SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60595; File No. SR–NYSE–2009–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rules 103B and 104 To Increase the Amount of Time That a Designated Market Maker Unit Must Maintain a Bid and an Offer at the National Best Bid and National Best Offer for an Aggregate Average Period of Time Monthly

August 31, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 31, 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 amend NYSE Rules 103B and 104 to increase the amount of time that a Designated Market Maker unit must maintain a bid and an offer at the National Best Bid and National Best Offer for an aggregate average period of time monthly. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *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

Exchange market participants want a trading venue that encourages participants to add liquidity and facilitate their ability to trade larger orders more efficiently. The Exchange believes that essential to meeting the demands of its market participants and maintaining market quality is the availability of liquidity at the National Best Bid (''NBB'') and National Best Offer (''NBO'') (collectively herein ''NBBO'').[4] The Exchange therefore proposes to amend NYSE Rules 103B and 104 to increase the amount of time that a Designated Market Makers (''DMM'') unit must maintain a bid and an offer at the NBBO for an aggregate average period of time monthly.

Background

The NYSE implemented sweeping changes to its market rules and execution technology designed to improve execution quality on the Exchange.[5] Among the elements of the enhanced Exchange market model, the NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM. The DMM, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest.

Moreover, the Exchange's market model was designed to encourage DMMs to add liquidity at the NBBO. Specifically, the Exchange implemented quoting requirements pursuant to Exchange Rules 103B (''Security Allocation and Reallocation'') and 104 (''Dealings and Responsibilities of DMMs''). The quoting requirement pursuant to Rule 103B is the single objective standard to determine DMM unit eligibility for participation in the allocation process. NYSE Rule 104 employs the same numerical standards as it relates to a DMM unit's affirmative obligations to maintain a continuous two-sided quote.

Under current Rules 103B and 104, for listed securities that have a consolidated average daily volume of less than one million shares per calendar month (''Less Active'') a DMM unit must maintain a bid and an offer at the NBBO for an aggregate average monthly time of 10% or more during a calendar month. For listed securities that have a consolidated average daily volume equal to or greater than one million shares per calendar month (''More Active''), the DMM unit must maintain a bid and an offer at the NBBO for an aggregate average monthly time of 5% or more during a calendar month. DMM units are required to satisfy the quoting requirement for both categories of their assigned securities.[6]

Time at the NBBO is calculated as the average of the percentage of time the DMM unit has a bid or offer at the NBBO. For example, if a DMM unit maintains a quote at the National Best Bid for 6% of the trading day and a quote at the National Best Offer for 4% of the trading day, then the average of these times is 5%. The Exchange determines whether a DMM unit has met its quoting requirements on a month-by-month basis by calculating:

(1) The ''Daily NBB Quoting Percentage'' by determining the percentage of time a DMM unit has at least one round lot of displayed interest in an Exchange bid at the National Best Bid during each Trading Day for a calendar month;

(2) The ''Daily NBO Quoting Percentage'' by determining the percentage of time a DMM unit has at least one round lot of displayed interest in an Exchange offer at the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In addition, through a separate filing the Exchange proposes to adjust DMM units' rebate payments to be based on (i) an increased amount of time that DMM units must maintain a bid and an offer at the NBBO on a stock by stock basis during a month; and (ii) a requirement that the DMM units be 25% of the quoted volume during the trading day on a stock by stock basis. *See* SR–NYSE–2009–90.

[5] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (approving certain rules to operate as a pilot scheduled to end October 1, 2009). The NYSE also recognized that in view of the NYSE's electronic execution functionality, the DMM, unlike the specialist, would no longer be deemed the agent for every incoming order. The NYSE also responded to customer demand to create additional undisplayed reserve interest.

[6] Under NYSE Rule 103B, if a DMM unit fails to satisfy the quoting requirements during a one-month period, the Exchange issues an initial warning letter to the DMM unit, advising it of its deficiency. The DMM unit must provide in writing an explanation and articulation of corrective action. If the DMM unit fails to meet the requirement for a second consecutive month, the DMM unit is ineligible to participate in the allocation process for a minimum of two months following the second consecutive month of its failure to meet its quoting requirement (''Penalty Period''). The DMM unit must satisfy the quoting requirement for the two consecutive months of the Penalty Period. In the event a DMM unit fails to satisfy its quoting requirements for the two consecutive months of the Penalty Period, the DMM unit will remain ineligible to participate in the allocation process until it has met the quoting requirement for a consecutive two calendar month period. Under NYSE Rule 104, failure to satisfy the quoting requirement is a violation of the DMM unit's affirmative obligation and may subject the DMM unit to regulatory action, including formal or informal discipline.

National Best Offer during each Trading Day for a calendar month;

(3) The ''Average Daily NBBO Quoting Percentage'' for each Trading Day by summing the ''Daily NBB Quoting Percentage'' and the ''Daily NBO Quoting Percentage'' then dividing such sum by two;

(4) The ''Monthly Average NBBO Quoting Percentage'' for each security by summing the security's ''Average Daily NBBO Quoting Percentages'' for each Trading Day in a calendar month then dividing the resulting sum by the total number of Trading Days in such calendar month; and

(5) For the total Less Active Securities (More Active Securities) assigned to a DMM unit, the Exchange will determine the ''Aggregate Monthly Average NBBO Quoting Percentage'' by summing the Monthly Average NBBO Quoting Percentages for each Less Active Security (More Active Security) assigned to a DMM unit, then dividing such sum by the total number of Less Active Securities (More Active Securities) assigned to such DMM unit.

Below is an example of a quoting requirement calculation. For purposes of this example, it is assumed that DMM Unit 1 has two assigned securities, A and B and that there were 5 trading days in the selected calendar month.

The Average Daily NBBO for DMM Unit 1 is calculated for each security by summing the daily NBB and NBO of each security for that day and dividing that number by two:

Trading days	NBB (percent)	NBO (percent)	Calculation average daily NBBO for DMM Unit 1	Average daily NBBO (percent)
Security A				
T1	4	6	4% + 6% = 10% divided by 2 = 5%	5
T2	3	5	3% + 5% = 8% divided by 2 = 4%	4
T3	4	4	4% + 4% = 8% divided by 2 = 4%	4
T4	6	8	6% + 8% = 14% divided by 2 = 7%	7
T5	5	5	5% + 5% = 10% divided by 2 = 5%	5
Security B				
T1	5	7	5% + 7% = 12% divided by 2 = 6%	6
T2	4	6	4% + 6% = 10% divided by 2 = 5%	5
T3	6	8	6% + 8% = 14% divided by 2 = 7%	7
T4	7	9	7% + 9% = 16% divided by 2 = 8%	8
T5	9	9	9% + 9% = 18% divided by 2 = 9%	9

The monthly average NBBO quoting percentage for DMM Unit 1 for each security is then calculated by summing the security's average Daily NBBO Quoting Percentages for all the Trading Days of the calendar month and then dividing the resulting total by the number of Trading Days in the calendar month (in this instance 5).

Average daily NBBO					Calculation monthly average NBBO for DMM Unit 1	Monthly average NBBO
T1	T2	T3	T4	T5		
Security A						
5%	4%	4%	7%	5%	5% + 4% + 4% + 7% + 5% = 25% divided by 5 = 5%	5%
Security B						
6%	5%	7%	8%	9%	6% + 5% + 7% + 8% + 9% = 35% divided by 5 = 7%	7%

The Aggregate Monthly Average NBBO Quoting Percentage for DMM Unit 1 is determined by summing the Monthly Average NBBO for each security and then dividing such sum by the total number of securities.

Aggregate Monthly Average for Specialist Unit 1

Monthly Average NBBO Security A + Monthly Average NBBO Security B divided by 2

5% + 7% = 12% divided by 2 = 6% Aggregate Monthly Average

The Exchange reviews each DMM unit's trading, as illustrated in the example above, on a monthly basis to determine whether the DMM unit has satisfied its quoting requirement.[7] In the example above, assuming that Securities A and B were Less Active Securities, then the DMM Unit 1 would not have met that component of its quoting obligation for the month because the 6% aggregate monthly average is 4% less than the required 10% monthly average time at the NBBO for its Less Active Securities. If however, Securities A and B were More Active Securities, then DMM Unit 1 would have met that component of its quoting obligation for the month because the 6% aggregate monthly average is 1% higher than the 5% monthly average time at the NBBO for More Active Securities.

Proposed Amendment to NYSE Rules 103B and 104

The Exchange proposes to increase DMM units' quoting requirement for both Less Active and More Active securities in both NYSE Rules 103B and 104. For Less Active securities the Exchange seeks to amend NYSE Rule 103B Section II(D) and NYSE Rule 104(a)(1)(A) to increase the current requirement that DMM units be 10% of the time at the NBBO to 15%. For More Active securities, the Exchange proposes to amend NYSE Rule 103B Section II(E) and NYSE Rule 104(a)(1)(A) to increase the current 5% of the time at the NBBO to 10%. Time at the NBBO will continue to be calculated on a month-by-month basis as the average of the percentage of time DMM units have a bid or offer at the NBBO.

As proposed, assuming again that DMM Unit 1 has two assigned securities, A and B and that there were

[7] *See* NYSE Rule 103B, Section II(J)(4).

5 trading days in the selected calendar month, then DMM Unit 1 must increase its quoting such that for Less Active Securities, it is 10% of the time at the NBBO and for More Active Securities it is 15% of time at the NBBO as illustrated in the example below.

Trading days	NBB (percent)	NBO (percent)	Calculation average daily NBBO for DMM Unit 1	Average daily NBBO (percent)
Security A				
T1	8	12	8% + 12% = 20% divided by 2 = 10%	10
T2	6	10	6% + 10% = 16% divided by 2 = 8%	8
T3	8	8	8% + 8% =16% divided by 2 = 8%	8
T4	12	16	12% + 16% = 28% divided by 2 = 14%	14
T5	10	10	10% + 10% = 20% divided by 2 = 10%	10
Security B				
T1	10	14	10% + 14% = 24% divided by 2 = 12%	12
T2	8	12	8% + 12% = 20% divided by 2 = 10%	10
T3	12	16	12% + 16% = 28% divided by 2 = 14%	14
T4	14	18	14% + 18% = 32% divided by 2 = 16%	16
T5	18	18	18% + 18% = 36% divided by 2 = 18%	18

The monthly average NBBO quoting percentage for DMM Unit 1 for each security is then calculated by summing the security's average Daily NBBO Quoting Percentages for all the Trading Days of the calendar month and then dividing the resulting total by the number of Trading Days in the calendar month (in this instance 5).

Average daily NBBO					Calculation monthly average NBBO for DMM Unit 1	Monthly average NBBO
T1	T2	T3	T4	T5		
Security A						
10%	8%	8%	14%	10%	10% + 8% + 8% + 14% + 10% = 50% divided by 5 = 10%.	10%
Security B						
12%	10%	14%	16%	18%	12% + 10% + 14% + 16% + 18% = 70% divided by 5 = 14%.	14%

The Aggregate Monthly Average NBBO Quoting Percentage for DMM Unit 1 is determined by summing the Monthly Average NBBO for each security and then dividing such sum by the total number of securities.

Aggregate Monthly Average for Specialist Unit 1

Monthly Average NBBO Security A + Monthly Average NBBO Security B divided by 2

10% + 14% = 24% divided by 2 = 12% Aggregate Monthly Average

In the example above, assuming Securities A and B were Less Active Securities, then DMM Unit 1 would not have met that component of the proposed quoting obligation for the month because the 12% aggregate monthly average is 3% less than the required 15% monthly average time at the NBBO for its Less Active Securities. If, however, Securities A and B were More Active Securities, then the DMM Unit 1 would have met that component of the proposed quoting obligation for that month because the 12% aggregate monthly average is 2% higher than the required 10% monthly average time at the NBBO for More Active Securities.

The Exchange will continue to review each DMM unit's trading on a monthly basis to determine whether the DMM unit has satisfied its quoting requirement for both Less Active and More Active Securities. The Exchange's current review of DMM units' trading on a monthly basis suggests that the proposed increase would not place an undue burden on DMM units. All DMM units currently exceed their quoting requirements on a monthly basis. Based on past performance, the Exchange anticipates that the changes proposed herein combined with the above referenced rebate changes will establish a new baseline for quoting by DMM units that will incentivize the DMM units to provide additional liquidity above the new proposed minimum standards. Accordingly, the Exchange believes that the proposed quoting requirements increase is reasonable, since it is anticipated to improve market quality by increasing liquidity at the NBBO, without adversely impacting the DMM units' ability to meet their market making obligations.

Moreover, the Exchange believes that increasing the quoting requirements pursuant to both NYSE Rules 103B and 104 is consistent with the Exchange's commitment to providing its customers with a trading venue that has deep liquidity at the NBBO and transparency, the hallmark of a fair and efficient market.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') [8] for these proposed rule changes is the requirement under Section 6(b)(5) [9] that an Exchange have rules that are

[8] 15 U.S.C. 78a.

[9] 15 U.S.C. 78f(b)(5).

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 proposed rule change supports these principles in that it serves to increase the liquidity available at the NBBO. The Exchange believes that increased liquidity at the NBBO will lead to enhanced market quality which ultimately serves to protect investors and the public interest.

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 [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [13] 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 so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay [14] is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to immediately apply the new enhanced quoting requirements.

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*. Please include File Number SR–NYSE–2009–91 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–NYSE–2009–91. 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 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–NYSE–2009–91 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21586 Filed 9–4–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60606; File No. SR–Phlx–2009–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to a Retroactive Waiver of the Cancellation Fee

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 retroactively waive the Cancellation Fee for the month of July 2009 and issue a rebate to member organizations for Cancellation Fees that were assessed in July 2009.

The text of the proposed rule change is available on the Exchange's Website at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/*

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] *Id.*

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.