

available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–29 and should be submitted on or before July 17, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60153; File No. SR–NYSE–2009–49]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Include Floor Broker Agency Interest Containing Pegging and/or Discretionary Instructions, Eligible for Execution in the Closing Transaction, in the NYSE Order Imbalance Information Datafeed Disseminated Prior to the Closing Transaction

June 19, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on June 18, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to include Floor Broker agency interest containing pegging and/or discretionary instructions, eligible for execution in the closing transaction, in the NYSE Order Imbalance Information datafeed disseminated prior to the closing transaction. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.com>.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, 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

New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to include Floor Broker agency interest files (“e-Quotes”) containing pegging and/or discretionary instructions (“d-Quotes”) (collectively “Floor broker agency interest”), eligible for execution in the closing transaction, in the NYSE Order Imbalance Information datafeed disseminated prior to the closing transaction.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).<sup>4</sup>

###### Background of NYSE Amex Order Imbalance Information

Currently, NYSE Rule 123C allows Exchange systems to make available a datafeed of real-time order imbalances that accumulate prior to the closing transactions on the Exchange.<sup>5</sup> The datafeed contains aggregate information about orders that are potentially subject to execution at the market’s closing price and represent issues that are likely to be of particular trading interest at the close. Recipients of the NYSE Order Imbalance Information datafeed

currently pay a \$500 monthly fee for access to this datafeed.

The NYSE Order Imbalance Information datafeed disseminated prior to the closing transaction (“NYSE Closing Order Imbalance Information”) includes all market-on-close orders and limit-on-close orders eligible to participate in the closing transaction. DMM interest and Crowd interest are excluded.

Prior to the closing transaction, NYSE Closing Order Imbalance Information is disseminated every fifteen seconds between 3:40 p.m. and 3:50 p.m. and every five seconds between 3:50 p.m. and 4 p.m. On any day that the scheduled close of trading on the Exchange is earlier than 4 p.m. EST, the dissemination of the NYSE Closing Order Imbalance will commence 20 minutes before the scheduled closing time. NYSE Closing Order imbalance information will be disseminated every 15 seconds for approximately 10 minutes. Thereafter, the order imbalance information will be disseminated every five seconds until the scheduled closing time.

###### d-Quotes and Pegging Instructions

Pursuant to NYSE Rule 70, Floor brokers are permitted to represent orders electronically through the use of e-Quotes. A d-Quote, as provided by NYSE Rule 70, Supplementary Material .25, permits the Floor broker to include discretionary instructions as to size and/or price on an e-Quote. D-Quote discretionary instructions specify the price at which the d-Quote may trade and the number of shares to be executed based on the application of the discretionary instructions. The Floor broker must also specify the price at which the d-Quote is to be quoted.

Pegging is a distinct instruction that may be used in conjunction with an e-Quote and/or a d-Quote pursuant to NYSE Rule 70, Supplementary Material .26. Pegging instructions allow the Floor broker to maintain his/her interest in the Exchange Best Bid or Offer (“BBO”) if the quote moves from the orders’ initial quote price. Pegged interest moves with the Exchange BBO within the designated range. Any discretionary instructions associated with that interest will continue to be applied as long as it is within the Floor broker’s designated price range. Buy-side e-Quotes will peg to the best bid and sell side e-Quotes will peg to the best offer.

<sup>4</sup> See SR–NYSEAmex–2009–29.

<sup>5</sup> See Securities Exchange Act Release No. 57861 (May 23, 2008), 73 FR 31905 (June 4, 2008) (SR–NYSE–2008–42) (enhancing NYSE OpenBook Product offerings with the introduction of the Order Imbalance Information datafeed); See also Securities Exchange Act Release No. 59202 (January 6, 2009), 74 FR 1744 (January 13, 2009) (SR–NYSE–2008–132) (introducing the NYSE Order Imbalance Information Fee); See also Securities Exchange Act Release No. 59815 (April 23, 2009), 74 FR 19609 (April 29, 2009) (SR–NYSE–2009–41) (modifying the reference price at which the Exchange reports the Order Imbalance Information and clarifying what information is included in and excluded from the Order Imbalance Information Reports). Pursuant to NYSE Rule 15, similar information is disseminated prior to the opening transaction via this product.

<sup>13</sup> 17 CFR 200.30–3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b–4.

Proposal to Include Floor Broker Agency Interest in the Closing NYSE Amex Order Imbalance Information Datafeed

Through this filing, the Exchange proposes to enhance the information included in the NYSE Closing Order Imbalance Information datafeed. Specifically, the Exchange proposes to also include, at no additional charge, Floor broker agency interest, eligible for execution in the closing transaction, in the NYSE Closing Order Imbalance Information datafeed. The Exchange currently also provides displayable aggregated d-Quote and pegging e-Quote interest in its NYSE OpenBook® and NYSE Trades® market data products. The Exchange now seeks to add additional transparency to the NYSE Order Imbalance Information datafeed. Accordingly, the Exchange believes that the inclusion of this information in the NYSE Closing Order Imbalance Information datafeed will provide increased transparency regarding the anticipated closing transaction.

The NYSE Closing Order Imbalance Information will include d-Quote interest using the maximum discretionary price that could be available on the close and pegging e-Quotes at their ceiling<sup>6</sup> or floor<sup>7</sup> price. Beginning at 3:55 p.m., Exchange systems will use the maximum discretionary or maximum pegged price (ceiling or floor) associated with the Floor broker agency interest to determine its inclusion in the NYSE Closing Order Imbalance Information datafeed.

The Exchange anticipates that the inclusion of Floor broker agency interest, eligible for execution in the closing transaction, in the NYSE Closing Order Imbalance Information datafeed will provide its customers with the requested transparency and allow sufficient time for contra-side interest to develop, thereby decreasing volatility and ultimately contributing to the maintenance of a fair and orderly market.

Currently, systemic modifications are required to implement the inclusion of d-Quotes and all other pegging e-Quotes eligible to participate in the closing transaction in all the securities traded on the Exchange. There are approximately 10 securities on the Exchange that will not receive the

<sup>6</sup> Pursuant to Supplementary Material .26 (ix)(B) of NYSE Rule 70, the "ceiling price" is the highest price to which a buy-side e-Quote or d-Quote may peg.

<sup>7</sup> Pursuant to Supplementary Material .26(ix)(C) of NYSE Rule 70, the "floor price" is the lowest price to which a sell-side e-Quote or d-Quote may peg.

modified Order Imbalance Information datafeed on the implementation date of June 22, 2009. During the implementation process, the Exchange will identify on its Web site all the securities operating on modified systems and receiving the Order Imbalance Information datafeed containing d-quotes and all other pegging e-quotes eligible to participate in the closing transaction. The Exchange anticipates the completion of these modifications on or about July 31, 2009.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> 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 instant proposal is in keeping with these principles in that it seeks to provide greater transparency to Exchange market participants, affording them additional information which further promotes just and equitable principles of trade. The Exchange submits that the proposal to include Floor broker agency interest in the NYSE Order Imbalance Information datafeed furthers the protection of investors and the public interest by providing investors with a more accurate depiction of the market interest prior to the closing transaction, thereby allowing them to make better informed trading decisions.

### 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 foregoing 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) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing in order to assist investors in making better informed trading decisions by providing a more accurate depiction of the available market interest prior to the closing transaction. Moreover, a grant of immediate effectiveness will ensure that the Exchange can provide this increased transparency afforded by the additional information for the June 26, 2009 rebalance of the Russell Index which has historically been characterized by increased trading volatility associated with the closing transaction. The Exchange believes that the provision of more accurate information prior to the closing transactions will serve to mitigate volatility, assisting in the maintenance of a fair and orderly market and ultimately protecting investors and the public interest. The Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>11</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the 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,

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to 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 satisfied this requirement.

<sup>11</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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-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-NYSE-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 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2009-49 and should be submitted on or before July 17, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60150; File No. SR-Phlx-2009-35]

**Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Definition of "Narrow-Based Index"**

June 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 16, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" 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 prepared by the Exchange. Phlx has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> 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**

The Exchange proposes to file a proposed rule change to add a commentary to Rule 1000A(b)(12) to clarify that this rule, which defines the term "narrow-based index" to mean "to be representative of a particular industry or a group of related industries" to also accommodate an index the constituents of which are all headquartered within a single country to be listed as a narrow-based index pursuant to Exchange rules.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, 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, 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**

Phlx is filing the proposed rule change to add a commentary to clarify that Phlx Rule 1000A(b)(12), which defines the term "narrow-based index" (or "industry index") to mean "to be representative of a particular industry or a group of related industries" to also accommodate an index the constituents of which are all headquartered within a single country to be listed as a narrow-based index pursuant to Exchange rules. This would enable options based on an index, including companies all headquartered within a single country, to be rightfully considered as a generic narrow-based index for purposes of listing on the Exchange and trading.

The listing and trading of index options on the Exchange is generally conditioned on the ability to meet the rule requirements for narrow-based and broad based indexes.<sup>4</sup> More particularly regarding narrow-based indexes, Phlx Rule 1009A(b) states that the Exchange may trade options on an underlying index pursuant to Rule 19b-4(e) of the Act<sup>5</sup> where all of the noted conditions noted are satisfied.<sup>6</sup> Indeed, the Exchange has, and continues to, list and trade options on narrow-based indexes based on industries or a group of related industries that are located within various countries. These options are

<sup>4</sup> Broad-based indexes (or market indexes), which are not at issue in this filing, are defined in Phlx Rule 1000A(b)(11).

<sup>5</sup> The Chicago Board Options Exchange and International Securities Exchange have the same ability pursuant to their own rules.

<sup>6</sup> These include the index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted, and consists of ten or more component securities; each component security has a market capitalization of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index; the market capitalization is at least \$50 million; and trading volume of each component security has been at least one million shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume has been at least 500,000 shares for each of the last six months. See Phlx Rule 1009A(b)(1)-(12) for all of the conditions.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).