

The Contingent Trade Order will address those concerns by permitting the member to provide its customer a net price for the entire trade, and then allowing the member to execute the options leg of the trade on the ISE at a price at least equal to the NBBO while using the CQT [sic] exemption to effect the trade in the equities leg at a price necessary to achieve the net price. While there is no exposure for price improvement for the options leg of a stock-option order with our proposed Qualified Contingent Cross Order, that order must be executed at the NBBO or better, [sic]. Moreover, since the price of a stock-options order is a net price derived from the price of the options leg and the price of the stock leg, we believe it is reasonable for any potential improvement of the net price to originate from the execution of the stock leg. On balance, we believe that providing members with the certainty that they can execute the options legs of these large complex orders for their customers, coupled with the flexibility members have with respect to the price at which the equity legs are executed, will provide customers with the flexibility needed to achieve their investment objectives.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will facilitate the ability of ISE members to execute large options orders that are tied to stock in an efficient manner, while also protecting the national market system against trade-throughs.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any

unsolicited written comments from members or other interested parties.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## **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 Number SR-ISE-2009-35 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-ISE-2009-35. 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-ISE-2009-35 and should be submitted on or before July 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-60151; File No. SR-NYSEAmex-2009-29]**

### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Floor Broker Agency Interest Containing Pegging and/or Discretionary Instructions, Eligible for Execution in the Closing Transaction, in the NYSE Amex Order Imbalance Information Datafeed Disseminated Prior to the Closing Transaction**

June 19, 2009.

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 12, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") 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 include Floor Broker agency interest containing pegging and/or discretionary

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

<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.

instructions, eligible for execution in the closing transaction, in the NYSE Amex Order Imbalance Information datafeed disseminated prior to the closing transaction. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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 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"), formerly the American Stock Exchange LLC, proposes to include Floor Broker agency interest files ("e-Quotes") containing pegging and/or discretionary instructions ("d-Quotes") (collectively "Floor broker agency interest"), eligible for execution in the closing transaction, in the NYSE Amex Order Imbalance Information datafeed disseminated prior to the closing transaction.

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

#### Background of NYSE Amex Order Imbalance Information

Currently, NYSE Amex Equities Rule 123C allows Exchange systems to make available a datafeed of real-time order imbalances that accumulate prior to the closing transactions on the Exchange.<sup>5</sup>

The datafeed contains aggregate information about orders that are potentially subject to execution at the market's closing price and represent issues that are likely to be of particular trading interest at the close. Recipients of the NYSE Amex Order Imbalance Information datafeed currently receive this datafeed free of charge.<sup>6</sup>

The NYSE Amex Order Imbalance Information datafeed disseminated prior to the closing transaction ("NYSE Amex Closing Order Imbalance Information") includes all market-on-close orders and limit-on-close orders eligible to participate in the closing transaction. DMM interest and Crowd interest are excluded.

Prior to the closing transaction, NYSE Amex Closing Order Imbalance Information is disseminated every fifteen seconds between 3:40 p.m. and 3:50 p.m. and every five seconds between 3:50 p.m. and 4 p.m. On any day that the scheduled close of trading on the Exchange is earlier than 4 p.m. EST, the dissemination of the NYSE Amex Closing Order Imbalance will commence 20 minutes before the scheduled closing time. NYSE Amex Closing Order imbalance information will be disseminated every 15 seconds for approximately 10 minutes. Thereafter, the order imbalance information will be disseminated every five seconds until the scheduled closing time.

#### d-Quotes and Pegging Instructions

Pursuant to NYSE Amex Equities Rule 70, Floor brokers are permitted to represent orders electronically through the use of e-Quotes. A d-Quote, as provided by NYSE Amex Equities Rule 70, Supplementary Material .25, permits the Floor broker to include discretionary instructions as to size and/or price on an e-Quote. D-Quote discretionary instructions specify the price at which the d-Quote may trade and the number of shares to be executed based on the application of the discretionary instructions. The Floor broker must also specify the price at which the d-Quote is to be quoted.

Pegging is a distinct instruction that may be used in conjunction with an e-Quote and/or a d-Quote pursuant NYSE Amex Equities Rule 70, Supplementary Material .26. Pegging instructions allow

is disseminated prior to the opening transaction via this product.

<sup>6</sup> The Exchange has filed with the Commission a proposed rule change seeking to charge a \$500 monthly fee to recipients of the NYSE Amex Order Imbalance Information datafeed. See SR-NYSEAmex-2009-26 (filed June 6, 2009). The Exchange does not seek to modify the proposed fee in any way through this filing.

the Floor broker to maintain his/her interest in the Exchange Best Bid or Offer ("BBO") if the quote moves from the orders initial quote price. Pegged interest moves with the Exchange BBO within the designated range. Any discretionary instructions associated with that interest will continue to be applied as long as it is within the Floor broker's designated price range. Buy side e-Quotes will peg to the best bid and sell side e-Quotes will peg to the best offer.

#### Proposal To Include Floor Broker Agency Interest in the Closing NYSE Amex Order Imbalance Information Datafeed

Through this filing, the Exchange proposes to enhance the information included in the NYSE Amex Closing Order Imbalance Information datafeed. Specifically, the Exchange proposes to also include, at no additional charge, Floor broker agency interest, eligible for execution in the closing transaction, in the NYSE Amex Closing Order Imbalance Information datafeed. Accordingly, the Exchange believes that the inclusion of this information in the NYSE Amex Closing Order Imbalance Information datafeed will provide increased transparency regarding the anticipated closing transaction.

The NYSE Amex Closing Order Imbalance Information will include d-Quote interest using the maximum discretionary price that could be available on the close and pegging e-Quotes at their ceiling<sup>7</sup> or floor<sup>8</sup> price. Beginning at 3:55 p.m., Exchange systems will use the maximum discretionary or maximum pegged price (ceiling or floor) associated with the Floor broker agency interest to determine its inclusion in the NYSE Amex Closing Order Imbalance Information datafeed.

The Exchange anticipates that the inclusion of Floor broker agency interest, eligible for execution in the closing transaction, in the NYSE Amex Closing Order Imbalance Information datafeed will provide its customers with the requested transparency and allow sufficient time for contra-side interest to develop, thereby decreasing volatility and ultimately contributing to the maintenance of a fair and orderly market.

<sup>7</sup> Pursuant to Supplementary Material .26 (ix)(B) of NYSE Amex Equities Rule 70, the "ceiling price" is the highest price to which a buy-side e-Quote or d-Quote may peg.

<sup>8</sup> Pursuant to Supplementary Material .26(ix)(C) of NYSE Amex Equities Rule 70, the "floor price" is the lowest price to which a sell-side e-Quote or d-Quote may peg.

<sup>4</sup> See SR-NYSE-2009-49.

<sup>5</sup> See Securities Exchange Act Release No. 59743 (April 9, 2009), 74 FR 17699 (April 16, 2009) (SR-NYSEAmex-2009-11) (making available the NYSE Amex Order Imbalance Information Datafeed as a separate, stand-alone Market Data product); See also Securities Exchange Act Release No. 59816 (April 23, 2009), 74 FR 19614 (April 29, 2009) (SR-NYSEAmex-2009-13) (modifying the reference price at which the Exchange reports the Order Imbalance Information and clarifying what information is included and excluded from the Order Imbalance Information Reports). Pursuant to NYSE Amex Equities Rule 15, similar information

Currently, systemic modifications are required to implement the inclusion of d-Quotes and all other pegging e-Quotes eligible to participate in the closing transaction in all the securities traded on the Exchange. There are approximately 15 securities on the Exchange that will receive the modified Order Imbalance Information datafeed on the implementation date of June 22, 2009. The Exchange will implement the modifications progressively across the Floor on a stock by stock basis. During the implementation process, the Exchange will identify on its Web site all the securities operating on modified systems and receiving the Order Imbalance Information datafeed containing d-quotes and all other pegging e-quotes eligible to participate in the closing transaction. The Exchange anticipates the completion of these modifications on or about July 31, 2009.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") 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 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 instant proposal is in keeping with these principles in that it seeks to provide greater transparency to Exchange market participants, affording them additional information which further promotes just and equitable principles of trade. The Exchange submits that the proposal to include Floor broker agency interest in the NYSE Amex Order Imbalance Information datafeed furthers the protection of investors and the public interest by providing investors with a more accurate depiction of the market interest prior to the closing transaction thereby allowing them to make better informed trading decisions.

### *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 Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing in order to assist investors in making better informed trading decisions by providing a more accurate depiction of the available market interest prior to the closing transaction. Moreover, a grant of immediate effectiveness will ensure that the Exchange can provide this increased transparency afforded by the additional information for the June 26, 2009 rebalance of the Russell Index which has historically been characterized by increased trading volatility associated with the closing transaction. The Exchange believes that the provision of more accurate information prior to the closing transactions will serve to mitigate volatility, assisting in the maintenance of a fair and orderly market and ultimately protecting investors and the public interest. The Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>12</sup> 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:

#### *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-2009-29 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-2009-29. 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 a.m. and 3 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

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 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.

<sup>12</sup> 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).

available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–29 and should be submitted on or before July 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60153; File No. SR–NYSE–2009–49]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Floor Broker Agency Interest Containing Pegging and/or Discretionary Instructions, Eligible for Execution in the Closing Transaction, in the NYSE Order Imbalance Information Datafeed Disseminated Prior to the Closing Transaction

June 19, 2009.

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 18, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) 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 include Floor Broker agency interest containing pegging and/or discretionary instructions, eligible for execution in the closing transaction, in the NYSE Order Imbalance Information datafeed disseminated prior to the closing transaction. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <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 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

New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to include Floor Broker agency interest files (“e-Quotes”) containing pegging and/or discretionary instructions (“d-Quotes”) (collectively “Floor broker agency interest”), eligible for execution in the closing transaction, in the NYSE Order Imbalance Information datafeed disseminated prior to the closing transaction.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).<sup>4</sup>

##### Background of NYSE Amex Order Imbalance Information

Currently, NYSE Rule 123C allows Exchange systems to make available a datafeed of real-time order imbalances that accumulate prior to the closing transactions on the Exchange.<sup>5</sup> The datafeed contains aggregate information about orders that are potentially subject to execution at the market’s closing price and represent issues that are likely to be of particular trading interest at the close. Recipients of the NYSE Order Imbalance Information datafeed

currently pay a \$500 monthly fee for access to this datafeed.

The NYSE Order Imbalance Information datafeed disseminated prior to the closing transaction (“NYSE Closing Order Imbalance Information”) includes all market-on-close orders and limit-on-close orders eligible to participate in the closing transaction. DMM interest and Crowd interest are excluded.

Prior to the closing transaction, NYSE Closing Order Imbalance Information is disseminated every fifteen seconds between 3:40 p.m. and 3:50 p.m. and every five seconds between 3:50 p.m. and 4 p.m. On any day that the scheduled close of trading on the Exchange is earlier than 4 p.m. EST, the dissemination of the NYSE Closing Order Imbalance will commence 20 minutes before the scheduled closing time. NYSE Closing Order imbalance information will be disseminated every 15 seconds for approximately 10 minutes. Thereafter, the order imbalance information will be disseminated every five seconds until the scheduled closing time.

##### d-Quotes and Pegging Instructions

Pursuant to NYSE Rule 70, Floor brokers are permitted to represent orders electronically through the use of e-Quotes. A d-Quote, as provided by NYSE Rule 70, Supplementary Material .25, permits the Floor broker to include discretionary instructions as to size and/or price on an e-Quote. D-Quote discretionary instructions specify the price at which the d-Quote may trade and the number of shares to be executed based on the application of the discretionary instructions. The Floor broker must also specify the price at which the d-Quote is to be quoted.

Pegging is a distinct instruction that may be used in conjunction with an e-Quote and/or a d-Quote pursuant NYSE Rule 70, Supplementary Material .26. Pegging instructions allow the Floor broker to maintain his/her interest in the Exchange Best Bid or Offer (“BBO”) if the quote moves from the orders’ initial quote price. Pegged interest moves with the Exchange BBO within the designated range. Any discretionary instructions associated with that interest will continue to be applied as long as it is within the Floor broker’s designated price range. Buy-side e-Quotes will peg to the best bid and sell side e-Quotes will peg to the best offer.

<sup>4</sup> See SR–NYSEAmex–2009–29.

<sup>5</sup> See Securities Exchange Act Release No. 57861 (May 23, 2008), 73 FR 31905 (June 4, 2008) (SR–NYSE–2008–42) (enhancing NYSE OpenBook Product offerings with the introduction of the Order Imbalance Information datafeed); See also Securities Exchange Act Release No. 59202 (January 6, 2009), 74 FR 1744 (January 13, 2009) (SR–NYSE–2008–132) (introducing the NYSE Order Imbalance Information Fee); See also Securities Exchange Act Release No. 59815 (April 23, 2009), 74 FR 19609 (April 29, 2009) (SR–NYSE–2009–41) (modifying the reference price at which the Exchange reports the Order Imbalance Information and clarifying what information is included in and excluded from the Order Imbalance Information Reports). Pursuant to NYSE Rule 15, similar information is disseminated prior to the opening transaction via this product.

<sup>13</sup> 17 CFR 200.30–3(a)(12).

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

<sup>25</sup> 15 U.S.C. 78a.

<sup>17</sup> 17 CFR 240.19b–4.