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–CHX–2009–15 and should be submitted on or before December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28617 Filed 11–30–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61048; File No. SR–NYSE–2009–112]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Rescinding Information Memoranda 04–27 and 07–66 and Issuing a New Information Memo Concerning the Exchange's Gap Quote Policy

November 23, 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 November 9, 2009, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("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 rescind NYSE Information Memoranda ("Information Memo") 04–27 and 07–66 and issue a new Information Memo that provides updated parameters for, and guidance on the application of, the Exchange's Gap Quote Policy (the "Policy"). 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 purpose of the proposed rule changes is to rescind Information Memos 04–27 and 07–66 and issue a new Information Memo that provides updated parameters for, and guidance on the application of, the Policy.[4]

The principal change to the Policy is a reduction in the minimum size (from at least 10,000 shares to at least 5,000) and value (from $200,000 or more to $100,000 or more) requirements for publishing a gap quote. In addition, the Exchange proposes to clarify certain aspects of the Policy related to setting the price of the gap quote. Finally, the Exchange proposes adding language clarifying or reminding members of certain aspects of the Policy and other technical or non-substantive changes.

In order to ensure an orderly transition to usage of the new parameters, the Exchange proposes that these changes be made operative within ten business days after the approval of this filing.

Background

The purpose of the Policy, described in greater detail below, is to provide public notice of order imbalances for securities, facilitate price discovery, and minimize short-term price dislocation, by allowing for the entry of offsetting orders or the cancellation of orders on the side of an imbalance.

An order imbalance may occur when the Exchange receives a sudden influx of orders for a particular security on the same side of the market within a short time interval, or when one or more large-size orders for a security are entered, and there is insufficient offsetting interest.

When an imbalance in a security exists, the Policy provides that the Designated Market Maker ("DMM") for the security should widen the spread between the bid and offer—a process known as "gapping the quote."[5] The use of a gap quote signals the existence of the imbalance to the market in order to attract contra-side liquidity and mitigate volatility.

Gap quotes occur more frequently in securities that are illiquid or thinly traded than in securities that are very liquid or heavily traded.[6]

History

In 2004, the Exchange updated its policies and procedures for gapping the quote, which had previously been implemented in 1994.[7] The Exchange announced the updated policy through a new Information Memo 04–27 (June 9, 2004), which it also filed with the Commission.[8] In 2007, the Exchange changed the minimum size and value requirements for use of gap quotes to at least 10,000 shares or $200,000, and updated the policies and procedures to reflect technical changes to the market and Exchange systems.[9]

The Current Policy

Under the current Policy, a gapped quotation consists of, on one side, a bid or offer for the amount representing the amount of the imbalance in the market priced at the price of the last sale, and, on the side of the market opposite the imbalance, an offer or bid for 100 shares, priced at the price at which the DMM believes the stock would trade if

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[14] 17 CFR 200.30–3(a)(12).

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

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

[3] 17 CFR 240.19b–4.

[4] The Exchange's corporate affiliate, NYSE Amex LLC ("NYSE Amex"), has submitted an identical companion filing updating its Gap Quote Policy governing equities trading. *See* SR–NYSE–Amex–2009–82. The proposed new Information Memo will be jointly issued by both the Exchange and NYSE Amex.

[5] The current version of the Policy contained in Information Memo 07–66 refers to "specialists" and "specialist member organizations." In accordance with the Exchange's adoption of its New Market Model ("NMM"), the Exchange refers herein to "DMMs" and "DMM Units." *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (approving the NMM).

[6] Currently, it is not cost-effective for the Exchange to implement stock-specific gap quote procedures.

[7] *See* Information Memo 94–32 (August 9, 1994).

[8] *See* Securities Exchange Act Release No. 50237 (August 24, 2004), 69 FR 53123 (August 31, 2004) (SR–NYSE–2004–37) (concerning Information Memo 04–27).

[9] *See* Information Memo 07–66 (July 5, 2007). This Information Memo was not filed with the Commission.

no contra side interest developed or no cancellations occurred as a result of the gapped quotation. The resulting quote is shown as either ''100 x size'' or ''size x 100,'' depending on the side of the imbalance.

To qualify for a gapped quotation, the size of the imbalance must be 10,000 shares or more, or have a market value of $200,000 or more. Depending on the trading characteristics of an individual stock, including its average daily trading volume and its average volatility, a gapped quotation may not be appropriate every time the stock crosses these thresholds, but rather may only become appropriate when the imbalance amount or value reaches some higher level that is more consistent with the stock's trading characteristics.

When a DMM has determined that a gapped quotation is appropriate, the DMM must follow these procedures:

- Prior to publishing the gapped quotation, the DMM must honor the displayed quotation on the side opposite the imbalance by executing a portion of the imbalance amount against the displayed amount at the bid (for sell imbalances) or offer (for buy imbalances). The DMM should complete all related Display Book reports and check the status of the order imbalance. Note that the requirement to honor the displayed bid or offer does not apply if the exposed quote results from a Liquidity Replenishment Point (''LRP'') being reached through trading and the quote has a quote condition of non-firm.
- Gap quotations are typically used after a security has reached a high or low LRP. In such instances, the trade that triggered the LRP will have hit the firm bid or taken the firm offer on the Display Book prior to the posting of a gap quote and the Display Book will issue the related execution reports.
- The DMM's pricing determination for the gapped quotation should take account of executable orders, e-Quotes and verbal interest in the Crowd at prices better than the price of the 100-share bid or offer. If the imbalance interest is limited as to price, the price on the 100-share side cannot exceed that limit price.
- The DMM must publish the gapped quotation, using the Gap Quote Template in the Display Book, as follows:
  - On the side of the imbalance, the bid or offer price, as appropriate, (which is generated by the Display Book) will be the price of the last sale. The DMM must input a size of at least 10,000 shares or a market value of at least $200,000 and record the badge number of the Floor broker representing the imbalance. If a number of brokers' interest makes up the imbalance, the badge number of the broker with the most significant interest should be used. If the imbalance is caused by an influx of system orders, the DMM must record ''1'' as the badge number.
  - On the side opposite the imbalance, the DMM must show the possible extent of price impact in the bid or offer price by bidding or offering for 100 shares (one round lot) at the price at which the DMM believes the stock would trade if no contra side interest developed or no cancellations occurred as a result of the gapped quotation.

Following publication, the DMM must immediately contact a senior-level Floor Official (*i.e.* Executive Floor Governor, Floor Governor, Executive Floor Official or Senior Floor Official). The required Floor Official Approval Form documenting the consultation must be completed within a reasonable period of time after the intraday imbalance has been resolved.

- Following the publication of the gapped quote, the DMM should, where feasible or necessary due to conditions in the security or in the market, attempt to contact known contra-side parties to solicit participation to offset the imbalance. Brokers are expected to monitor conditions in securities where have interest or potential interest and should not rely on the DMM to contact them to advise of intraday order imbalances.
- During the term of the gapped quotation, the DMM must continue to permit the entry and cancellation of orders in the Display Book and not implicitly freeze the Book.

The gapped quotation is required to remain in place for a reasonable amount of time to permit interested parties to respond to the order imbalance. What constitutes a ''reasonable time'' is determined by the unique circumstances of each gapped quotation situation, but as a general guideline, gapped quotations are in place for at least 30 seconds unless offsetting interest is received earlier and generally should not last more than two minutes. As soon as the DMM receives offsetting interest that permits a trade within the stock's normal trading characteristics, the DMM must trade out of the gap quote to return to a fast market.

Role of the Senior-level Floor Official

As noted above, DMMs must consult with a senior-level Floor Official in connection with a gapped quotation. The senior-level Floor Official is responsible for monitoring the gapped quotation. As a result of this consultation, the senior-level Floor Official may determine that a gapped quotation is no longer necessary because the DMM can execute the orders immediately without undue price dislocation, or may determine to maintain the gap quote but for no more than two minutes, or may determine to halt trading in the stock due to the size and extent of the imbalance. If the senior-level Floor Official determines that the stock should be halted, he or she must declare a non-regulatory order imbalance halt in trading to address the imbalance rather than continue the gapped quotation.

Display Book Support for Gapping the Quote

The Gap Quote Template in the Display Book facilitates the DMM's compliance with the Policy. When using the Gap Quote Template, the DMM or DMM trading assistant must enter the correct size or dollar value (*i.e.* 10,000 shares or more, or a value of $200,000 or more), as well as the badge number of the Floor broker who is most responsible for the imbalance if that information is known to the DMM. If the imbalance is the result of order flow through the System, the DMM or trading assistant must enter the number '1' in the badge number field. If the user fails to comply with either of those requirements, the Display Book prompts the user for the necessary information.

Prohibited Use of the Gap Quote Template

The Gap Quote Template is to be used only when the DMM is gapping the quote in conformity with the Policy. Use of the Gap Quote Template for other purposes, such as to make the market slow to clean up a cross trade, or to manage trading immediately following the Opening or in advance of the Closing trade, is inappropriate. Misuse of the Gap Quote Template may result in violations of the limit order display rule and/or the firm quote rule, and as such may subject the DMM and/or the DMM Unit to disciplinary action by the Exchange. In addition, DMM Units are required to have adequate policies and procedures in place to ensure appropriate use of the Gap Quote Template.

Proposed changes

1. Reduced minimum size and value requirements

As noted above, the principal change to the Policy proposed by the Exchange is reduction of the minimum size and value requirements.

The Exchange proposes to reduce the minimum size and value requirements for the use of a gap quote under the Policy to at least 5,000 shares or a market value of $100,000 or more. The Exchange believes that these lower thresholds better reflect current market conditions, which have changed significantly since the Exchange last issued guidance on the Policy in 2007. The Exchange believes that the current parameters are generally too high in light of current market conditions, where the average size of trades is smaller and average stock prices are lower. As a result the current parameters inhibit DMMs from using gap quotes to facilitate price discovery and minimize short-term price dislocation to the degree warranted by the market for particular securities. Based on an analysis of historical market conditions, the Exchange believes that lowering the gap quote size and value requirements will increase the use of gap quotes in line with current market conditions, providing greater transparency and efficiency and reducing volatility. The Exchange does not believe, however, that lowering these requirements will cause an increase in the use of gap quotes to such a degree that would negatively impact the quality of the Exchange market.

In addition, the Exchange proposes to add language clarifying that, notwithstanding meeting the minimum size and value requirements, an imbalance must also be anticipated to cause a significant price dislocation in the stock at issue in order to qualify under the Policy. The Exchange believes it is important to emphasize that whether a gap quote is appropriate depends on the characteristics of a security as much as on the minimum requirements.

2. Setting the price of the gap quote

In addition, the Exchange proposes to clarify certain aspects of the Policy related to setting the price of the gap quote.

Currently, DMMs are instructed to set the price of a gap quote ''at the price at which the DMM believes the stock would trade if no contra side interest developed or no cancellations occurred[.]'' The Exchange proposes to clarify this guidance to provide that the DMM should published the gap quote at the price where the DMM ''reasonably anticipates'' the stock would trade if no contra side interest developed or no cancellations occurred.

The Exchange also proposes to clarify that the Policy still requires a DMM to take into account, ''to the extent known,'' executable orders, e-Quotes and verbal interest in the Crowd (on the side of the market opposite the imbalance) at prices better than the price of the 100-share bid or offer when making his or her pricing determination. If the imbalance is known to be limited as to price, the DMM should not set the gap quote higher than that limit price.

The Exchange also proposes adding a provision reminding the DMMs that, at the time they publish a gap quote, they should set the price of the gap quote such that it would likely result in a trade of at least the minimum size of 5,000 shares or $100,000 in value.

3. Other technical or non-substantive changes

The Exchange also proposes additional technical or non-substantive changes:

- The Exchange proposes to change the requirement that the DMM honor the ''displayed'' quote on the opposite side of the imbalance before publishing the gap quote to a requirement that the DMM honor the ''protected'' quote, consistent with the terminology of Regulation NMS. The Exchange believes that, given its new minimum and non-displayed liquidity options, use of the word ''displayed'' could be misleading.[10]
- The Exchange proposes to update the Policy to reflect that Display Book now automatically completes certain reports that were, in the past, manually completed by DMMs.
- The Exchange proposes to add language reminding members and member organizations that only the badge number of the relevant Floor broker or brokers—and not Floor Officials—should be entered into the Gap Quote Template in accordance with the Policy.
- The Exchange proposes to add Staff Governors to the list of qualifying senior-level Floor Officials who may oversee a gap quote publication.[11] In addition, to provide the DMM with greater flexibility, the Exchange proposes to change the guidance for contacting senior-level Floor Officials from ''immediately'' following publication of the gap quote to ''as soon as possible.''
- The Exchange proposes to add language clarifying that, while the DMM should attempt to obtain price discovery using appropriate Display Book tools, he or she should not leave any Display Book templates open for an extended duration of time so as not to implicitly freeze the Book and shut out interest. DMMs must balance the need for accurate price discovery with that of trying to attract contra side interest and trade out of the gap quote as soon as possible. The DMM should also, in consultation with a senior-level Floor Official, consider updating the initial gap quote if necessary to attract sufficient contra side interest.
- The Exchange proposes to add language reminding members and member organizations that the gap quote procedures may not be initiated after trading has closed. Instead, where there is a significant imbalance in a security at the close of trading, members and member organizations should use the other procedures provided under Exchange rules when attempting to mitigate the imbalance. *See, e.g.,* NYSE Rule 123C(8).
- The Exchange proposes to add a summary of the options available to a DMM when publishing a gap quote to include: (1) Trading out of the gap quote by executing contra side interest against the imbalance (allowing for any cancellations); (2) updating the gap quote in consultation with a senior-level Floor Official; or (3) in consultation with a senior-level Floor Official, requesting an order imbalance trading halt in the security at issue.
- In view of the current market conditions and the lower minimum size and value requirements, the Exchange proposes to amend the original example it included in the Policy (in Information Memo 07–66) to reflect the changed parameters and to add a second example to clarify how the Policy works when an LRP is reached as opposed to when it is implemented following an influx of orders from the Floor.
- The Exchange proposes to substitute new screenshots of the Gap

[10] A Minimum Display Order requires a portion of the shares in the order to be displayed when the interest is at or becomes the Exchange Best Bid or Offer (''Exchange BBO'') and, upon execution, this amount is replenished at that price point until the entire order is either filled or canceled. Minimum Display Orders are eligible to participate in both electronic and manual transactions, such as gap quote situations.

A Non-Displayed Reserve Order does not require the display of any portion of the order. Non-Displayed Reserve Orders entered by Off-Floor participants are not included in the published quote and are not eligible for participation in manual transactions. Non-Displayed Orders entered by Floor brokers, however, are eligible to participate in manual transactions and will be displayed to the DMM in such circumstances unless the Floor broker designates the order as ''Do Not Display.'' DMM Non-Displayed Reserve interest is eligible to participate in manual transactions since there is no anonymity to protect in that instance.

For more information concerning these order types, *see* Information Memo 08–57 (November 14, 2008) (describing key features of the New Market Model adopted by the Exchange).

[11] ''Staff Governors'' are designated pursuant to NYSE Rule 46(b)(v), which permits the Exchange Chairman to ''designate such number of qualified NYSE Euronext employees'' as needed, who shall be permitted to take any action assigned to or required of a Floor Governor as prescribed under Exchange rules.

Quote Template reflecting the changed parameters.

- Finally, because DMMs no longer act as agent for orders on the Display Book, the Exchange proposes to clarify that a failure to follow the Policy by a DMM would not lead to violations the Order Display rule and/or the Firm Quote rule under Regulation NMS, but could rather result in a failure to maintain a fair and orderly market or a failure to observe high standards of commercial honor and just and equitable principles of trade under NYSE Rules 104(a), 104(f) and 2010.[12]

The Exchange also proposes other non-substantive wording changes.

The Exchange represents that it has reasonable policies and procedures to surveil the use of gap quotes and to detect the potential misuse of gap quotes in violation of Exchange rules and federal securities laws.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Act,[13] in that they 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 proposed rule changes also support the principles of Section 11A(a)(1)[14] of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed updates to its Gap Quote Policy will better reflect current market conditions and improve transparency in situations where gapped quotations are used. The Exchange believes these changes will result in greater efficiency and less volatility, and a better functioning market for all participants.

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

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.* Please include File Number SR–NYSE–2009–112 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–2009–112. 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 the 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 available publicly. All submissions should refer to File Number SR–NYSE–2009–112 and should be submitted on or before December 22, 2009.

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

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28615 Filed 11–30–09; 8:45 am]

BILLING CODE 8011–01–P

[12] The role of DMMs and their obligations on the Exchange are described in Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Proposed Amended and New Routine Uses

AGENCY: Social Security Administration (SSA).

ACTION: Proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to amend one routine use and add a new routine use applicable to our system of records entitled, *Master Files of Social Security Number (SSN) Holders and SSN Applications,* 60–0058 (the Enumeration System). The two routine uses to the Enumeration System will:

(1) Allow us to verify SSNs and disclose the results to State agencies that issue non-driver's license identification documents to the public; and

(2) Allow us to verify the SSN, disclose the results, and provide citizenship status information in our records to State agencies that administer Medicaid and the State Children's Health Insurance Program (CHIP) to assist them in determining new applicants' entitlement to benefits provided by the CHIP.

We discuss the routine uses in greater detail in the Supplementary Information