

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62357; File No. SR-NYSEAmex-2010-54)

June 22, 2010

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 1000 Regarding Order Size Eligible for Automatic Execution

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 June 17, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 1000 regarding order size eligible for automatic execution. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, the Commission’s Web site at <http://www.sec.gov>, and [www.nyse.com](http://www.nyse.com).

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

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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.

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

The Exchange proposes to amend Rule 1000 to state that the order size eligible for automatic execution is 1,000,000 shares and to provide that upon advance notice to market participants, the Exchange may increase the order size eligible for automatic executions up to 5,000,000 shares on a security-by-security basis. In addition, the Exchange proposes to raise the maximum order size accepted by Exchange systems to 25,000,000 shares.

Background

Currently, the maximum order size eligible for automatic execution is 1,000,000 shares. This limit is reflected in Exchange and New York Stock Exchange LLC ("NYSE") rule filings that have been approved by the Commission, but it is not specifically stated in Rule 1000. In 2006, as part of the approval of the NYSE Hybrid Model, the NYSE amended NYSE Rule 1000 to provide for a phased-in increase of order size eligibility for automatic execution to a maximum size of 3,000,000, but noted that the then-current order size eligibility for automatic execution was 1,000,000 shares.<sup>4</sup> The NYSE determined not to raise the 1,000,000 share maximum in order to avoid any possible issues resulting from routing orders in excess of 1,000,000 shares to another market as other markets also do not offer automatic execution in size greater than 1,000,000 shares.

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<sup>4</sup> See Securities Exchange Act Release No. 54820 (November 26 [sic], 2006), 71 FR 70824 (December 6, 2006) (SR-NYSE-2006-65).

In 2008, the NYSE implemented on a pilot basis its New Model structure, which is also the model that governs trading at the Exchange.<sup>5</sup> Among other things, the NYSE's New Model filing included amendments to Rule 1000 to provide for a phased-in increase of order size eligibility for automatic execution from 3,000,000 shares to a maximum of 6,500,000 shares. At that time, the NYSE intended to raise the maximum order size accepted by NYSE systems to 6,500,000 shares. While the rule text states that the order size eligibility is 3,000,000 shares, the New Model filing indicates that the maximum order size eligible for automatic execution is 1,000,000 shares and states that the purpose of the amendment to Rule 1000 was to provide for a new potential maximum order "size eligibility" of 6,500,000 shares.

#### Proposed Amendment to NYSE Amex Equities Rule 1000

The Exchange proposes three amendments to NYSE Amex Equities Rule 1000. First, the Exchange proposes to amend Rule 1000 to state specifically that orders up to 1,000,000 shares are eligible for automatic execution. Second, the Exchange proposes that upon at least 24 hours

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<sup>5</sup> The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1-1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE. See Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR-Amex-2008-63); No. 58833 (Oct. 22, 2008), 73 FR 64642 (Oct. 30, 2008) (SR-NYSE-2008-106); No. 58839 (Oct. 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03); No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10); and No. 59027 (Nov. 28, 2008), 73 FR 73681 (Dec. 3, 2008) (SR-NYSEALTR-2008-11). Among the rule changes that the Exchange has proposed to adopt is the NYSE's New Model structure. See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46); See also Securities Exchange Act Release Nos. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR-NYSEAmex-2009-65) (extending the operation of the New Model Pilot until the earlier of Securities and Exchange Commission approval to make such pilot permanent or November 30, 2009); 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR-NYSEAmex-2009-83) (extending Pilot to March 30, 2010); and 61725 (March 17, 2010), 75 FR 14223 (May [sic] 24, 2010) (SR-NYSEAmex-2010-28) (extending the operation of the NMM Pilot until the earlier of Securities and Exchange Commission approval to make such pilot permanent or September 30, 2010).

advance notice to market participants, the execution size of automatic executions may be increased up to 5,000,000 shares on a security-by-security basis. Determination of such securities will be based on factors including the basis of average daily volume and price over a calendar quarter. A list of such securities will be posted on the Exchange website. Third, the Exchange proposes to amend Rule 1000 to state that Exchange systems shall accept a maximum order size of 25,000,000 shares.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE.<sup>6</sup>

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Act”)<sup>7</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> 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 the proposed rule change accomplishes these goals by providing transparency regarding the order size eligible for automatic execution, while providing for a mechanism to increase that execution size on a security-by-security basis.

### 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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<sup>6</sup> See SR-NYSE-2010-44.

<sup>7</sup> 15 U.S.C. 78a.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 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) does not become operative for 30 days after the date of the filing, 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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>12</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 has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The proposed rule change clarifies the maximum order size accepted by the Exchange's systems and the maximum order size eligible for automatic execution. The proposed rule change also specifies that any increases in the order size

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give 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.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

eligible for automatic execution will require advance notice to Exchange members. In addition, the Exchange represented that a list of such securities will be posted on its Web site. For these reasons, the Commission believes that the proposed rule change is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEAmex-2010-54 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.

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<sup>13</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. 15 U.S.C. 78c(f).

All submissions should refer to File No. SR-NYSEAmex-2010-54. 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>14</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 NYSE Amex. 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

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<sup>14</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

to File No. SR-NYSEAmex-2010-54 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).