

Act,<sup>11</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change provides transparency and finality for participants and creates consistent results across U.S. equities exchanges with respect to clearly erroneous executions. This proposed change further promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on 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>

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 implement the new rule on October 5, 2009, the same date as the other equities exchanges. The Commission believes

that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to begin applying the new rule on the same date as the other equities exchanges.<sup>16</sup> Application of the new rule on this date should help foster transparency and consistency among those exchanges that adopt clearly erroneous execution rules substantially similar to those previously approved by the Commission.<sup>17</sup> For these reasons, the Commission designates that the proposed rule change become operative on October 5, 2009.

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-BATS-2009-030 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-BATS-2009-030. 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-BATS-2009-030 and should be submitted on or before October 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-24247 Filed 10-7-09; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60782; File No. SR-NYSEAmex-2009-69]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 128 Governing Clearly Erroneous Executions for NYSE Amex Equities**

October 2, 2009.

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 2, 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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<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, 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).

<sup>17</sup> See Securities Exchange Act Release No. 60706 (September 22, 2009) 74 FR 49416 (September 28, 2009) (NYSEArca-2009-36).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

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 NYSE Amex Equities Rule 128 (Clearly Erroneous Executions for NYSE Amex Equities) governing clearly erroneous executions for NYSE Amex equities. 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**

The Exchange proposes to amend Rule 128 in order to improve the Exchange's policies and procedures regarding clearly erroneous executions that occur on the NYSE Amex equities and on other national market centers. The proposed changes are part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions. This effort seeks to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. The proposed changes are more fully discussed below.

##### **Definition**

The Exchange will maintain the meaning of the definition of a clearly erroneous execution, but proposes to add clarifying language with respect to add clarifying language with respect to cancelled trades. The proposed change identifies that when a clearly erroneous

execution occurs and both parties agree to cancel the execution and when a trade is determined by the Exchange to be clearly erroneous such executions will be removed "from the Consolidated Tape."<sup>4</sup> A trade will be removed from the Consolidated Tape only when the determination is deemed final and any applicable appeals have been exhausted.

##### **Member or Member Organization Initiated Review Requests**

The Exchange proposes to amend Rule 128 to update the procedures for requesting a review of a clearly erroneous execution. First, and throughout Rule 128, the term "Officer" will be defined as an Officer of the Exchange or such other senior level employee designee. Next, the proposed rule will require that requests for review be made by electronic mail ("e-mail") or other electronic means specified from time to time by the Exchange, except for market participants who trade on the Floor of the Exchange, who will continue to be permitted to make such requests for review in person on the Floor of the Exchange. Requiring requests for review to be made electronically, except those requests made in person on the Floor of the Exchange, creates a standard format that can easily be logged and tracked. The Exchange will continue to publish the e-mail address and other electronic means to be used for all clearly erroneous filings in a circular distributed to members and member organizations.

The Exchange further proposes that requests for review must be received by the Exchange within thirty (30) minutes of the execution time for orders initially routed to and executed on the Exchange. The Exchange proposes that members and member organizations submit certain essential identifying information with the request including the time of the execution(s), security symbol(s), number of shares, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. The current rule requires requests for review to be received within fifteen (15) minutes of the execution and does not specify what information is required. The Exchange believes that thirty (30) minutes is an appropriate time frame that offers the requesting party sufficient time to gather and submit all required information.

The proposed rule also requires the Exchange to notify the counterparty to a trade upon receipt of a timely filed

request for review that satisfies the Numerical Guidelines set forth within the rule. This proposed language eliminates the requirement that counterparties be notified of every request for a ruling and instead requires notice only when a request is filed in a timely manner and satisfies the Numerical Guidelines. This change alleviates the burden on the Exchange of notifying the counterparty when a request for review does not merit a ruling.

The Exchange proposes to amend Rule 128 to allow an Officer to request additional information from each party to an execution under review. Parties to an execution under review will have thirty (30) minutes from the time of the request to provide additional supporting information.

##### **Routed Executions**

The Exchange proposes to give other market centers an additional thirty (30) minutes from the receipt of their participant's timely filing to request a ruling, but no longer than sixty (60) minutes from the time of the execution under review. This provision accounts for those executions initially directed to an away market center and subsequently routed by that away market center to the Exchange.

For example, assume an order is initially routed by a participant to Market Center A and subsequently routed to the NYSE Amex where the order is executed at a price outside of the Numerical Guidelines. This provision generally requires Market Center A to file with the Exchange within thirty (30) minutes from the time it receives its participant's timely filed request for review. This provision caps the filing deadline for an away market center at sixty (60) minutes from the time of the execution under review.

##### **Threshold Factors**

Currently, the Exchange's Clearly Erroneous Execution rule does not identify specific numeric guidelines for determining what constitutes a clearly erroneous execution. The current rule simply provides that "an Officer of the Exchange \* \* \* shall review the transaction \* \* \* and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest."<sup>5</sup> In practice, the Exchange currently incorporates the internal guidelines in the Exchange's Clearly Erroneous Execution policy. The Exchange proposes adding certain numerical

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> For purposes of this Rule, "removed from the Consolidate Tape" means that a subsequent message will be sent to the Consolidated Tape indicating that a previously executed trade has been cancelled.

<sup>5</sup> NYSE Amex Equities Rule 128(b).

thresholds to the Rule that explicitly state what constitutes, among other factors, a possible clearly erroneous execution.

#### Numerical Guidelines

The proposed Numerical Guidelines state that an execution executed during the regular trading hours and after hours of the Exchange may be found to be clearly erroneous only if the price of the execution to buy is greater, or less in the case of a sale, than the Reference Price by an amount that equals or exceeds the numerical guidelines for a particular execution category. The execution time of the transaction under review determines whether the Numerical

Guideline applied is for the regular trading hours or the after hours of the Exchange. The Reference Price shall be equal to the Consolidated Last Sale immediately prior to the execution under review, unless unusual circumstances are present. The proposed guidelines for sales greater than \$0.00 up to and including \$25.00 are 10% for the regular trading hours and 20% for the after hours of the Exchange. The proposed guidelines for sales greater than \$25.00 up to and including \$50.00 are 5% for the regular trading hours and 10% for the after hours of the Exchange. The proposed guidelines for sales greater than \$50.00 are 3% for the regular trading hours and

6% for the after hours of the Exchange. A filing involving five or more securities by the same member or member organization will be aggregated into a single filing called a "Multi-Stock Event." In the case of a Multi-Stock Event, the proposed guidelines are 10% per security for the regular trading hours and after hours of the Exchange. In the case of Leveraged ETF/ETN securities, the above guidelines are to be multiplied by the leverage multiplier of the security. Executions that do not meet or exceed the Numerical Guidelines will not be eligible for review under this section. The following chart summarizes the proposed Numerical Guidelines.

Reference price: Consolidated last sale	Regular trading hours of the exchange numerical guidelines (subject execution's % difference from the consolidated last sale)	After hours of the exchange numerical guidelines (subject execution's % difference from the consolidated last sale)
Greater than \$0.00 up to and including \$25.00	10% .....	20%.
Greater than \$25.00 up to and including \$50.00	5% .....	10%.
Greater than \$50.00 .....	3% .....	6%.
Multi-Stock Event—Filings involving five or more securities by the same member or member organization will be aggregated into a single filing.	10% .....	10%.
Leveraged ETF/ETN securities .....	Regular Trading Hours of the Exchange Numerical Guidelines multiplied by the leverage multiplier ( <i>i.e.</i> 2×).	After Hours of the Exchange Numerical Guidelines multiplied by the leverage multiplier ( <i>i.e.</i> 2×).

Establishing Numerical Guidelines within the Rule brings regulatory transparency and consistency in the application of the rules of the Exchange. These Numerical Guidelines represent the general consensus approach and were developed based on the collective experiences of a market-wide group. The Exchange believes that the thresholds established are fair and appropriate and apply evenly to all participants.

#### Unusual Circumstances

The Exchange further proposes that in Unusual Circumstances the Exchange may, in its discretion and with a view toward maintaining a fair and orderly market and the protection of investors and the public interest, use a Reference Price other than the consolidated last sale. Unusual Circumstances may include periods of extreme market volatility, sustained illiquidity, or widespread system issues. Other Reference Prices that the Exchange may use would include the consolidated inside price, the consolidated opening price, the consolidated prior close, or the consolidated last sale prior to a series of executions.

The following example explains the use of a Reference Price equal to the consolidated last sale prior to a series of executions.

ABC has a consolidated last sale of \$10.00. During the regular trading hours of the Exchange Customer A enters a market order to buy 10,000 shares, although it had intended a market order for 1,000 shares. The size of the order is such that the order sweeps the NYSE Amex Display Book, which reflects 1,000 shares of liquidity offered at each of following prices. Executions occur, moving through the depth of Book, as follows:

Trade #1—1,000 shares @ \$10.00 (9,000 remaining)  
 Trade #2—1,000 shares @ \$10.20 (8,000 remaining)  
 Trade #3—1,000 shares @ \$10.40 (7,000 remaining)  
 Trade #4—1,000 shares @ \$10.60 (6,000 remaining)  
 Trade #5—1,000 shares @ \$10.80 (5,000 remaining)  
 Trade #6—1,000 shares @ \$11.00 (4,000 remaining)  
 Trade #7—1,000 shares @ \$11.20 (3,000 remaining)  
 Trade #8—1,000 shares @ \$11.40 (2,000 remaining)  
 Trade #9—1,000 shares @ \$11.60 (1,000 remaining)

Trade #10—1,000 shares @ \$11.80 (complete)

Thus, to be eligible for review, an execution must be at a price that is at least 10% higher than the consolidated last sale prior to the series of executions. Customer A could request a ruling for trades #6 through #10, priced at \$11.00 and above, but trades #1 through #5 would not be eligible for review.

Under the proposed rule the Exchange may also use a higher Numerical Guideline if, after market participants have been alerted to erroneous activity, the price of the security returns toward its prior trading range but continues to trade at a price beyond the Numerical Guidelines.

#### Joint Market Rulings

In the interest of achieving consistency across markets, the Exchange proposes that, in events that involve other markets, the Exchange would have the ability to use a different Reference Price and/or Numerical Guideline. In these instances the Reference Price would be determined based on a consensus among the Exchanges where the executions occurred. Furthermore, when a ruling is made across markets, the Exchange may determine that the ruling is not eligible

for appeal because immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. While the Exchange will coordinate its review of a clearly erroneous execution with other affected market centers with the goal of rendering consistent results across the market, the Exchange is not bound by joint market rulings when such rulings would violate other NYSE Amex equities rules or are inconsistent with internal policies of the Exchange.

#### Additional Factors

The proposed amendments to Rule 128 also enumerate some additional factors that an Officer may consider when determining whether an execution is clearly erroneous. These factors include, but are not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Opening and Late Session executions, validity of the consolidated tape's trades and quotes, consideration of primary market indications, Liquidity Replenishment Points ("LRPs"), Depth Guidelines and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market, the protection of investors and the public interest.

#### Numerical Guidelines Applicable to Volatile Market Opens

The Exchange proposes to give the Exchange the ability to expand the Numerical Guidelines applicable to executions occurring between 9:30 a.m. and 10 a.m. based on the disseminated value of the S&P 500 Futures at 9:15 a.m. When the S&P Futures are up or down 3% up to but not including 5% at 9:15 a.m., the Numerical Guidelines are doubled. When the S&P Futures are up or down 5% or greater at 9:15 a.m., the Numerical Guidelines are tripled. The Exchange believes that the S&P 500 futures contract is an appropriate and reliable barometer of market activity prior to the market opening due to its broad based market coverage and deep liquidity. Using the S&P 500 Futures disseminated value at 9:15 a.m. as the barometer of market activity, the Exchange is providing a transparent

means of offering adjusted guidelines in times of volatile market activity.

#### Outlier Executions

The proposed amendments to Rule 128 provide that the Officer may consider requests for review received after thirty (30) minutes, but not longer than sixty (60) minutes after the execution in question in the case of an Outlier Execution. An Outlier Execution is an execution where, (1) the execution price of the security is greater than three times the current Numerical Guidelines, or (2) the execution price of the security breaches the 52-week high or low, in which case the Exchange may consider Additional Factors to determine if the execution qualifies for review or if the Exchange shall decline to act.

#### Review Procedures

##### Initial Determination

Under the current rule, if the Officer determines that the execution is not clearly erroneous, the Officer shall not take any action in connection with the completed execution. In the event that the Officer determines that the execution in dispute is clearly erroneous, the Officer shall either declare the execution null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. In the proposed rule, in the event the Officer determines there is a clearly erroneous execution, the Officer may declare the execution null and void or, if such transaction occurred only on the Exchange and no contemporaneous transaction(s) occurred on another market center(s) at a price that meets or exceeds the applicable Numerical Guidelines and if the Exchange has no actual knowledge of a clearly erroneous execution review of a contemporaneous transaction of the subject security on another market center, modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred.

For purposes of the proposed Rule, a transaction will be considered to have been contemporaneous if it was reported to the Consolidated Tape within a reasonable time frame of the transaction under review. Such time frame shall be determined by the Officer at the time of the clearly erroneous determination based on the liquidity of

the relevant security, but shall in no case be less than one (1) second before or after the time of execution on the Exchange. In assessing whether there was a contemporaneous transaction on another market center, the Exchange will consider the existence of any clearly erroneous review of a transaction in the subject security on another market center of which it has actual knowledge, which may be indicative that the transaction under review on such other market center was contemporaneous with the transaction under review on the Exchange. However, the Exchange will not be required to initiate communication with other market centers to determine the existence of any such review(s).

For purposes of the proposed rule, whenever the rule provides authority for the Officer to modify or adjust a clearly erroneous execution, in addition to the Officer's ability to declare a clearly erroneous execution null and void, the Officer's authority to modify or adjust the clearly erroneous execution is subject to the conditions that there were no contemporaneous transactions on other markets and that the Exchange had no actual knowledge of a clearly erroneous execution review of a contemporaneous transaction of the subject security on another market center, as described above.

The Exchange also proposes adding language stating that a determination shall be made generally within thirty (30) minutes of receipt of the complaint, but in no case later than the start of the regular trading hours of the Exchange on the following trading day. Rulings made outside of thirty (30) minutes by an Officer will not fail for lack of timeliness. The guideline simply provides participants an appropriate expectation that a ruling will generally be made within thirty (30) minutes and in no case later than the start of the regular trading hours of the Exchange on the following trading day.

#### Appeals

The Exchange proposes to amend the appeals procedure for trades that are deemed to be clearly erroneous. First, the Exchange will no longer accept appeal requests via facsimile. Similar to the proposed language for an initial request for a ruling, all appeal requests must be made via e-mail, except for those requests for appeals from Exchange members who trade on the Floor of the Exchange. Members who trade on the Floor of the Exchange may also submit requests for appeals in person from the Floor.

The current rule provides that the Exchange shall review and render a

decision upon an appeal within a timeframe provided by the Exchange. The proposed rule offers more definite guidelines to ensure the expedient resolution of appeals. It requires the Exchange to review appeals as soon as practicable, but generally on the same day as the executions under review. Appeal requests received between 3 ET and the close of trading should be made as soon as practicable, but in no case later than the trading day following the date of the execution under review. Appeal decisions will not fail for lack of timeliness. This revised provision provides participants a reasonable expectation of when a ruling on appeal will generally be made.

Further, the proposed rule declares that any determination made by an Officer or by the CEE Panel shall be rendered without prejudice as to the right of the parties to the execution to submit their dispute to arbitration. This provision simply clarifies the fact that nothing in the proposed rule limits or impedes the rights of the parties to arbitrate their dispute.

#### System Disruption and Malfunctions

Currently, within the System Disruptions and Malfunctions section of the Rule, after an Officer determines that a trade was clearly erroneous he may declare the execution null and void or modify the trade to attempt to achieve an equitable rectification of the error. Under the proposed rule, when the Office determines that an execution is clearly erroneous, the officer shall either declare the transaction null and void or, if such transaction occurred only on the Exchange and no contemporaneous transaction(s) occurred on another market center(s) at a price that meets or exceeds the applicable Numerical Guidelines and if the Exchange has no actual knowledge of a clearly erroneous execution review of a contemporaneous transaction of the subject security on another market center, modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. This rule change supports the goal to provide market-wide consistency to the resolution of clearly erroneous executions that occur on multiple markets.

The proposed rule also provides that, in the event of a disruption or a malfunction, the Officer will rely on the proposed Numerical Guidelines in determining whether an execution is clearly erroneous. However, the Officer

may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors, and protect the public interest. The proposed rule also adds that actions taken under these circumstances must be taken within thirty (30) minutes of detection of the erroneous execution in the ordinary case, and by no later than the start of the regular trading hours of the Exchange on the day following the date of the execution under review when extraordinary circumstances exist.

#### Officers Acting on Their Own Motion

The Exchange proposes to add a section to the Rule that will grant an Officer the ability to act on his or her own motion to review potentially erroneous executions. Under the current rule, an Officer has the ability to act upon his or her own motion only in the event of a System Disruption or Malfunction. The proposed rule would allow an Officer to review executions and rely on the Numerical Guidelines under any circumstance.

Under the proposed rule, an Officer acting on its own motion, may review potentially erroneous executions that occur on the Exchange and shall either declare the transaction null and void or, if such transaction occurred only on the Exchange and no contemporaneous transaction(s) occurred on another market center(s) at a price that meets or exceeds the applicable Numerical Guidelines and if the Exchange has no actual knowledge of a clearly erroneous execution review of a contemporaneous transaction of the subject security on another market center, modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. This rule change supports the goal to provide market-wide consistency to the resolution of clearly erroneous executions that occur on multiple markets.

In extraordinary circumstances an Officer may apply a lower Numerical Guideline to review a trade if it is determined that such action is necessary to maintain a fair and orderly market or protect investors and the public interest. In some instances the Exchange may detect a single execution that breaches the Numerical Guidelines but is not the subject of a ruling request. This provision gives the Exchange the ability to review such executions. Additionally, in practice clearly erroneous executions may involve multiple parties and multiple executions. The Exchange proposes this provision to permit an

Officer to rule on a group of executions related to the same occurrence or event as a whole, with or without a formal request for a ruling from an affected party.

#### Trade Nullification and Price Adjustments for UTP Securities That Are the Subject of Initial Public Offerings

The proposed Rule also modifies the Exchange's policy on trade nullification and UTP securities that are subject to initial public offerings. Under the current Rule, a clearly erroneous execution may be deemed to have occurred in the opening execution of the subject security if the execution price of the opening execution on the Exchange is the lesser of \$1.00 or 10% away from the opening price on the listing exchange or association. Under the proposed rule, in such circumstances, the Officer shall either decline to take action in connection with the completed transaction, declare the transaction null and void or, if such transaction occurred only on the Exchange and no contemporaneous transaction(s) occurred on another market center(s) at a price that meets or exceeds the applicable Numerical Guidelines and if the Exchange has no actual knowledge of a clearly erroneous execution review of a contemporaneous transaction of the subject security on another market center, adjust the transaction price to the opening price on the listing exchange or association.

Pursuant to the proposed rule, clearly erroneous executions of subsequent executions of the subject security will be reviewed in the same manner as the procedure set forth in (e)(1). Absent extraordinary circumstances, action of the Officer must be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous execution. In extraordinary circumstances, the reviewing Officer may take action by no later than the start of the regular trading hours of the Exchange on the day following the date of the execution under review.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change provides transparency and finality for participants and creates consistent results across U.S. equities exchanges with respect to clearly erroneous executions. This proposed change further promotes the maintenance of a fair and orderly market, the protection of investors and the protection of 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<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>11</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 implement the new rule on October 5, 2009, the same date as the other equities

exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to begin applying the new rule on the same date as the other equities exchanges.<sup>12</sup> Application of the new rule on this date should help foster transparency and consistency among those exchanges that adopt clearly erroneous execution rules substantially similar to those previously approved by the Commission.<sup>13</sup> For these reasons, the Commission designates that the proposed rule change become operative on October 5, 2009.

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-2009-69 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-2009-69. 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-NYSEAmex-2009-69 and should be submitted on or before October 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

[FR Doc. E9-24246 Filed 10-7-09; 8:45 am]

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60781; File No. SR-NYSE-2009-103]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Interim Rule 128 Governing Clearly Erroneous Executions for NYSE Equities**

October 2, 2009.

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 2, 2009, the New York Stock Exchange LLC ("Exchange" or "NYSE") 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 has designated the proposed rule change as constituting a rule change under Rule

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>12</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).

<sup>13</sup> See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (NYSEArca-2009-36).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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