

DMM units. In addition, by prohibiting communications regarding the selection process between members of the Panel and DMM units, the Exchange will be able to immediately reinforce impartiality and fairness during the selection process.¹⁶ Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMEX-2009-49 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-2009-49. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-49 and should be submitted on or before September 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-19120 Filed 8-10-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60428; File No. SR-NYSEAmex-2009-46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 1000 To Allow Exchange Systems to Access CCS Interest to Partially Fill an Incoming Limit Order

August 4, 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 July 20, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 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 amend NYSE Amex Equities Rule 1000 to allow Exchange systems to access CCS interest

to partially fill an incoming limit order. 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 Exchange 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

NYSE Amex LLC ("NYSE Amex" or the "Exchange"), formerly the American Stock Exchange LLC, proposes to amend NYSE Amex Equities Rule 1000 to allow Exchange systems to access CCS interest to partially fill an incoming limit order.

The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC.⁴

Background

NYSE Amex adopted sweeping changes to its market rules and execution technology designed to improve execution quality on the Exchange as a result of its merger with the New York Stock Exchange LLC.⁵ Among the elements of the adopted enhanced Exchange market model, NYSE Amex eliminated the function of specialists on the Exchange creating a

⁴ See SR-NYSE-2009-71.

⁵ NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC. Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex-2008-62) (approving the Merger). Subsequently NYSE Alternext US LLC was renamed NYSE Amex LLC and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act"). NYSE Alternext US LLC was subsequently renamed NYSE Amex LLC. See Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24).

¹⁶ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 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.

new category of market participant, the Designated Market Maker or DMM. The DMM, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. In view of the Exchange's electronic execution functionality, the DMM, unlike the specialist, would no longer be deemed the agent for every incoming order. The Exchange also responded to customer demand to create additional undisplayed reserve interest.

In another enhancement to the Exchange's market model, designed to encourage DMMs to add liquidity, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS").⁶ CCS provides the Display Book⁷ with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange BBO. CCS interest is separate and distinct from other DMM interest in that it 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 if the CCS interest were to participate at the completion price. Exchange systems also review any protected bids or offers

on markets other than the Exchange ("away interest") and determines the price at which the remaining volume of the contra side order can be executed in full.

Exchange systems then review the amount of liquidity offered by 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 62⁸) 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").

Price of order or interest	Minimum price variation
Less Than \$1.00	\$.0001
\$1.00 to 99,999.99	.01
\$100,000 or greater	.10

If the volume of CCS interest that would be accessed 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 more 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 NYSE Amex Equities Rule 72 ("Priority of Bids and Offers and Allocation of Executions").⁹

Exchange systems can access CCS interest only once to participate in the execution of an incoming order. As such, CCS interest that may exist at the

completion price is inaccessible to Exchange systems to trade with any remaining balance of the incoming order if Exchange systems included the DMM's CCS interest in the execution of any portion of such order at the better price. Moreover, 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 Amex Equities Rule 1000

The Exchange proposes to allow Exchange systems to access CCS interest to participate in executions where the incoming order will only be partially executed. The purpose of this change is to provide additional liquidity to the incoming order.

As illustrated in the example below, because Exchange systems are permitted to access CCS interest only where an incoming order would be executed in full, there are times when the incoming order exhausts the displayed and reserve interest on the Display Book at various price points and the remaining shares of the order are quoted. In these instances Exchange systems cannot access the CCS interest available at the price point where the remaining shares of the order will be quoted to partially fill the incoming limit order.

Example of Current CCS Operation

The Exchange Market is 200 shares bid at the price of \$20.05 and 200 shares offered at a price of \$20.10. At the price points of \$20.04, \$20.03, \$20.02, \$20.01 and \$20.00 there are 100 shares bid. The CCS interest file is willing to provide 200 shares of additional bid liquidity at each of those price points as well. A customer sends the Exchange a sell order for 1200 shares with a limit price of \$20.00. Given the current operation of CCS, the order will execute against the 200 shares at the Exchange bid price of \$20.05 and all the shares indicated in *italic* typeface at each price point down to the orders limit price of \$20.00 will be executed against the order for a total execution of 700 shares. The remaining 500 shares of the order will be filed in Display Book at its limit price of \$20.00.

⁶ The provisions of NYSE [sic] Rule 1000 relating to CCS are in effect pursuant to a pilot that commenced on October 2008 and is scheduled to end on October 1, 2009.

⁷ The Display Book^{reg} 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.

⁸ See NYSE [sic] Rule 62, Supplementary Material .10, which provides that the minimum price variation (MPV) for quoting and entry of orders in equity securities admitted to dealings on the Exchange shall be as follows (see table above):

⁹ Pursuant to NYSE Amex Equities 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 [sic] Rule 72.

CCS interest	Shares bid	Bid price	Offer price	Shares offered	CCS interest
	.....	.....	\$20.10	200	200
200	200	\$20.05	.....	.....	.....
200	100	\$20.04	.....	.....	.....
200	100	\$20.03	.....	.....	.....
200	100	\$20.02	.....	.....	.....
200	100	\$20.01	.....	.....	.....
200	100	\$20.00	.....	.....	.....

The Exchange proposes to modify the operation of CCS interest to allow Exchange systems to access and execute CCS interest designated to partially fill an incoming limit order. This will create an additional processing action for Exchange systems. Exchange systems will continue to review all the liquidity available on the Display Book and any away market centers; however, once it determines that the order cannot be executed in full, it will also review the DMM CCS interest file to determine if any of the liquidity is eligible to partially fill the incoming limit order at the price where any remaining shares of the order would be quoted.

In order for the DMM CCS interest to participate in a partial execution of an incoming limit order that exceeds the liquidity available at the Exchange BBO the DMM must designate interest available in the CCS interest file eligible

for partial execution by including a "PF" indicator on the shares provided at the price point. All liquidity provided in the CCS interest file will continue to be eligible to participate in executions of incoming limit orders in full. Only DMM CCS interest containing the PF indicator will be available to participate in an execution to provide a partial execution of an incoming limit order that exceeds the liquidity available at the Exchange BBO. In this way incoming limit orders will have another opportunity to receive fuller executions prior to quoting.

Example of Proposed CCS Partial Fill at the Price the Remaining Shares Will be Quoted

The Exchange Market is 200 shares bid at the price of \$20.05 and 200 shares offered at a price of \$20.10. At the price points of \$20.04, \$20.03, \$20.02, \$20.01 and \$20.00 there are 100 shares bid. The

CCS interest file is willing to provide 200 shares of additional bid liquidity at each of those price points as well. The CCS interest at \$20.00 is designated for partial fill. A customer sends the Exchange a sell order for 1200 shares with a limit price of \$20.00. Enabling Exchange systems to access CCS interest to partially fill the order, the incoming limit order will execute against the 200 shares at the Exchange bid price of \$20.05. The order would then execute against all the shares bid, indicated in *italic* typeface at each price point down to the orders limit price of \$20.00, Exchange systems would execute an additional 200 shares of the order against the CCS interest at \$20.00 designated for partial fill. The incoming limit order receives a total execution of 900 shares and the remaining 300 shares of the order will be filed in Display Book at its limit price of \$20.00.

CCS interest	Shares bid	Bid price	Offer price	Shares offered	CCS interest
	.....	.....	\$20.10	200	200
200	200	\$20.05	.....	.....	.....
200	100	\$20.04	.....	.....	.....
200	100	\$20.03	.....	.....	.....
200	100	\$20.02	.....	.....	.....
200	100	\$20.01	.....	.....	.....
200 ^{PF}	100	\$20.00	.....	.....	.....

When Exchange systems access the CCS interest in order to provide a partial execution of an incoming order, CCS interest will participate at the price point where the remaining shares will be quoted as illustrated in the example above. If, however, the incoming order reaches a Liquidity Replenishment Point ("LRP")¹⁰ prior to being executed in full, then Exchange systems will execute the CCS interest at the LRP price, as illustrated in the example

¹⁰ 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.

below, and the remaining shares of the order will be quoted thereafter at its limit price. In the case of a market order it will be quoted at the LRP price.

Example of Proposed CCS Partial Fill at the LRP Price

CCS Partial Fill at the LRP #1

The Exchange Market is 200 shares bid at the price of \$20.10 and 200 shares offered at a price of \$20.15. The price point of \$20.05 is a designated LRP. At the price points of \$20.09 down to \$20.05 there are 100 shares bid. The CCS interest file is willing to provide 200 shares of additional bid liquidity at the price points of \$20.09 down to

\$20.05.¹¹ In addition, the CCS interest file indicates that the interest at the prices \$20.08, \$20.07 and \$20.05 is available to provide a partial fill. A customer sends the Exchange a sell order for 1200 shares with a limit price of \$20.00. Enabling Exchange systems to access CCS interest to partially fill the order, the incoming limit order would execute against the 200 shares at the Exchange bid price of \$20.10. The order would then execute against all the shares bid (indicated in *italic* typeface) at each price point down to the LRP price of \$20.05. Exchange systems

¹¹ A DMM cannot provide CCS interest past the LRPs because that interest will not be executed. Pursuant to current NYSE [sic] Rules, once an LRP is reached interest may not trade through the price point.

would execute an additional 200 shares of the order against the CCS interest at the LRP price of \$20.05 for a total 900

shares of the incoming limit order executed. The original order will execute a total of 900 shares above its

limit price before the remaining 300 shares of the order is posted on the Display Book at its limit price of \$20.00.

CCS interest	Shares bid	Bid price	Offer price	Shares offered	CCS interest
	.....	.....	\$20.15	200	200
200	200	\$20.10	.....	.....	.....
200	100	\$20.09	.....	.....	.....
200 ^{PF}	100	\$20.08	.....	.....	.....
200 ^{PF}	100	\$20.07	.....	.....	.....
200	100	\$20.06	.....	.....	.....
200 ^{PF}	100	\$20.05 ^{LRP}	.....	.....	.....
0	0	\$20.04	.....	.....	.....
0	0	\$20.03	.....	.....	.....
0	0	\$20.02	.....	.....	.....
0	0	\$20.01	.....	.....	.....
0	0	\$20.00	.....	.....	.....

CCS Partial Fill at the LRP # 2

The Exchange Market is 200 shares bid at the price of \$20.10 and 200 shares offered at a price of \$20.15. The price point of \$20.05 is a designated LRP. At the price points of \$20.09 and \$20.08 there are 100 shares bid. The CCS interest file is willing to provide 200 shares of additional bid liquidity at the price points of \$20.09 down to \$20.05.

In addition, the CCS interest file indicates that the interest at the prices \$20.08, \$20.07 and \$20.05 is available to provide a partial fill. A customer sends the Exchange a sell order for 700 ¹² shares with a limit price of \$20.00. Enabling Exchange systems to access CCS interest to partially fill the order, the incoming limit order would execute against the 200 shares at the Exchange bid price of \$20.10. The order would

then execute 100 shares against the shares bid at \$20.09 and \$20.08. Exchange systems would execute an additional 200 shares of the order against the CCS interest at the LRP price of \$20.05 for a total 600 shares of the incoming limit order executed. The remaining 100 shares of the order will be posted on the Display Book at its limit price of \$20.00.

CCS interest	Shares bid	Bid price	Offer price	Shares offered	CCS interest
	.....	.....	\$20.15	200	200
200	200	\$20.10	.....	.....	.....
200	100	\$20.09	.....	.....	.....
200 ^{PF}	100	\$20.08	.....	.....	.....
200 ^{PF}	0	\$20.07	.....	.....	.....
200	0	\$20.06	.....	.....	.....
200 ^{PF}	0	\$20.05 ^{LRP}	.....	.....	.....
0	0	\$20.04	.....	.....	.....
0	0	\$20.03	.....	.....	.....
0	0	\$20.02	.....	.....	.....
0	0	\$20.01	.....	.....	.....
0	0	\$20.00	.....	.....	.....

When accessing CCS interest to partially execute an order, Exchange systems will not review the liquidity available at one minimum price variation better than the execution price to determine if the number of shares that CCS interest is willing to provide at the better price is greater than the number of shares at the price point where the order would execute and then post. The order will be executed against the CCS interest where the remaining shares of the order will ultimately be quoted or in the event an LRP is reached, at the LRP price.¹³

Whether the order is executed at the price where the remaining shares will be quoted or at the LRP price, Exchange systems will not access CCS interest designated PF until all other interest on the Display Book up to the price point is executed in full. CCS interest therefore, remains the interest of last resort because Exchange systems will access CCS interest to provide a partial execution to an incoming limit order only after all it has satisfied protected interest on away market centers and all other interest on the Display Book eligible to be executed against the order is executed in full. In all instances

where Exchange systems access CCS to provide a partial execution of an order, the customer order is afforded the ability for price improvement within the parameters of the rule.

The Exchange therefore proposes to amend NYSE Amex Equities Rule 1000, to allow Exchange systems to access available CCS interest in order to provide an incoming order with a fuller execution. The Exchange proposes to amend NYSE Amex Equities Rule 1000(e)(iii)(A)(4) to include this provision and renumber former subparagraph (e)(iii)(A)(4) to (e)(iii)(A)(5).

¹² If the order were for 600 shares Exchange systems would have executed 200 shares at the bid price of \$20.10, 100 shares at the price of \$20.09. The Exchange will execute the remaining 300 shares at the price of \$20.08 against the 100 shares of "Shares Bid" and CCS interest at the price point.

However, because the 700 share order could not be completely filled at the price of \$20.08 including CCS interest, it is executed based on the rules governing partial executions and will thus be executed as illustrated in the example.

¹³ 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.

The Exchange believes that the instant proposal to maximize an order's partial execution by allowing Exchange systems to access CCS interest removes the current impediment from a limit order accessing all the liquidity available on the Display Book. The proposed modification increases the opportunities for executing a greater number of shares of the incoming order and exposes it to additional opportunity for price improvement. The Exchange believes that the proposal therefore contributes to perfect the mechanism of a free and open market and ultimately protects investors and the public interest.

Administrative Amendments to NYSE Amex Equities Rule 1000

The Exchange further proposes to include references to its Do Not Ship Order¹⁴ in NYSE Amex Equities Rule 1000 subparagraphs (e)(ii), (e)(ii)(C) and (e)(iii)(A)(5) to illustrate the additional order type that requires the same execution handling as Reg. NMS-compliant IOC.

Finally, the Exchange proposes to delete the redundant text of NYSE Amex Equities Rule 1000 subparagraph (e)(ii)(D) because it restates the information contained in subparagraph (e)(ii) above it.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")¹⁵ for these proposed rule changes is the requirement under Section 6(b)(5)¹⁶ that an 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 proposed rule change supports these principles in that it seeks to protect the investor and the public interest by allowing an incoming limit order to execute against all the liquidity available on the Exchange.

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.

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. In addition, the Commission seeks comment on whether the proposed handling of incoming orders receiving partial fills that include CCS interest is consistent with the Act and, in particular, whether the proposed rule changes are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

Specifically, in certain situations, the Exchange's proposal would allow the DMM's CCS interest to participate in partial fills at the best possible price (from the DMM's perspective), even when this price is inferior to all the non-CCS interest participating in the same execution. Currently, NYSE Amex's rules allow for CCS participation only when the incoming order will be completely filled, and the DMM's CCS interest may not participate in an execution at a price inferior to the completion price.

The Commission notes the fact pattern presented above under the heading "CCS Partial Fill at the LRP #2" where, under NYSE Amex's current rules, an incoming order of 600 shares would be completed at \$20.08 (200, 100, and 100 shares of non-CCS interest at \$20.10, \$20.09, and \$20.08 respectively, and 200 shares of CCS interest also at \$20.08).¹⁷ In contrast, under the

proposal, an incoming order of 700 shares that outsizes the available non-CCS interest would be partially completed by CCS interest at the LRP price, and thus would receive an execution of 200 shares against CCS interest at \$20.05, rather than \$20.08, before the system quotes the residual 100 shares at \$20.05, the LRP.¹⁸

Absent the proposed rule change, a 700-share incoming order would result in a partial fill without any CCS participation, with 300 shares unexecuted and quoting at the LRP. Thus, the Commission notes that the proposal may benefit the incoming order by immediately and automatically executing additional shares at the order's limit price or at the LRP price, as applicable. However, the Commission is interested in commenters' views on the proposed expansion of DMMs' CCS capabilities for partial fills and, in particular, on the proposed execution of CCS interest at the limit price of the order or the LRP price, as the case may be, even when no other interest resides at that price. To illustrate, in the "CCS Partial Fill at the LRP #2" example above, the proposal would result in a CCS interest execution at \$20.05 (*i.e.*, the LRP price). Is another price more appropriate? For example, should such CCS interest be executed at \$20.08 (the last price at which there is non-CCS interest)? Another price? Why or why not?

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-NYSEAmex-2009-46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-46. 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

¹⁴ See NYSE Amex Equities Rule 13.

¹⁵ 15 U.S.C. 78a.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See *supra* note 12.

¹⁸ See *supra* text accompanying note 12.

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 am and 3 pm. 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-2009-46 and should be submitted on or before September 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-19140 Filed 8-10-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60432; File No. SR-FINRA-2009-053]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Incorporated NYSE Rules 12 and 282 To Conform to Amendments Made by NYSE

August 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 30, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ 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

FINRA is proposing to amend Incorporated NYSE Rules 12 ("Business Day") and 282 (Buy-in Procedures)⁴ to conform to rule changes by the New York Stock Exchange LLC ("NYSE") to its versions of Rules 12 and 282.⁵

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing changes to Incorporated NYSE Rules 12⁶ and 282⁷ to conform these rules to amendments made by NYSE to allow customers to transmit orders for execution on the NYSE with the settlement instructions of "cash", "next day" and "seller's

option" (collectively referred to herein as "non-regular way settlement") directly to a Floor broker for manual execution.

According to the NYSE filing,⁸ after adopting amendments in March 2009 requiring that all orders submitted to the NYSE be submitted for regular way settlement (i.e., settlement on the third business day following trade date),⁹ the NYSE recognized that there was a continuing need for the availability of orders with non-regular way settlement instructions. NYSE customers have expressed that certain trading strategies and/or expiration of certain trading instruments (e.g., rights and warrants) require the ability to submit orders to the NYSE that contain instructions for execution with non-regular way settlement. To accommodate the needs of its customers, the NYSE adopted NYSE Rule 14 (Non-Regular Way Settlement Instructions for Orders) to allow customers to directly transmit an order containing instructions for cash, next day and seller's option settlement to a Floor broker for representation in the trading crowd. In addition, the NYSE added Rule 14 references to several NYSE rules that relate in some way to these settlement instructions.

Under the NYSE filing, references to proposed NYSE Rule 14 (Non-Regular Way Settlement Instructions for Orders) and non-regular way settlement instructions were added to NYSE Rule 12 ("Business Day"), and specific provisions related to orders submitted with cash settlement instructions were added to NYSE Rule 282 (Buy-in Procedures).

FINRA is making conforming changes to Incorporated NYSE Rules 12 and 282 to ensure consistency with NYSE's versions of Rules 12 and 282.¹⁰

⁸ See *supra* note 5.

⁹ See Securities Exchange Act Release No. 59446 (February 25, 2009), 74 FR 9323 (March 3, 2009) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2009-17).

¹⁰ Pursuant to Rule 17d-2 under the Exchange Act, NASD, NYSE, and NYSE Regulation, Inc., entered into an agreement ("Agreement") to reduce regulatory duplication for firms that are Dual Members by allocating certain regulatory responsibilities for selected NYSE rules from NYSE Regulation to FINRA. The Agreement includes a list of all those rules ("Common Rules") for which FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent that such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁵ See Securities Exchange Act Release No. 60216 (July 1, 2009), 74 FR 33283 (July 10, 2009) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2009-59).

⁶ Incorporated NYSE Rule 12 defines the term "business day."

⁷ Incorporated NYSE Rule 282 sets forth buy-in procedures.