

performance; and (e) implement procedures reasonably designed to ensure compliance by the Sub-Advisers with the Fund's investment objective, policies and restrictions.

8. No director, trustee or officer of the Trust or a Fund, or director or officer of the Manager, will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control), any interest in a Sub-Adviser except for: (a) Ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

10. Independent legal counsel, as defined in rule 0-1(a)(6) under the Act, has been and will continue to be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

11. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

12. The Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

13. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the profitability of the Manager.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60671; File No. SR-NYSE-2009-71]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending NYSE Rule 1000 to Allow Exchange Systems to Access CCS Interest To Partially Fill an Incoming Limit Order

September 15, 2009.

#### I. Introduction

On July 20, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NYSE Rule 1000 to allow Exchange systems to access CCS interest to partially fill an incoming limit order. The proposed rule change was published for comment in the **Federal Register** on August 11, 2009.<sup>3</sup> The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description

##### Background

The NYSE offers Designated Market Makers ("DMMs") the ability to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with, and provide price improvement to, incoming orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS").<sup>4</sup> CCS provides the Display Book<sup>5</sup> with the amount of shares that the DMM is willing to trade at price points outside, at, and inside the Exchange BBO. CCS

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

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

<sup>3</sup> See Securities Exchange Act Release No. 60429 (August 4, 2009), 74 FR 40259 ("Notice").

<sup>4</sup> The provisions of NYSE Rule 1000 relating to CCS are in effect pursuant to a pilot that commenced in October 2008 and that is currently scheduled to end on October 1, 2009. The Commission understands that NYSE plans to request an extension of the pilot before it expires.

<sup>5</sup> The Display Book<sup>®</sup> system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

interest is separate and distinct from other DMM interest and serves as the interest of last resort.

When an order is entered for an amount of shares that exceeds the liquidity available at the Exchange BBO, Exchange systems review all the liquidity available on the Display Book, including CCS interest, to determine the final price point at which the order can be fully executed (the "completion price"). Exchange systems determine the completion price by calculating the unfilled volume of the incoming order (*i.e.*, the volume of the incoming order that exceeds the volume available to execute against it that is then present in the Exchange bid or offer) and reviewing the additional displayed and non-displayed interest available in the Display Book, which may be at more than one price point, including the CCS interest submitted by the DMM unit that is available at the completion price. Exchange systems also take into account protected bids or offers on markets other than the Exchange ("away interest") when determining the completion price.

Exchange systems then review the CCS to determine if the number of shares provided via the DMM's CCS at the completion price is less than the number of CCS shares provided at the next different price that has interest that is one minimum price variation ("MPV") (as that term is defined in Exchange Rule 62<sup>6</sup>) or more higher (in the case of an order to sell) or at the next different price that has interest that is one MPV or more lower (in the case of an order to buy) (hereinafter collectively referred to as "better price"). If the volume of CCS interest that would be accessed is greater at the completion price, or is the same at the completion price and the better price, Exchange systems access CCS interest at the completion price with CCS interest yielding to any other interest in Exchange systems at the completion price. If the number of shares that would be allocated to the CCS interest at the better price is greater than the number of shares that would be allocated to the DMM's CCS interest at the completion price, then Exchange systems will access the CCS liquidity available at the better price with CCS interest yielding to any other interest in Exchange systems (both displayed and undisplayed reserve interest) at the better price. Any remaining balance of the incoming order is executed at the completion price against displayable and non-displayable interest pursuant to

<sup>6</sup> See NYSE Rule 62, Supplementary Material .10.

NYSE Rule 72 ("Priority of Bids and Offers and Allocation of Executions").<sup>7</sup>

Exchange systems can access CCS interest only once to participate in the execution of an incoming order. Moreover, under current rules, Exchange systems will only access CCS interest to participate in the execution of an incoming order where the incoming order will be executed in full.

#### *Proposed Amendment to NYSE Rule 1000*

The Exchange now proposes to allow Exchange systems to access CCS interest to participate in executions where the incoming order will only be partially executed.<sup>8</sup> Large incoming orders may exhaust the entirety of displayed and reserve interest on the Display Book at various price points such that the remaining unexecuted shares of the incoming order would be quoted at the order's limit price, if any, or, alternatively, at a Liquidity Replenishment Point ("LRP")<sup>9</sup> if that price point is reached. In these partial executions, Exchange systems currently do not access the CCS interest available at the price point where the remaining shares of the incoming order is quoted.

The Exchange proposes to modify the operation of CCS interest to allow Exchange systems to access and execute CCS interest to partially fill an incoming order that exhausts the interest available on the Display Book. Exchange systems would continue to review all the liquidity available on the Display Book and at away market centers; however, once it determines that the order cannot be executed in full, it would also review the DMM CCS interest file to determine if any CCS interest is eligible to partially fill the incoming order at the price

where any remaining shares of the order would be quoted.<sup>10</sup>

When Exchange systems access the CCS interest in order to provide a partial execution of an incoming order, the CCS interest would participate at the price point where the remaining shares will be quoted—the order's limit price, if any, or the LRP, if reached. As before, any unexecuted remainder of the incoming order would be quoted at the limit price or LRP, as applicable.

When accessing CCS interest to partially execute an order, Exchange systems would not review the CCS interest available at the better price. For such partial executions, CCS interest would only participate at the price at which the unexecuted shares of the incoming order would be quoted at the last price, if any, or, if an LRP is reached, at the LRP price. As is the case with completed executions, Exchange systems would not access CCS interest during a partial execution until all other interest on the Display Book at that price point is executed in full.

The Exchange further proposes technical changes to NYSE Rule 1000.<sup>11</sup>

#### **III. Discussion and Commission's Findings**

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that a national securities exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange stated in its filing it believes that this proposal would increase an order's execution volume by allowing Exchange systems to access CCS interest for partial

executions. The proposed modification increases the opportunities for automatically executing a greater number of shares of the incoming order on the Exchange prior to quoting the remainder. Thus, under the proposal, partially executed incoming orders would have an opportunity to have a greater number of shares receive an execution prior to being quoted.

The Commission notes that the price point at which the CCS interest participates in partial executions would be, by operation of the proposed rule, the same or better than any limit price the customer has set for the incoming order. For the foregoing reasons, the Commission finds the proposed rule change is consistent with the Act.

#### **IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NYSE-2009-71) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60670; File No. SR-NYSEAmex-2009-46]

#### **Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Amending NYSE Amex Equities Rule 1000 To Allow Exchange Systems To Access CCS Interest To Partially Fill an Incoming Limit Order**

September 15, 2009.

#### **I. Introduction**

On July 20, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NYSE Amex Equities Rule 1000 to allow Exchange systems to access CCS interest to partially fill an incoming limit order. The proposed rule change was published for comment in the **Federal Register** on August 11,

<sup>7</sup> Pursuant to NYSE Rule 72, round-lot executions on the Exchange are allocated on an equal basis, *i.e.* parity, among market participants at a price point unless one of the participants has established priority. Priority is established when the participant is the *only* interest displayed at the price point when such price is or becomes the best bid or offer published by the Exchange. A participant that establishes priority for the displayed portion of his or her order is allocated the first 15% of any execution (a minimum of one round lot). Any DMM non-CCS interest included in the displayed quantity and non-displayed quantity is also executed pursuant to NYSE Rule 72.

<sup>8</sup> For a more detailed description of the Exchange's proposal, including examples describing the proposal, *see* Notice, *supra* note 3, at 40261-40262.

<sup>9</sup> LRPs are pre-determined price points that temporarily convert the automatic Exchange market to an auction market in order to dampen volatility when the market is experiencing a large price movement based on a security's typical trading characteristics or market conditions over short periods of time during the trading day. LRPs allow the DMM to solicit additional liquidity.

<sup>10</sup> In order for the DMM CCS interest to be eligible to participate in a partial execution of an incoming order, the DMM must designate such interest with a "PF" indicator. All liquidity provided in the CCS interest file would continue to be eligible to participate in full executions of incoming orders. If the DMM did not designate the CCS interest eligible for partial fill, then the CCS interest would not participate in the execution and the remaining shares of the order would be quoted.

<sup>11</sup> For a description of these technical changes, *see* Notice, *supra* note 3, at 40263.

<sup>12</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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.