

principles of Section 11A(a)(1)<sup>12</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investors' orders in the best market. The Exchange believes that the updates to Floor broker functionality meet such goals because it ensures that customer orders eligible to trade will execute against willing contra-side liquidity. In particular, d-Quotes that are active outside the Exchange BBO provide Floor brokers with functionality to replace the now defunct CAP-DI functionality and permit d-Quotes to better participate in sweeps or to execute against reserve interest. The addition of the MTS instruction provides investors with the ability to ensure that an execution will not be fragmented and therefore will promote larger-sized executions. In addition, the Exchange believes that the proposed change to provide for e-Quotes and d-Quotes to peg to the NBBO ensures that investors' orders will be executed in the best market because more liquidity will be available at the NBBO.

#### *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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after

the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

### **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 Exchange 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-2009-76 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-2009-76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing 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-NYSEAmex-2009-76 and should be submitted on or before November 24, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-26358 Filed 11-2-09; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60888; File No. SR-NYSE-2009-106]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending Rule 70 in Order To Update d-Quote Functionality and Provide for e-Quotes To Peg to the National Best Bid or Offer**

October 27, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 26, 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, II, and III 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 Rule 70 in order to (1) update d-Quote functionality and (2) provide for e-Quotes to peg to the National best bid or offer. 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,

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>12</sup> 15 U.S.C. 78k-1(a)(1).

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

In this filing, the Exchange proposes (1) to amend NYSE Rule 70.25 to permit d-Quotes to be active when their filed prices are not at the best bid or offer, and to provide for discretionary instructions that a d-Quote will execute only if a minimum trade size ("MTS") requirement is met, and (2) to amend NYSE Rule 70.26 to provide for e-Quotes and d-Quotes to peg to the National best bid or offer ("NBBO") rather than just the Exchange best bid or offer ("BBO").<sup>4</sup>

Background

Rule 70.25 governs the entry, validation, and execution of bids and offers represented electronically by a Floor broker on the Floor of the Exchange that include discretionary instructions as to size and/or price.<sup>5</sup> The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price range within which the e-Quote may trade and the number of shares to which the discretionary price instruction applies. D-Quote functionality is available for both displayed and reserve interest.

In particular, Rule 70.25(a) provides that d-Quotes are eligible for execution only when they are at or join the existing Exchange BBO, would establish a new Exchange BBO, or at the opening and closing transactions. Under current rules, d-Quotes at or joining the Exchange BBO may be displayed or undisplayed interest. For example, under the current rule, if the Exchange BBO were .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote bidding for .04 with four cents of price discretion would not be eligible to trade with the prevailing offer because the filed price of the d-Quote is not at the Exchange best bid. Accordingly, notwithstanding that the pricing instructions of the d-Quote indicate that the customer is willing to trade with the available contra-side interest, that d-Quote would not trade.

In addition, Rule 70.25(d)(ii) currently provides that, once it has been activated, a d-Quote will automatically execute against a contra-side order if the contra-side order's price is within the discretionary pricing instructions and the contra-side order's size meets any minimum or maximum size requirements that have been set for the d-Quote. Thus, for example, if the minimum size requirement for a d-Quote is 10,000 shares and an incoming contra-side order meets both the discretionary pricing instructions of the d-Quote and the 10,000 share minimum size requirement (and the d-Quote is eligible for execution under Rule 70.25(a)), that incoming order will trade with the d-Quote. Notably, however, if there is other interest on the same side as the d-Quote that can trade with the incoming order, the d-Quote may in the end receive an execution that is less than its trade size minimum threshold, because the d-Quote would share the execution with other executable interest at the same price pursuant to applicable parity rules.<sup>6</sup>

Rule 70.26 provides for the entry, validation, and execution of an e-Quote that remains available for execution at the Exchange BBO as the Exchange BBO moves. In an automated trading environment, pegging e-Quotes and d-Quotes permit Floor brokers to keep their interest in the quote, even as the quote moves. Floor brokers are able to designate a range of prices within which their e-Quotes and d-Quotes will peg and, as long as the Exchange BBO is within that range, the e-Quote and d-Quote will be included in the quote.

Proposed Amendments

D-Quotes Active When Their Filed Price Is Not at the Exchange BBO

The Exchange proposes to amend Rule 70.25(a)(ii) to provide that d-Quote instructions will not need to wait for the d-Quote's filed price to be at the Exchange BBO before they activate. By removing references to specific points when a d-Quote is active, *i.e.*, when its filed price is or becomes the Exchange BBO, d-Quotes will be active and available to execute whenever incoming interest satisfies the discretionary instructions, without regard to the filed price of the e-Quote.<sup>7</sup>

For example, as proposed, if the Exchange BBO were .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote filed at a .04 bid with four cents of price discretion would be

eligible to execute against the offer, notwithstanding that the d-Quote was not filed at the Exchange best bid. Similarly, if an incoming sell order at .07 were to arrive, that d-Quote would be eligible to exercise discretion to execute at .07, between the spread. Under the proposed functionality, a d-Quote could also exercise discretion in a sweep outside the Exchange BBO. For example, assuming the same Exchange BBO, a d-Quote filed at a .03 bid for 1,000 shares with one cent of price discretion will trade with an incoming large sell order that sweeps through the .05 Exchange best bid. In such case, the incoming sell order would trade first with the displayed best bid at .05 and then with any undisplayed interest at .05. It would then move to the next available price point in the sweep. Thus, for example, assume there are 1,000 shares of the incoming order remaining to sell after exhausting all interest at .05; assume also that at .04 there is displayable interest bidding for 400 shares and reserve interest bidding for 600 shares. In that case, the incoming sell order would be allocated first to the 400 shares displayable at .04. The remaining 600 shares of sell interest would then be allocated on parity between the d-Quote, exercising one cent of price discretion, and the remaining reserve interest at .04, with each participant receiving an execution of 300 shares. If there were no interest bidding at .04, the d-Quote would exercise discretion and trade at .04, thus dampening the sweep and providing price improvement to the incoming order.

The Exchange proposes to add clarifying language to Rule 70.25(a)(i) to provide that d-Quotes that exercise discretion will be considered non-displayable interest for purposes of Rule 72. The Exchange also proposes amending Rule 70.25(d)(i) (as proposed Rule 70.25(e)(i)) to provide that d-Quotes that execute between the Exchange best bid or offer will execute the largest amount of shares using the least amount of discretion necessary and that d-Quotes outside the quote will execute at their maximum discretion.

The proposed d-Quote functionality would provide Floor brokers with functionality that is similar to functionality that was previously available to Floor brokers when the Exchange operated a manual auction. In particular, in the manual market and in the Exchange's Hybrid Market, Exchange Rule 123A.30 permitted brokers to enter percentage orders with CAP (convert and parity) instructions. A subset of CAP orders, the CAP-DI order, was the elected or converted portion of

<sup>4</sup> The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. See SR-NYSEAmex-2009-76.

<sup>5</sup> For purposes of these rules, floor broker agency interest files (that is, electronic bids or offers from the Floor) are referred to as "e-Quotes". E-quotes that include discretionary instructions are referred to as "d-Quotes".

<sup>6</sup> See Rule 72.

<sup>7</sup> The Exchange will continue to provide functionality to allow brokers to designate d-quotes that may participate on the open and the close.

a percentage order that was convertible on a destabilizing tick (the "D" in "CAP-DI") and designated for immediate execution or cancel election (the "I" in "CAP-DI"). Neither CAP nor CAP-DI orders were displayed interest. When elected, a CAP-DI order would automatically execute against any contra-side volume available at the electing price and was eligible to participate in a sweep or between the spread. The CAP-DI order did not have to be at the Exchange best bid or offer before it could be elected and executed at or through the Exchange BBO.

In connection with the Next Generation Market Model, the Exchange eliminated CAP orders in part because the manner in which such orders were processed impeded the efficiency of the Exchange's Display Book® system.<sup>8</sup> As a consequence of the elimination of CAP orders, Floor brokers thereafter had only a limited ability to enter an order into Exchange systems that would be elected for execution at a price point other than the Exchange best bid or offer.

When it eliminated CAP orders, the Exchange did not have the technology that would permit d-Quotes to fully replicate the functionality of a CAP order. The proposed changes would now permit brokers to replicate the CAP functionality, including the ability to execute in sweeps outside the Exchange BBO or between the spread. The Exchange believes this is an important tool for brokers and will assist them in more effectively representing their customers' orders.

Separately, the Exchange notes that the proposed functionality would allow d-Quotes to interact with order types that did not exist when d-Quotes were first introduced, and which they are unable to easily interact with under the current rules. In particular, when d-Quote functionality was introduced in October 2006, the Exchange did not offer the ability to enter fully dark reserve interest at, outside or between the Exchange BBO. Since that time, however, the Exchange has added two new order types, the Minimum Display Reserve Order and the Non-Displayable Reserve Order.<sup>9</sup> Because d-Quotes

currently become active only when the filed price of the d-Quote is at or becomes the Exchange best bid or offer, d-Quotes are therefore limited in their ability to interact with the type of liquidity that now trades at the Exchange. For example, if the Exchange BBO were .05 bid for 1,000 shares and 1,000 shares offered at .10, there may be reserve sell interest available at .08, which is between the spread. A d-Quote bidding .04 cents with four cents of price discretion would now be eligible to execute against that reserve interest. The d-Quote functionality proposed in this rule filing therefore would enable willing interest to trade with all willing contra-side liquidity, including reserve interest. In this way, the proposed changes will allow the brokers' tools to keep pace with the ways in which trading on the Exchange has evolved.

#### Minimum Trade Size (MTS) Instruction for d-Quotes

The Exchange proposes to add a new subsection to Rule 70.25 to provide that a Floor broker may include additional discretionary instructions with a d-Quote that such d-Quote will execute only if the designated MTS is met. The proposed MTS functionality for d-Quotes is similar to the approved functionality in the New York Block Exchange facility ("NYBX").<sup>10</sup> Currently, d-Quotes may include instructions of a minimum size requirement that would trigger discretionary pricing, but such requirement would not guarantee a minimum execution size.

As proposed here, Floor brokers will be able to include an additional discretionary instruction that the d-Quote will not execute if the MTS is not met. For example, as proposed, if the minimum size requirement for a d-Quote is 10,000 shares and an incoming contra-side order meets both the discretionary pricing instructions of the d-Quote and the 10,000 share minimum size requirement, that incoming order will trigger the d-Quote. If the Floor broker also includes an MTS instruction of 10,000 shares and there is other competing interest on the same side as the d-Quote, that d-Quote will not execute if the d-Quote would not receive an execution of at least 10,000

shares. Therefore, if the amount of an execution that would be allocated to a d-Quote is less than the MTS quantity, the d-Quote will not be eligible to participate in the execution and will not compete with other same-side interest from other Floor brokers. Additionally, MTS instructions will not be active at the open or close.

NYSE Rule 70.25(a)(vi) provides that same-side d-Quotes from the same Floor broker do not compete with each other for executions allocated to that Floor broker, as they would if from different Floor brokers, when the d-Quote with the most aggressive price range executes first. The Exchange proposes to add to Rule 70.25 that when a Floor broker designates an MTS for a d-Quote, such d-Quote may compete with other same-side d-Quotes from the same Floor broker by improving the price if necessary to satisfy its MTS. For example, if a Floor broker has three d-Quotes bidding for 1,000 shares at the same price, and none of those d-Quotes has an MTS, an incoming sell order for 1,000 shares will be allocated equally to all three of the d-Quotes. In contrast, if a Floor broker has three d-Quotes bidding for 1,000 shares at the same price, and one of those d-Quotes has an MTS of 1,000 shares, an incoming sell order for 1,000 shares will be allocated in its entirety to the d-Quote with the MTS instruction if that d-Quote has a more aggressive price than the competing d-Quotes. If the d-Quote with the MTS instruction does not have a more aggressive range of discretionary price instructions than the competing d-Quotes, that d-Quote will not participate because the MTS will not be met and the incoming 1,000 share sell order will be allocated to the other two d-Quotes.

#### Pegging to the NBBO

The Exchange proposes to amend Rule 70.26 to provide that pegging e-Quotes and d-Quotes will now peg to the NBBO, rather than the Exchange BBO. As noted above, currently, pegging e-Quotes and d-Quotes are activated at the Exchange BBO, and move when the Exchange BBO moves. Under current rules, pegging e-Quotes and d-Quotes cannot be the sole interest at the Exchange BBO, but must peg to other non-pegging interest at the Exchange BBO. Accordingly, under current rules and functionality, pegging e-Quotes are unable to set the Exchange BBO.

The Exchange proposes that instead of pegging to the Exchange BBO, pegging e-Quotes and d-Quotes would peg to the NBBO. As a result, a pegging e-Quote or d-Quote may set the Exchange BBO, even if there is no other displayed bid or offer at the Exchange at that price.

<sup>8</sup> See Securities Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR-NYSE-2008-46). The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the Book, and provides a mechanism to execute and report transactions and publish 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.

<sup>9</sup> See *id.* In addition, to reflect that the contra-side liquidity for d-Quotes may be reserve interest that

is already in Exchange systems, the Exchange proposes to change references in Rule 70.25 to "incoming orders" to refer instead to "interest."

<sup>10</sup> Under Rule 1600(c)(3)(B)(ii), orders entered into NYBX may include a minimum triggering volume ("MTV") instruction. An order in NYBX with an MTV will execute only if there is contra-side interest available to meet the MTV. Similar to the proposed MTS functionality for d-Quotes, if the MTV for an NYBX order is not met, the NYBX order will not execute.

Accordingly, because such pegging e-Quotes or d-Quotes may now be the setting interest at the Exchange BBO, the Exchange proposes to amend Rule 70.26(vi) to provide that pegging e-Quotes or d-Quotes may be entitled to priority if such e-Quote or d-Quote sets the Exchange BBO. For example, if the Exchange best bid is .05, and the National best bid is .06, a pegging e-Quote will quote at the Exchange at .06, as interest pegged to the NBBO. That pegging e-Quote will therefore be the new Exchange best bid. If it is the only interest at that price when it becomes the Exchange BBO, it will be entitled to priority pursuant to Rule 72.

Except for the ability to become the Exchange BBO and be entitled to priority, as proposed, the functionality of pegging e-Quotes and d-Quotes would not otherwise change. For example, similar to the current rule, if the NBBO moves, the pegging e-Quote or d-Quote will move to follow the NBBO, provided that the NBBO is in the price range of the pegging e-Quote or d-Quote. In addition, a pegging e-Quote or d-Quote will never set the NBBO.

The Exchange believes that the proposed change to the pegging e-Quote and d-Quote functionality supports the goals of a national market system by providing additional liquidity at the NBBO and tightening spreads on the Exchange to the NBBO. This functionality therefore protects investors by aiding in the goal of executing investor's orders in the best market.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act<sup>11</sup> which requires the rules of an exchange 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 also is designed to support the principles of Section 11A(a)(1)<sup>12</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that the updates to Floor broker functionality meet such goals because it ensures that customer orders eligible to trade will execute against willing contra-side liquidity. In particular, d-Quotes that are active outside the Exchange BBO provide

Floor brokers with functionality to replace the now defunct CAP-DI functionality and permit d-Quotes to better participate in sweeps or to execute against reserve interest. The addition of the MTS instruction provides investors with the ability to ensure that an execution will not be fragmented and therefore will promote larger-sized executions. In addition, the Exchange believes that the proposed change to provide for e-Quotes and d-Quotes to peg to the NBBO ensures that investors' orders will be executed in the best market because more liquidity will be available at the NBBO.

### *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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

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### *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-NYSE-2009-106 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-2009-106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing 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-2009-106 and should be submitted on or before November 24, 2009.

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

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

[FR Doc. E9-26359 Filed 11-2-09; 8:45 am]

**BILLING CODE 8011-01-P**

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

<sup>12</sup> 15 U.S.C. 78k-1(a)(1).

<sup>13</sup> 17 CFR 200.30-3(a)(12).