

across their respective marketplaces, the Exchange is proposing to delay the operative date for NYSE Rule 92(c)(3) from May 14, 2008 to March 31, 2009.

Pending the harmonization of the two rules, the Exchange will continue to require that, as of the date each Exchange member organization implements its riskless principal routing, the Exchange member organization must have in place systems and controls that allow it to easily match and tie riskless principal execution on the Exchange to the underlying orders, and that it be able to provide this information to the Exchange upon request. Moreover, the Exchange will coordinate with FINRA to examine for compliance with the rule requirements.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>9</sup> in particular, insofar as it is designed to prevent fraudulent and manipulative acts and practices, 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 believes the proposed extension will provide the Exchange and FINRA the time necessary to develop a harmonized rule concerning trading ahead that will enable Exchange member organizations to participate in the national market system without unnecessary impediments.

### 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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public

interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-29 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-NYSE-2008-29. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested and the Commission has determined to waive this five-day pre-filing notice requirement.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2008-29 and should be submitted on or before May 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57688; File No. SR-NYSE-2008-30]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend Exchange Rule 13 (Definitions of Orders) To Add a New Order Type To Be Known as a Reserve Order and To Amend Exchange Rule 70 (Bids and Offers)

April 18, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 14, 2008, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the NYSE. The NYSE has designated the proposed rule change as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule

<sup>12</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.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. On April 18, 2008, NYSE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to amend NYSE Rule 13 (Definitions of Orders) to extend to off-Floor participants the ability to directly enter orders that use reserve functionality ("Reserve Order"), an ability currently available only to Exchange Floor brokers and specialists. The Exchange intends to institute this new order type in 100 Exchange-listed securities traded on the Exchange as a pilot program that would last up to six months beginning in the second quarter of 2008. The Exchange also proposes to amend NYSE Rule 70 (Bids and Offers) to allow Floor broker agency interest excluded from the aggregated agency interest information available to the specialist to participate in manual executions. The text of the proposed rule change is available at <http://www.nyse.com>, NYSE's principal office, and 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, the NYSE 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. The NYSE 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**

In this filing, the Exchange proposes to amend NYSE Rule 13 to adopt a new order type available to all market participants to be known as a Reserve Order. The Exchange proposes to implement this order type in a pilot program that will be established in two phases. The instant filing seeks to establish Phase 1 of the Reserve Order

type. The Exchange will submit a separate filing to the Commission at a later date in order to establish Phase 2 of the Reserve Order. The Exchange states that, in Phase 2, it intends to propose to initiate a second Reserve Order type that does not require any displayed quantity and therefore will not be eligible for manual executions or have any portion of the order published in NYSE OpenBook®.<sup>5</sup>

In connection with the adoption of the Reserve Order type, the Exchange further proposes to amend NYSE Rule 70<sup>6</sup> to allow Floor broker agency interest excluded from the aggregated agency interest information made available to the specialist to be able to participate in manual executions. This will have the effect of placing reserve interest of Floor brokers and reserve interest entered from off-Floor on an equal footing.

##### **Reserve Orders**

In Phase 1, the NYSE seeks to provide customers with the ability to directly enter orders that use reserve functionality, an ability currently available only to Exchange Floor brokers<sup>7</sup> and specialists.<sup>8</sup> The Reserve Order will allow all market participants to maintain non-displayed liquidity on the Exchange's Display Book system® ("Display Book") for execution.<sup>9</sup> The Exchange intends to institute this new order type in 100 Exchange-listed securities as a pilot to end no later than the earlier of September 30, 2008 or Commission approval of a proposed rule change to make the instant pilot permanent for all securities ("Reserve Order Pilot"). The Exchange states that a list of the 100 securities proposed for participation in the pilot will be available on the NYSE Web site (<http://www.nyse.com>).

##### **Current Ability to Use Reserve Function**

Currently, Floor brokers' interest may be represented electronically by including these orders in a separate file,

known as the Floor broker agency interest file, within Display Book®. Floor brokers are permitted to place the liquidity representing customer orders at or outside the best bid or offer on the Exchange ("Exchange BBO"). Similarly, specialists have the ability to place in a separate file, known as the specialist interest file, within Display Book® their dealer interest at prices at or outside the Exchange BBO. Pursuant to NYSE Rules 70.20(c)(ii) and 104(d)(i), some of the interest in either of these files that is at the Exchange BBO may, at the choice of the Floor broker or specialist, be non-displayed interest. That is, the Floor broker or specialist may decide to hold additional interest in "reserve" and not have it be part of the published bid or offer. Both specialists and Floor brokers are required to have a minimum of one round lot (which for most securities trading on the Exchange is 100 shares) displayed (*i.e.*, designated to be published in the Exchange quote or "displayable") whenever their interest is at the Exchange BBO. The specialist or Floor broker may choose to display more than the required minimum. If an execution occurs at the Exchange BBO that reduces the displayed amount below the amount designated to be displayed, the displayed interest is automatically replenished from the specialist's or Floor broker's respective reserve interest. Reserve interest is eligible to participate in automatic executions on the Exchange after displayed interest on the same side of the market trades. Reserve Floor broker and specialist interest participate on parity with each other when trading with contra-side interest.

The ability to have reserve interest was designed, in part, to allow Floor brokers flexibility to determine the best way in which to represent customer orders, especially larger customer orders. One way in which they can do this is to decide what portion of customer interest should be displayed based on the Floor broker's sense of the market in a particular security. The reserve gives Floor brokers the advantage of both auction market and automatic execution capability, without the risk of missing the market.

For specialists, the reserve function allows the possibility of more liquidity at the best bid or offer price and facilitation of single-price executions on behalf of customers.

The Exchange notes that other market centers also utilize reserve order types.<sup>10</sup>

<sup>5</sup> NYSE OpenBook® provides aggregate limit order volume that has been entered on the Exchange at price points for all NYSE-traded securities.

<sup>6</sup> See proposed amendment to NYSE Rule 70.20(k).

<sup>7</sup> See NYSE Rule 70.20(c)(ii).

<sup>8</sup> See NYSE Rule 104(d)(i).

<sup>9</sup> The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, 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.

<sup>10</sup> See, e.g., NASDAQ Rule 4751(f)(2), and NYSE Arca Equities Rule 7.31(h)(3).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

### Proposed Reserve Order

The proposed amendment to NYSE Rule 13 will create a Reserve Order type that is a limit order for which a portion of the order is to be displayed and a portion of the order, at the same price, is in reserve.<sup>11</sup> Market participants that choose to enter Reserve Orders must enter specified order information in relation to the price and size of the order and the amount to be displayed. The displayable portion of a Reserve Order will be published in NYSE OpenBook® and will be available to the specialist on the Floor. However, both the displayable and the non-displayable portion will be unavailable to the specialist's algorithm and therefore not eligible for price improvement by the specialist. Such interest will be made available to the specialist manually in certain situations, as discussed below. Both the displayable and the non-displayable portions are available for automatic execution against incoming contra-side orders.

Interest represented through Reserve Orders will trade according to Exchange rules governing priority and parity.<sup>12</sup> Under current Exchange rules, the first bid or offer made at a particular price is entitled to priority at that price.<sup>13</sup> Once a trade occurs with a bid or offer that has priority, other bids or offers at that price representing customer orders (DOT orders) and Floor broker agency interest files (e-Quotes and d-Quotes) trade on parity. Specialist interest (s-Quotes) yields to DOT orders; once DOT orders are satisfied, s-Quotes trade on parity with e-Quotes and d-Quotes.

For example, assume that immediately following a Floor clearing event, the bid on the Exchange is \$20.05 for 1,000 shares, consisting of a DOT order of 300 shares, Floor broker agency interest file (e-Quote) volume of 400 shares representing interest of two Floor brokers for 200 shares each, and specialist interest of 300 shares. This is all displayed interest, *i.e.*, there is no

reserve interest involved. There is no priority as all bids were reentered following the Floor clearing event. An incoming market order to sell 400 shares is executed against the DOT bid and the e-Quotes since the specialist interest (s-Quote) must yield to DOT interest. If the incoming order had been for 800 shares, the DOT orders and Floor broker interest would be executed in full and the specialist would receive 100 shares.

The displayable portion of the Reserve Order interest will be executed first in accordance with the above rules governing priority and parity. Once all displayable interest, including DOT orders, e-Quotes, d-Quotes, and s-Quotes that is quoted at the Exchange BBO has been traded, any remainder of an incoming order will be executed against any reserve, *i.e.*, non-displayable interest at the Exchange BBO. Such non-displayable interest trades on parity except that specialist reserve interest at the Exchange BBO will yield to all DOT Reserve and CAP orders. Outside the Exchange BBO, e-Quotes and d-Quotes will trade with all interest represented by DOT orders, including DOT Reserve Orders, both displayable (*i.e.*, the interest that will be published if such interest becomes the Exchange best bid or offer) and non-displayable, on parity. Reserve interest represented by s-Quotes outside the Exchange BBO will yield to reserve interest represented by Reserve Orders and CAP orders. Within DOT orders, interest that would be displayable will be allocated on a time priority basis. After displayable DOT order interest is completely executed, any remaining shares are allocated to eligible non-displayable Reserve Order interest in time priority. Interest represented by a Floor broker is allocated equally among the Floor broker's customers without regard to whether that interest was displayable or non-displayable.

To illustrate how this will work for a trade at the quote, assume the same scenario as above, but in addition to the displayed interest of 1,000 shares, there is reserve interest for the DOT order of 600 shares, 400 for each Floor broker (total of 800 shares) and 700 shares for the specialist for a total of 2,100 shares in reserve. An incoming order to sell 2,500 shares would be executed as follows:

- 1,000 shares trade with the displayed bid and is allocated 300 shares to the DOT order, 200 shares to each Floor broker (400 shares total), and 300 shares to the specialist, leaving 1,500 shares to be executed.
- The 1,500 remaining shares execute against the reserve portion of the DOT Reserve Order (600 shares), and 400

shares of reserve interest for each of the Floor brokers and 100 shares for the specialist.

A trade outside the quote will occur when the displayed and reserve interest volume at the Exchange BBO is not sufficient to completely fill the incoming contra side order. Assume the same condition exists as in the second example, but the incoming order to sell is for 4,800 shares, thus out-sizing the displayed and non-displayed interest at the bid by 1,700 shares. At the next bid price of 20.03, there is 400 shares of a DOT Reserve Order, of which 100 shares is displayable, three Floor brokers using the reserve function bidding for 400 shares each, with 100 shares displayable and 300 shares in reserve and 1,000 shares of specialist interest, 100 shares displayable and 900 shares in reserve. After the execution at the bid price of 20.05, the execution of the remaining 1,700 shares at 20.03 would be as follows:

- 400 shares each to the DOT Reserve Order and the Floor brokers, since they trade on parity with each other outside the Exchange best bid (offer) for a total of 1,600 shares.
- 100 shares to the specialist, since the DOT Reserve Order was executed in full.

If there had been additional volume in the DOT Reserve Order of 100 shares, the specialist would not have traded at all.

Reserve Orders will have the ability to automatically replenish the displayable amount of interest at the Exchange BBO when trades reduce or exhaust such displayable interest; however, the Exchange proposes to allow customers to determine the specific amount to be included as displayable above a minimum requirement of one round lot. In this way customers will have the flexibility to replenish liquidity that is in keeping with the market need at the specific time and at that price point. Moreover, if customers are able to display liquidity in keeping with the current trading characteristics of the security, then there is more incentive for them to use the reserve function and thus provide additional liquidity to the market.

When the displayable size of a Reserve Order is replenished from reserve, the replenished displayable quantity will be assigned a time sequence based on the time it is replenished. The remaining original displayed quantity, if any, will retain its original time sequence.

<sup>11</sup> The Exchange represents that this functionality is equivalent to the functionality currently available to Floor brokers and specialists with respect to the entry of reserve interest. In order for Floor brokers' reserve interest not to be visible by the specialists, a Floor broker must designate his or her reserve interest as "Do Not Display" interest. Reserve Orders in contrast are never shown to the specialist except when included in aggregate quantities for manual executions.

<sup>12</sup> Reserve Orders will also be subject to federal securities regulations, including the order entry requirements of Section 11(a) of the Securities Exchange Act of 1934.

<sup>13</sup> See NYSE Rule 72 I(a) through (g). While a priority bid or offer may be established it is usually broken by a "Floor clearing" event. "Floor clearing" events include a trade or an update of the NYSE quote. After such an event, all bids and offers at the price are on parity.

### Execution of Reserve Interest During a Manual Transaction

While the majority of transactions on the Exchange are executed electronically, there are times when manual execution is required. In these situations, specialists seek information on the available interest at various price points to determine the appropriate price at which to complete the manual execution. As with reserve interest in a Floor broker's agency interest file, information on reserve interest entered directly into Exchange systems through Reserve Orders will be made available to the specialist only in the aggregate at each price point for the express purpose of the specialist effecting a manual execution.<sup>14</sup> The reserve interest is not distinguished from other interest available to be executed at a specific price point. Rather, Exchange systems display to the specialist the total number of shares available for execution at the price point and include reserve interest in the total number. In this manner such reserve interest will be available for trades that take place on the Floor of the Exchange that will not be conducted automatically. Such trades take place at the opening and close of the Exchange, during the trading day in situations involving auction market transactions that are not automatic trades, and in certain specific trading situations, such as trades conducted when a Liquidity Replenishment Point<sup>15</sup> is reached after an automatic execution or in a "gap" quote situation.

Similarly, today, interest in the Floor broker agency interest file is not publicly disseminated except for the amount of interest designated by the Floor broker to be displayed when the interest is priced at or becomes the Exchange best bid or offer. Any reserve interest in the Floor broker agency interest file that is priced at or becomes the Exchange best bid or offer is displayed to the specialist on an aggregated basis along with any other interest that is available at the same price. However, pursuant to NYSE Rule 70.20(g), a Floor broker has the discretion to exclude his or her agency interest, including any reserve interest at the best bid (offer), from the aggregate information available to the specialist. At the present time, however, Exchange systems are not enabled to provide this function. The Exchange represents,

<sup>14</sup> As previously indicated, subject to Commission approval, in Phase 2 customers will have a choice of whether to use a zero display Reserve Order, which will not be eligible for execution in manual trades.

<sup>15</sup> See NYSE Rule 1000(a)(iv) for a description of Liquidity Replenishment Points and functionality surrounding automatic and manual executions.

however, that this functionality will be enabled upon effectiveness of the instant filing.

Floor broker agency interest excluded from the aggregate information available to the specialist would not be included in a specialist's response to a member's market probe in accordance with NYSE Rule 115.<sup>16</sup> Floor broker agency interest removed from the aggregate information is eligible to participate in automatic executions and sweeps; however, it is not eligible to participate in manual executions. The Floor broker is responsible for ensuring that agency interest removed from the aggregate information is properly represented with respect to any manual trade that may occur because the specialist will not have any knowledge of such interest. As a result, excluded interest may be executed at an inferior price because that information is not visible to the specialist.

The Exchange has concluded that it is not in the public interest to have agency interest removed from the aggregate information excluded from manual executions. In order to provide its customers with the best possible execution experience, the Exchange proposes to amend NYSE Rule 70.20(h) to permit agency interest removed from the aggregated agency interest information to participate in manual executions. As such, those orders will no longer be at the risk of being executed at inferior prices.

In order to permit agency interest removed from the aggregated agency interest information to participate in manual executions, Exchange systems will include excluded interest in the aggregated agency interest displayed to the specialist only during the execution of the manual trade. This information is maintained in the template used by specialist to execute trades in the Display Book. As such, aggregate Floor broker agency interest visible to the specialist will include agency interest designated to be excluded from the aggregate Floor broker agency interest file.

The Exchange further proposes to amend NYSE Rule 70.20<sup>17</sup> to prohibit specialists, trading assistants and anyone acting on their behalf from using

<sup>16</sup> Pursuant to NYSE Rule 115(iii) a specialist may provide information about orders contained in the Display Book referred to also as a market probe, "to provide information about buying or selling interest in the market, including aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest in response to an inquiry from a member conducting a market probe in the normal course of business."

<sup>17</sup> See proposed NYSE Rule 70.20(h)(ii).

the Display Book to access information about Floor broker agency interest excluded from the aggregated agency interest other than in situations where there is a reasonable expectation on the part of such specialist, trading assistant or other person acting on their behalf that a transaction will take place imminently for which such agency interest information is necessary to effect such transaction. A pattern and practice of specialists accessing reserve order information without trading may constitute a violation of NYSE Rule 70.20.

The amendments to NYSE Rule 70.20 are proposed as permanent changes and will not be a part of the pilot program.

### Reserve Order Pilot

As previously stated above, the Exchange intends to initiate use of the Reserve Order type for the off-Floor participants as a pilot program in approximately 100 Exchange-listed securities. This will allow the Exchange to test its viability from a business and technological viewpoint. The Exchange will announce to its membership the 100 securities that will be in the pilot program. The Exchange proposes to expand the Reserve Order function to additional securities during the pilot period, based on how successful the results of the pilot are. The Exchange proposes that the pilot program operate until September 30, 2008, or such earlier time that the Exchange determines that the pilot is operating successfully and files with the Commission to have it extended to all securities trading on the NYSE.

### Execution Logic Amendments Prior to Completion of the Reserve Order Pilot

The Exchange represents that it intends to submit a formal proposal prior to the completion of the Reserve Order Pilot to modify how interest is allocated during an execution outside the Exchange BBO to provide for the allocation of shares to displayable quantities of interest, including the displayable portion of a Reserve Order and displayable reserve order interest represented by Floor brokers, prior to any share allocation to the non-displayable portion thereof.<sup>18</sup>

Specifically, Reserve Order interest and the portion of reserve interest represented by Floor brokers that is designated to be displayed, (*i.e.*, designated to be published in the Exchange quote or "displayable") will be executed first on parity. The

<sup>18</sup> See email from Deanna Logan, Associate General Counsel, NYSE, to David Liu, Assistant Director, Division of Trading and Markets, Commission, on April 18, 2008.

incoming order will be divided equally among each participant's (e.g., DOT orders and each Floor broker) displayable interest at that price point on parity. Once all displayable interest has been completely executed, any remainder of an incoming order will be executed against any reserve, i.e., non-displayable, interest at that price point. Such non-displayable interest will also be executed on parity.<sup>19</sup>

To illustrate how this will work for a trade, assume that the bid on the Exchange is \$20.05 for 1,000 shares, consisting of a DOT order of 600 shares and Floor broker agency interest file (e-Quote) volume of 400 shares representing interest of two Floor brokers for 200 shares each. There is no interest at \$20.04, but at \$20.03 the same amount of displayable interest of 1,000 shares exists and there is reserve interest for the DOT order of 600 shares and 600 for each Floor broker (total of 1,200 shares) for a total of 1,800 shares in reserve. An incoming order to sell 2,800 shares would be executed as follows:

- 1,000 shares trade with the displayed bid of \$20.05 and is allocated 600 shares to the DOT order and 200 shares to each Floor broker (400 shares total), leaving 1,800 shares to be executed.

- There is no interest at \$20.04. The 1,800 shares remaining will be executed first against the 1,000 shares that has been designated as displayable interest at the price of \$20.03, leaving 800 shares to be executed.

- Then the reserve portion of the DOT Reserve Order receives an allocation of 300 shares, 300 shares of interest is allocated to the reserve interest of the Floor broker who was next in line and 200 shares to the reserve interest of the other Floor broker for a total of 800 shares, completing the incoming order.

#### Conclusion

The Exchange believes that by providing all market participants with the ability to maintain non-displayed liquidity on the Display Book, market participants will be encouraged to post liquidity and thus offer Exchange customers additional opportunities for price improvement by expanding the interest available to execute against incoming orders at a single price. The Exchange further believes that the amendment of NYSE Rule 70.20 will result in a better execution experience for its customers by allowing them to participate in manual executions.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under section 6(b)(5)<sup>20</sup> of the Act 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 Exchange also believes that the proposed rule change also is designed to support the principles of section 11A(a)(1)<sup>21</sup> in that it seeks to assure economically efficient execution of securities transactions, fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that the instant proposal is in keeping with these objectives in that extending reserve order functionality will provide an opportunity for all market participants to receive efficient, low cost executions available through the use of this order type, and promote fair competition among markets which already provide for entry of Reserve Orders by all market participants.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to

section 19(b)(3)(A)<sup>22</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>23</sup> As required under Rule 19b-4(f)(6)(iii),<sup>24</sup> the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), which would make the rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would immediately allow off-Floor participants to directly enter orders that use reserve functionality that is currently available to Floor brokers and specialists. In addition, the proposed reserve functionality is currently available on other exchanges.<sup>25</sup> The Commission also believes that the proposed amendment to NYSE Rule 70.20(h) to allow participation by Floor broker interest in manual executions should provide investors with the opportunity to receive economically efficient executions of their securities transactions. Accordingly, the Commission designates the proposed rule change to be 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.<sup>26</sup>

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6).

<sup>24</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>25</sup> See, e.g., Nasdaq Rule 4751(f)(2); Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (NASDAQ-2006-001).

<sup>26</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 18, 2008, the date on which the NYSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78k-1(a)(1).

<sup>19</sup> *Id.*

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-30 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2008-30. 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 such filing also will be available for inspection and copying at the principal office of the NYSE. 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-2008-30 and should be submitted on or before May 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8-8878 Filed 4-23-08; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57683; File No. SR-Phlx-2008-27]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Access to XLE on Phlx's Options Floor

April 18, 2008.

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> notice is hereby given that on April 11, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Phlx. 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 delete Phlx Rule 1014(e)(iii), which limits the actions of Registered Options Traders ("ROTs") related to trading in Phlx's equity market in certain situations, and adopt Phlx Rule 175 prohibiting an XLE Market Maker from acting as an options specialist or option market maker in options overlying the securities in which the XLE Market Maker is registered.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.phlx.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 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.

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

###### 1. Purpose

The purpose of the proposed rule change is to clarify that members and member organizations on the Phlx options floor are permitted to have connectivity to XLE, Phlx's electronic equity trading system. XLE provides to those Phlx member organizations and their Sponsored Participants authorized to enter orders on the system ("XLE Participants") a system for the entry and execution of NMS Stock orders. XLE is the sole means on Phlx to enter and execute NMS Stock orders; the physical equity trading floor has been discontinued.<sup>3</sup> The Exchange states that, in the past, Phlx's physical equity and options floor were separated by a wall, which required a member to leave one floor and walk to the other floor in order to participate on the other floor. In addition, the wall prevented any line of sight or line of hearing between the two floors. Specifically, the wall helped to prevent someone on one floor from using information gained there on the other floor without first physically leaving the one floor and walking to the other, thereby mitigating the "time and place" advantage gained from being on that floor.<sup>4</sup>

When XLE started, the trading of NMS Stocks on Phlx ceased to take place on a physical floor and, instead, now takes place electronically according to the algorithms programmed in the software that operates XLE.<sup>5</sup> XLE Participants cannot alter these algorithms, nor does the identity of a XLE Participant affect the execution of the order. Access to XLE is available to XLE Participants through an Exchange electronic interface by means of their own communication lines or through lines established by service providers in the business of maintaining connectivity in the securities marketplace. In addition, XLE Participants may access XLE for the entry of two-sided orders through

<sup>3</sup> See Phlx Rule 160.

<sup>4</sup> Phlx Rule 606 regulates the use of electronic and telephonic means of communication on the floor.

<sup>5</sup> See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006).

<sup>27</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.