611(b)(9) could qualify for such exception, the SIFMA Exemption Request states that there are many instances in which bona fide errors need to be remedied, but may not meet the definition of an underwater trade. The inability of broker-dealers to correct all bona fide errors in a manner consistent with a customer's original order without incurring additional expense would impede the effective correction of trading errors. As a result, SIFMA believes that all bona fide error correction transactions, including those not underwater, merit a specific exemption from Rule 611.[10]

The SIFMA Exemption Request states that the benefits of the requested exemption would far outweigh any disadvantages.[11] The exemption would facilitate the ability of broker-dealers to provide fair remediation to customers who otherwise would suffer economic consequences as a result of inadvertent mistakes or system failures. Also, the SIFMA Exemption Requests asserts that the number of bona fide error correction transactions is likely to be small in comparison to the total number of trades executed in NMS stocks, so that the number of exempted trade-throughs would not unduly detract from the objectives of Rule 611.[12]

III. Discussion

The Commission has decided to exempt trading centers from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when the transaction that constituted the trade-through meets the following terms and conditions (''Error Correction Transaction''):

(1) The trading center effects the transaction solely to correct a ''bona fide error,'' [13] which is defined as: (i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.[14]

(2) The bona fide error is evidenced by objective facts and circumstances, and the trading center maintains documentation of such facts and circumstances;

(3) The trading center records the transaction in its error account;

(4) The trading center establishes, maintains, and enforces written policies and procedures that are reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption; and

(5) The trading center regularly surveils to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and takes prompt action to remedy deficiencies in such policies and procedures.

The exemption applies only to the Error Correction Transaction itself. It does not, for example, apply to any subsequent trades effected by a trading center to eliminate a proprietary position connected with the Error Correction Transaction.

The Commission believes that an exemption for Error Correction Transactions is appropriate to promote efficiency and the best execution of investor orders.[15] The exemption will allow trading centers to execute Error Correction Transactions at the appropriate prices to correct bona fide errors without a requirement to prevent trade-throughs of the current protected quotations or to qualify for one of the exceptions in Rule 611(b). It thereby will minimize the expense incurred by trading centers to remedy certain errors in a manner consistent with their customers' orders.

In addition, the terms of the exemption are designed to minimize the potential for abuse, such as claiming its applicability to transactions other than those to correct bona fide errors. For example, a bona fide error must be evidenced by objective facts and circumstances, and the trading center must document such facts and circumstances. A trading center must record the Error Correction Transaction in an error account and implement policies and procedures that reasonably address errors and the use of Error Correction Transactions. A trading center's use of the exemption therefore should be readily reviewable by the applicable regulatory authorities.

Finally, Error Correction Transactions should represent a very small percentage of the total number of trades in NMS stocks. The exemption therefore should not significantly detract from the policy objectives of Rule 611.

For the foregoing reasons, the Commission finds that granting the foregoing exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors.

IV. Conclusion

It is hereby ordered, pursuant to Rule 611(d) of Regulation NMS, that trading centers shall be exempt from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when the transaction that constituted the trade-through qualifies as an Error Correction Transaction, as defined above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

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[10] *Id.*

[11] *Id.* at 5.

[12] *Id.* at 5.

[13] The exemption solely addresses the status of a transaction under Rule 611. It presumes that the trading center has complied with all requirements applicable to error transactions, including SRO rules.

[14] Absent a bona fide error as defined above, the exemption does not apply to a broker-dealer's mere failure to execute a not-held order in accordance with a customer's expectations.

[15] *See* Exchange Act Section 11A(a)(1)(C)(i) and (iv) (assuring efficient execution of securities transactions and the practicability of executing investors' orders in the best market are two of the primary objectives for the national market system).

[16] 17 CFR 200.30–3(a)(82).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55883]

Order Exempting Certain Print Protection Transactions From Rule 611 of Regulation NMS Under the Securities Exchange Act of 1934

June 8, 2007.

I. Introduction

Pursuant to Rule 611(d) [1] of Regulation NMS [2] under the Securities Exchange Act of 1934 (''Exchange Act''), the Securities and Exchange Commission (''Commission''), by order, may exempt from the provisions of Rule

[1] 17 CFR 242.611(d).

[2] 17 CFR 242.600 *et seq.*

611 of Regulation NMS (''Rule 611'' or ''Rule''), either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[3] As discussed below, the Commission is exempting from Rule 611(a) certain transactions that offer print protection to displayed customer orders when trades are reported at prices inferior to such orders. The exemption is designed to promote efficiency and the best execution of investor orders by allowing trading centers to offer beneficial executions to their customers that have offered liquidity that is immediately and automatically accessible in the public markets, without the trading centers incurring additional costs to meet the requirements of Rule 611(a).

II. Background

The Commission adopted Regulation NMS in June 2005.[4] Rule 611 addresses intermarket trade-throughs of displayed quotations in NMS stocks. Rule 611(a)(1) requires a trading center to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in the Rule. Rule 611(b)(6) provides an exception for a trade-through transaction effected by a trading center that simultaneously routes an intermarket sweep order (''ISO'') to execute against the full displayed size of any protected quotation in the NMS stock that was traded through. Rule 611(b)(5) provides an exception for a trade-through transaction that is an execution of an ISO. Finally, Rule 611(c) requires that the trading center, broker, or dealer responsible for the routing of an ISO take reasonable steps to establish that such order meets the definition of an ISO in Rule 600(b)(30).[5]

The Trading Committee of the Securities Industry and Financial Markets Association (''SIFMA'') has requested that the Commission exempt certain print protection transactions from Rule 611(a).[6] According to the SIFMA Exemption Request, print protection is the mechanism through which broker-dealers may elect to execute a displayed order at a price that is better than a reported trade in the same security on a different market.[7] The ability of broker-dealers to offer print protection to orders will become more difficult under Rule 611 when the price of the print protection transaction is inferior to one or more protected quotations at the time of execution. The SIFMA Exemption Request asserts that, absent an exemption, broker-dealers will not be able to provide print protection to orders in these circumstances.

As an example, the SIFMA Exemption Request supposes that Firm A represents an order to buy 1000 shares at $49.90, and it is displayed on Automated Trading Center X, which currently shows a top-of-book (''TOB'') protected bid of $50 for 1000 shares. Automated Trading Center Y shows a TOB protected bid of $49.80 for 1000 shares. A broker-dealer wants to sell 2000 shares, and it sends an ISO to sweep the TOB protected quotes across the automated trading centers. The 1000 shares at $50 at Automated Trading Center X are filled, and the 1000 shares at $49.80 at Automated Trading Center Y are filled. In contrast, the order represented by Firm A and displayed on Automated Trading Center X does not receive a fill, even though its $49.90 price is better than the $49.80 order executed by Automated Trading Center Y, because the $49.80 quote was the TOB in Automated Trading Center Y. Firm A wants to provide print protection for its customer and execute the displayed order but, depending on the new national best protected bid and offer, filling the order at $49.90 may violate Rule 611.

When customer orders contribute to price discovery by being displayed in whole or in part, SIFMA believes that broker-dealers should be allowed to elect to execute these orders for their customers without violating Rule 611.[8] It asserts that the requested exemption will promote greater price discovery in the securities markets by encouraging the display of limit orders. The requested exemption would be available for a broker-dealer that offers its customers print protection to use at the broker-dealers' election, and broker-dealers would not be required to provide print protection.

III. Discussion

The Commission has decided to exempt trading centers from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when the transaction that constituted the trade-through is the execution of an order that meets the following terms and conditions (''Print Protection Transaction''):

(1) The order is displayed in whole or in part by an automated trading center (as defined in Rule 600(b)(4) of Regulation NMS) that directly displays protected quotations (as defined in Rule 600(b)(57) of Regulation NMS);

(2) After the order is displayed, a transaction (''Triggering Transaction'') is reported pursuant to a transaction reporting plan (as defined in Rule 600(b)(32) of Regulation NMS) at a price that is inferior to the price of the displayed order;

(3) The Triggering Transaction is reported as qualifying for the exception for ISOs in paragraphs (b)(5) or (b)(6) of Rule 611;

(4) The trading center executes the order promptly after the Triggering Transaction is reported;

(5) The contra side of the execution of the order is provided by a broker-dealer who has responsibility for the order;

(6) The size of the transaction does not exceed the total of the displayed size and reserve size of the order displayed on the automated trading center; and

(7) The trading center establishes, maintains, and enforces written policies and procedures that are reasonably designed to assure compliance with the terms of this exemption, and the trading center regularly surveils to ascertain the effectiveness of such policies and procedures and takes prompt action to remedy deficiencies in them.

The exemption applies only to the execution of the Print Protection Transaction itself. It does not, for example, apply to any trades executed by the trading center that are connected with the Print Protection Transaction.

The Commission believes that an exemption for Print Protection Transactions will promote efficiency and the best execution of investor orders.[9] The exemption will allow trading centers to execute Print

[3] *See also* 15 U.S.C. 78mm(a)(1) (providing general authority for the Commission to grant exemptions from provisions of the Exchange Act and rules thereunder).

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[5] 17 CFR 242.600(b)(30).

[6] Letter to Nancy M. Morris, Secretary, Commission, from Jerry O'Connell, Chairman, SIFMA Trading Committee, dated May 1, 2007 (''SIFMA Exemption Request'').

[7] *Id.* at 2.

[8] *Id.* at 4.

[9] *See* Exchange Act Section 11A(a)(1)(C)(i) and (iv) (assuring efficient execution of securities transactions and the practicability of executing investors' orders in the best market are two of the primary objectives for the national market system).

Protection Transactions without a requirement to prevent trade-throughs of the current protected quotations or to qualify for one of the exceptions in Rule 611(b). It thereby will minimize the expense incurred by trading centers to offer beneficial transactions to customers when such customers have contributed to public price discovery by displaying trading interest at a price and offering immediately accessible liquidity at such price.

Promoting the display of customer limit orders and public price discovery were primary objectives of Rule 611.[10] The trade-through protection of Rule 611, however, is limited to the best bids and offers (''BBOs'') displayed by automated trading centers. The Commission did not adopt a proposal to extend trade-through protection to certain ''depth-of-book'' quotations outside a trading center's BBOs, but noted that a number of commenters believed that enhanced order interaction with depth-of-book quotations would likely result even if the proposal were not adopted.[11] These commenters asserted that competition and best execution responsibilities would lead market participants to voluntarily access depth-of-book quotations in addition to quotations at BBOs. The Commission noted that such a competition-driven outcome would benefit investors and the markets in general.[12]

Print protection offered by trading centers is an additional competition-driven factor that can improve the execution of depth-of-book quotations and thereby promote price discovery. The Commission therefore believes that the exemption is fully consistent with the policies of Rule 611. The terms of the exemption are designed to achieve this goal. The customer's order must be displayed in whole or in part by an automated trading center that displays protected quotations. An automated trading center is required to offer immediate and automatic access to its displayed quotations, including both the displayed size and any reserve (*i.e.*, undisplayed) size of such quotations.[13] The size of a Print Protection Transaction cannot exceed the total of the displayed size and reserve size of the customer's order. Given that those who seek to trade in large size often are unwilling to display the full extent of their trading interest because of the risk of causing an adverse price movement, the Commission believes it is appropriate to allow Print Protection Transactions to protect both displayed size and reserve size of customer orders. As a result, customers will be rewarded for displaying some of their trading interest at a particular price, while also providing immediately available liquidity at such price that is undisplayed.[14] Finally, the trading center must execute the Print Protection Transaction promptly after the Triggering Transaction, the contra side of the execution of the order must be provided by a broker-dealer who has responsibility for the order, and the Triggering Transaction must be identified as qualifying for the ISO exceptions in paragraphs (b)(5) or (b)(6) of Rule 611. These exceptions indicate that ISOs were routed to execute against all protected quotations with prices superior to the price of the Triggering Transaction, but may not have satisfied the full extent of the customer's order. If they did not, the trading center will be allowed to offer print protection and give the customer's order a beneficial execution.

For the foregoing reasons, the Commission finds that granting the foregoing exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors.

IV. Conclusion

It is hereby ordered, pursuant to Rule 611(d) of Regulation NMS, that trading centers shall be exempt from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when the transaction that constituted the trade-through qualifies as an Print Protection Transaction, as defined above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

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[10] *See, e.g.*, NMS Adopting Release, 70 FR at 37501.

[11] NMS Adopting Release, 70 FR at 37530.

[12] *Id.*

[13] *See* Rule 600(b)(4)(i) (automated trading center must be capable of displaying automated quotations); Rule 600(b)(3)(ii) (automated quotation must be immediately and automatically accessible); Regulation NMS Adopting Release, 70 FR at 37534 n. 313 (automated quotation ''must be immediately and automatically accessible up to its full size, which will include both the displayed and reserve size of the quotation'').

[14] *See* NMS Adopting Release, 70 FR at 37514 (noting common use of ''pinging'' orders—marketable orders with sizes greater than displayed size that seek to access both displayed and reserve liquidity at automated trading centers).

[15] 17 CFR 200.30–3(a)(82).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55880; File No. SR–Amex–2007–49]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Adoption of Market Data Fees for AMEX Real-Time Trade Price Service

June 8, 2007.

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 May 18, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been substantially prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange proposes to establish a one-year pilot program to disseminate AMEX Real-Time Trade Prices, a new Amex-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange (''AMEX Trade Prices'') and to establish a flat monthly fee for that service. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com.*

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

In filings with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments received on the proposed rule change. The text of these 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 aspects of such statements.

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

[2] 17 CFR 240.19b–4.