Proposed Amendment to NYSE Amex Equities Rule 62**

Through this filing, the Exchange seeks to eliminate the above described order handling procedures for orders/interest submitted to the Exchange that contain a sub-penny component.

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<sup>5</sup> See NYSE Amex Equities Rule 62 Supplementary Material first paragraph which provides in pertinent part:

<b>Price of Order or Interest</b>	<b>Minimum Price Variation</b>
Less Than \$1.00	\$.0001
\$1.00 to 99,999.99	\$.01
\$100,000 or greater	\$.10

<sup>6</sup> See Securities Exchange Act Release No. 59025 (November 26, 2008), 73 FR 73769 (December 3, 2008) (SR-NYSE-2008-123) [sic].

<sup>7</sup> See NYSE [sic] Rule 62 Supplementary Material second paragraph.

Instead, the Exchange proposes to quote, trade or route to another market center orders/interest that contain a sub-penny component without first rounding the orders/interest. The Exchange therefore proposes to delete Supplementary Material .20 from NYSE Rule 62 because Exchange technology can [sic] is capable of quoting and executing orders/interest in sub-penny increments of \$0.0001 for those securities that are priced below \$1.00 per share. The Exchange further proposes to delete the duplicate captioning of “NYSE Amex Equities” in Rule 62.

The Exchange will commence implementation of the systemic changes to allow Exchange systems to quote, trade or route to another market center orders/interest that contain a sub-penny component on or about November 27, 2009. The Exchange intends 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 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”)<sup>8</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>9</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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 proposed rule change also is designed to support the principles of Section

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<sup>8</sup> 15 U.S.C. 78a.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

11A(a)(1)<sup>10</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that the instant proposal is in keeping with these principles in that it seeks to amend NYSE Amex Equities Rule 62 to provide for executions of interest entered on the Exchange in increments below \$.01, consistent with the provisions of Rule 612 of Regulation NMS<sup>11</sup> which permits markets to accept, rank and display orders priced less than \$1.00 per share in a minimum pricing increment of \$0.0001.

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 does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

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<sup>10</sup> 15 U.S.C. 78k-1(a)(1).

<sup>11</sup> 17 CFR 242.612.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). 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,

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may immediately provide another competitive venue for market participants to submit orders priced less than \$1.00 per share in a minimum pricing increment of \$0.0001 for execution. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will provide another competitive venue for execution of orders priced in sub-penny increments of \$0.0001 for securities priced below \$1.00 per share.<sup>16</sup> For these reasons, the Commission designates that the proposed rule change become operative upon filing.

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:

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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)(6).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2009-78 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-2009-78. 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 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2009-78 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.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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