

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61755; File No. SR-NYSEAmex-2010-27)

March 22, 2010

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 127 to Remove the Restrictions on the Execution of Block Cross Transactions Outside the Prevailing NYSE Amex Quotation

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 11, 2010, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 127 (“Block Crosses Outside the Prevailing Exchange Quotation”) to remove the restrictions on the execution of block cross transactions outside the prevailing NYSE Amex quotation to make such execution more consistent with prevailing industry standard and to delete all references to “percentage orders” in the rule text. 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> 15 U.S.C. 78a.

<sup>3</sup> 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 LLC (“NYSE Amex” or the “Exchange”) proposes to amend NYSE Amex Equities Rule 127 (“Block Crosses Outside the Prevailing Exchange Quotation”) to remove restrictions on the execution of block cross transactions outside the prevailing NYSE Amex quotation to make such execution more consistent with prevailing industry standard and to delete all references to “percentage orders” in the rule text.

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

Background

NYSE Amex Equities Rule 127 governs the execution of block cross transactions outside the Exchange quotation. NYSE Amex Equities Rule 127 prescribes the method of block cross executions for member organizations when the member organization intends to represent both sides of the proposed cross as agent or will trade with one side of the cross in part or in whole as principal. The member organization handling the block orders must first trade with the displayed

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<sup>4</sup> See SR-NYSE-2010-24.

bid or offer (whichever is relevant to the proposed cross, i.e., whether the cross is to be executed at a price lower than the bid or higher than the offer) including any reserve interest<sup>5</sup> at that bid or offer price when the member organization is trading as principal on one side of the transaction and is establishing or increasing a proprietary position as a result. The member organization then executes, in a single transaction, at the agreed upon block price, all limit orders on the Display Book<sup>®</sup> (“Display Book”)<sup>6</sup> priced at or better than the block clean-up price. The result is two separate tape prints. If, however, the cross represents agency interest only or the liquidation of a member organization’s position, the member organization must execute all orders on the Display Book priced better than the block clean-up price at a price one cent better than the clean-up price and then execute the block at the clean-up price. This results in three separate tape prints. The block cross will have execution priority at the clean-up price. None of these executions are subject to the procedural requirements of NYSE Amex Equities Rule 76 governing “crossing” orders with respect to offering the security at a minimum variation higher than the bid.

Two Print Execution Example:

The NYSE Amex quote in XYZ is \$20.05 bid for 10,000 shares with 5,000 shares offered at \$20.10. There is no reserve interest at the best bid or offer or at the other bid prices. There are bids at \$20.04, \$20.03 and \$20.02, each for 5,000 shares. A member organization intends to facilitate a block transaction of 50,000 shares at \$20.02. The following executions occur:

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<sup>5</sup> Reserve interest is that portion of a bid or offer that is designated as not to be displayed, i.e., is in “reserve.”

<sup>6</sup> The Display Book<sup>®</sup> system is an order management and execution facility. The Display Book receives and displays orders to the DMMs, 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.

The member organization sells to the 10,000 shares bid at \$20.05. Next, the member organization sells 15,000 shares at a price of \$20.02 to satisfy the 5,000 shares bids at \$20.04, \$20.03 and \$20.02. The remaining 25,000 shares of the 50,000 share block order are crossed at \$20.02 with the member organization buying 25,000 shares as principal from its customer.

Three Print Execution Example:

The NYSE Amex quote in XYZ is \$20.05 bid for 10,000 shares with 5,000 shares offered at \$20.10. There is no reserve interest at the best bid or offer or at the other bid prices. There are bids for \$20.04, \$20.03 and \$20.02, each for 5,000 shares. A member organization intends to facilitate a block transaction of 50,000 shares at \$20.02 either representing customer (agency) buy side interest at \$20.02 or liquidating a current position. The following executions occur:

The member organization sells 10,000 shares at \$20.05 to satisfy the exposed bid price. Next, the member organization sells an additional 10,000 shares one cent better than the clean-up price at \$20.03 to satisfy the bids at \$20.04 and \$20.03. The remaining 30,000 shares of the 50,000 share block cross order is crossed at \$20.02 at the block clean-up price.

Proposed Amendment to NYSE Amex Equities Rule 127

Historically, NYSE Amex Equities Rule 127 provided a member organization with the ability to execute block transactions at a negotiated price outside the prevailing quote while providing price improvement to resting orders on the Display Book.

Block transactions effected pursuant to the Rule must be executed manually. The DMM assigned to the security must manually enter the information in the Display Book to effect each of the required transactions. Given the speed of execution and updating of quotations in the Exchange's current more electronic market, the DMM, in most securities, is physically unable to print the transaction at the bid and clean-up price, or bid, one cent better and the clean-up price

prior to any quote changes or cancellations/replacements of orders. In the time it takes the DMM to manually print the block cross transaction pursuant to the steps set forth in NYSE Amex Equities Rule 127, quotes and prices in the market have been updated. As such, the member organization is unable to determine how many shares it must satisfy on the Display Book in order to effect the block transaction at the negotiated price.

Without the provisions of NYSE Amex Equities Rule 127, a member organization could electronically transmit an order to execute against the liquidity (displayed and non-displayed) available at each limit price until the bid/offer reached the price the member sought to cross his or her order.<sup>7</sup> However, because Rule 127 mandates that a member organization with a block of stock it intends to cross on the Floor at a specific clean-up price outside the current NYSE Amex quotation must follow the provisions of paragraph (b) of the Rule, member organizations are impeded in the execution of block cross transactions because of the physical inability of the DMM to print the block cross transactions consistent with the provisions of NYSE Amex Equities Rule 127. This physical impediment to the DMM's ability to print these transactions makes compliance with NYSE Amex Equities Rule 127 virtually impossible in the liquid securities traded on the Exchange.

The Exchange acknowledges that in order to provide for the efficient execution of block cross transactions outside the prevailing quote that affords a member organization the ability to cross stock at a negotiated price and provide price improvement to resting orders on the Display Book, system modifications are required. Such system modifications would allow for these

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<sup>7</sup> This is similar to the method employed by off-Floor participants wherein orders are sent to market centers for execution against protected quotes and the balance of the cross order is then printed on a trade reporting facility.

trades to be executed consistent with the requirements of the proposed amendments to NYSE Amex Equities Rule 127, pursuant to the customer's instructions.

Given the inability of the DMM to manually print the required transaction pursuant to NYSE Amex Equities Rule 127 and the need for system modification, NYSE Amex proposes to amend NYSE Amex Equities Rule 127. The amendments would remove the current requirement in Rule 127 that a member organization with a block of stock that it intends to cross on the Floor at a specific clean-up price outside the current NYSE Amex quotation must comply with the provisions of Rule 127.<sup>8</sup> Specifically, the Exchange seeks to amend the rule text in NYSE Amex Equities Rule 127(b) by replacing the word "should" with "may" in order to remove the restrictive language that would require member organizations to execute block cross transactions outside the prevailing NYSE Amex quotation pursuant to the specific provisions of the rule.

Pursuant to proposed NYSE Amex Equities Rule 127(b), the member organization may execute block crosses outside the prevailing quote prescribed in NYSE Amex Equities Rule 127 or in the same manner as large non-block trades are currently executed. The member organization may electronically route an order to the Display Book that will satisfy protected quotes in other markets and sweep orders on the Display Book to the cross price and manually cross the remainder of the initiating order if market conditions permit, i.e., if the remainder of the initiating order will be executed at the National Best Bid or Offer ("NBBO") or consistent with the intermarket sweep order exception under Reg NMS or any other applicable trade-through exception or exemption that may apply. This cross transaction shall be consistent with all NYSE

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<sup>8</sup> Email from Jennifer D. Kim, Counsel, NYSE Regulation, to Theodore Venuti, Special Counsel, Division of Trading and Markets, Commission, dated March 17, 2010.

Amex Equities Rules, including those rules related to priority and parity.<sup>9</sup> Member organizations will continue to be required to comply with all Reg NMS obligations.<sup>10</sup>

Finally, the Exchange seeks to delete all references in the rule text to “percentage orders.” Percentage orders were eliminated as a valid order type on the Exchange in a previously approved NYSE filing.<sup>11</sup> The references in NYSE Amex Equities Rule 127 were inadvertently left in and should be deleted.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>12</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 Exchange believes the proposed rule change supports these provisions because the proposed amendment removes the current impediment to NYSE Amex members organizations’ ability to execute block cross orders and offers an alternate method while the Exchange develops a better mechanism for the execution of block cross orders outside the prevailing quotation.

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<sup>9</sup> See e.g. NYSE Amex Equities Rule 72.

<sup>10</sup> 17 CFR 242.600 et seq.; See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>11</sup> See Securities Exchange Act Release No.58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> 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<sup>15</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

4(f)(6)(iii),<sup>18</sup> 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 Commission notes that the proposed rule change would allow member organizations to execute block cross transactions outside the prevailing NYSE Amex quotation consistent with the manner that large, non-block size orders may currently be executed on the Exchange and on other market centers. The proposed rule change is consistent with Regulation NMS and the Commission does not believe that it raises any new substantive issues. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change as operative upon filing.<sup>19</sup>

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

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<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> 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. See 15 U.S.C. 78c(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-27 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-2010-27. 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,<sup>20</sup> 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 Web site 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 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

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<sup>20</sup> The text of the proposed rule change is available on the Commission’s Web site at <http://sec.gov/rules/sro/shtml>.

submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEAmex-2010-27 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).