

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 does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately 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 will enable the Exchange to implement new Rule 0(c) commensurate with its entering into the RSA. In addition, as noted by the Exchange, the proposal is consistent with the rules of other self-regulatory organizations previously approved by the Commission.<sup>11</sup> For these reasons, the Commission designates the proposed rule change as operative upon filing.<sup>12</sup>

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, 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-NYSEAmex-2010-57 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-2010-57. 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 Web site viewing and printing 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-NYSEAmex-2010-57 and should be submitted on or before July 19, 2010.

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. 34-62334; File No. SR-NASDAQ-2010-076]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NASDAQ Rule 11890 Governing Clearly Erroneous Executions**

June 21, 2010.

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 June 17, 2010, The NASDAQ Stock Market LLC (the "Exchange" or "Nasdaq") 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 Exchange. On June 18, 2010, the Exchange submitted 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 the Substance of the Proposed Rule Change**

The Exchange is filing with the Commission to amend NASDAQ Rule 11890, entitled Clearly Erroneous Transactions.

The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.cchwallstreet.com/Filings/>, at Nasdaq's principal office, 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

<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) requires a self-regulatory organization to give the Commission written notice of its intent to file 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> See Nasdaq Rule 0130 and BATS Rule 8.1(d).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</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.

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

NASDAQ is proposing modifications to its Rule 11890, entitled Clearly Erroneous Transactions. First, NASDAQ proposes replacing existing paragraph (C)(2) of Rule 11890, entitled "Unusual Circumstances and Joint Market Rulings" with a new paragraph, entitled "Multi-Stock Events Involving Twenty or More Securities." Second, NASDAQ replacing existing paragraph (C)(4) of Rule 11890, entitled "Numerical Guidelines Applicable to Volatile Market Opens" with a new paragraph, entitled "Individual Stock Trading Pauses." Third, NASDAQ is proposing changes to existing paragraph (b) of Rule 11890 to eliminate the ability of NASDAQ to deviate from the Numerical Guidelines contained in paragraph (C)(1) (other than under limited circumstances set forth in paragraph (b)(i)) when deciding which transactions will be reviewed by NASDAQ as potentially clearly erroneous. Finally, NASDAQ proposes modifications to paragraphs (C)(1) and (C)(3) of Rule 11890 consistent with the proposed changes to paragraphs (C)(2) and (C)(4). As proposed, the provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of Rule 11890 as amended pursuant to this filing, would be in effect during a pilot period set to end on December 10, 2010. If the pilot is not either extended or approved permanent by December 10, 2010, the prior versions of paragraphs (C), (c)(1), and (b) of Rule 11890 would be in effect.

NASDAQ is proposing the rule changes described below in consultation with other markets and Commission staff to provide for uniform treatment: (1) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on NASDAQ. NASDAQ has also proposed additional changes to Rule 11890 that reduce the ability of NASDAQ to deviate from the objective standards set forth in the Rule. In addition, NASDAQ is modifying certain defined terms in

the rule to match definitions used by other exchanges in order to avoid the risk of confusion. The proposed changes are described in further detail below.

Revised Paragraph (C)(2) Related to Multi-Stock Events Involving Twenty or More Securities

NASDAQ proposes to eliminate the majority of existing paragraph (C)(2), which provides flexibility to NASDAQ to use different Numerical Guidelines or Reference Prices in various "Unusual Circumstances." NASDAQ proposes to replace this paragraph with new language that would apply to Multi-Stock Events involving twenty or more securities whose executions occurred within a period of five minutes or less. The revised paragraph would retain language making clear that during Multi-Stock Events involving twenty or more securities the number of affected transactions may be such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, in such circumstances, decisions made by NASDAQ in consultation with other markets could not be appealed. Further, as proposed, in connection with reviews of Multi-Stock Events involving twenty or more securities, NASDAQ may use a Reference Price other than consolidated last sale in its review of potentially clearly erroneous executions. With the exception of those securities under review that are subject to an individual stock trading pause as described in proposed paragraph (C)(4), and to ensure consistent application across market centers when proposed paragraph (C)(2) is invoked, NASDAQ will promptly coordinate with the other market centers to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of proposed paragraph (C)(2), as well as select one or more specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. NASDAQ will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by NASDAQ and other markets consistent with the proposed paragraph (C)(2).

Because NASDAQ and other market centers are adopting a different threshold and standards to handle large-scale market events, which would include events occurring during times of

high volatility at the beginning of regular trading hours, NASDAQ proposes deletion of paragraph (C)(4) ("Numerical Guidelines Applicable to Volatile Market Opens") of the existing rule. NASDAQ believes that this provision is no longer necessary, and if maintained, could result in extremely high Numerical Guidelines (up to 90%) in certain circumstances.

Revised Paragraph (C)(4) Related to Individual Stock Trading Pauses

NASDAQ and other primary listing markets for U.S. stocks recently amended their rules so that they may, from time to time, issue a trading pause for an individual security if the price of such security moves 10% or more from a sale in a preceding five-minute period. In this regard, NASDAQ recently amended its rules to pause trading in an individual stock when the primary listing market for such stock issues a trading pause triggered pursuant to Rule 4120(a)(11), as approved.<sup>3</sup> As described above, NASDAQ is proposing to eliminate existing paragraph (C)(4) ("Numerical Guidelines Applicable to Volatile Market Opens"). NASDAQ proposes adopting a rule, numbered as (C)(4) following such elimination, which will provide for uniform treatment of clearly erroneous execution reviews in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on NASDAQ. The proposed rule change is necessary to provide greater certainty of the clearly erroneous Reference Price for transactions that trigger a trading pause (the "Trigger Trade") and subsequent transactions occurring between the time of the Trigger Trade and the time the trading pause message is received by NASDAQ from the single plan processor responsible for consolidation and dissemination of information for the security and put into effect on NASDAQ, especially under highly volatile and active market conditions.

NASDAQ proposes to revise paragraph (C)(4) of NASDAQ Rule 11890 to allow NASDAQ to use the price that triggered a trading pause in an individual stock (the "Trading Pause Trigger Price") as the Reference Price for clearly erroneous execution reviews of a Trigger Trade and transactions that occur immediately after a Trigger Trade but before a trading pause is in effect on NASDAQ. As proposed, the phrase

<sup>3</sup> See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR-NASDAQ-2010-061).

“Trading Pause Trigger Price” shall mean the price that triggered a trading pause in any Securities as defined in NASDAQ Rule 4120(a)(11). The Trading Pause Trigger Price reflects a price calculated by the primary listing market over a rolling five-minute period and may differ from the execution price of a transaction that triggered a trading pause. NASDAQ will rely on the primary listing market that issued an individual stock trading pause to determine and communicate the Trading Pause Trigger Price for such stock. NASDAQ proposes to make clear

in the text that the proposed standards in paragraph (C)(4) apply regardless of whether the security at issue is part of a Multi-Stock Event involving five or more securities as described in proposed paragraphs (C)(1) and (C)(2). As proposed, the Numerical Guidelines set forth in NASDAQ Rule 11890(C)(1), other than those Numerical Guidelines applicable to Multi-Stock Events, would apply to reviews of Trigger Trades and subsequent transactions. Nasdaq proposes to review, on its own motion pursuant to paragraph (b)(ii) of the Rule, all transactions that trigger a trading pause

and subsequent transactions occurring before the trading pause is in effect on NASDAQ. NASDAQ has proposed to limit such reviews to reviews of transactions that executed at a price lower than the Trading Pause Trigger Price in the event of a price decline and higher than the Trading Pause Trigger Price in the event of a price rise. Because the proposed rules for trading pauses would only apply within Regular Trading Hours,<sup>4</sup> an execution would be reviewed and nullified as clearly erroneous if it exceeds the following thresholds:

| Reference price or product                             | Numerical guidelines (subject transaction's % difference from the trading pause trigger price)        |
|--|---|
| Greater than \$0.00 up to and including \$25.00 .....  | 10  |
| Greater than \$25.00 up to and including \$50.00 ..... | 5   |
| Greater than \$50.00 .....                             | 3   |
| Leveraged ETF/ETN securities .....                     | Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier ( <i>i.e.</i> , 2x). |

Revisions to Paragraph (b)

NASDAQ to be consistent with other exchanges is eliminating paragraph (b) and adding new paragraphs (b)(i) and (b)(ii) to separate the System Disruptions from Own Motion situations. Consistent with other proposals made in this filing, NASDAQ proposes modifying paragraph (b)(ii) to eliminate the ability of a Senior Official to deviate from the Numerical Guidelines contained in the Rule other than under very limited circumstances set forth in paragraph (C)(3).

New paragraph (b)(i) provides a Senior Official of NASDAQ the ability on his or her own motion, to review and rule on executions that result from “any disruption or a malfunction in the operation of any electronic communications and trading facilities of NASDAQ, or extraordinary market conditions or other circumstances in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist.”

New paragraph (b)(ii) is similar to existing Rule 11890(b) and covers other situations where NASDAQ may act on its own motion. Without modification, the language “extraordinary market conditions or other circumstances\* \* \*” in current Rule 11890(b) would leave NASDAQ with broad discretion to deviate from the Numerical Guidelines set forth in

paragraph (C)(1). Thus, NASDAQ proposes narrowing the scope of paragraph (b) so that it only permits NASDAQ to nullify transactions consistent with that paragraph (including at a lower Numerical Guideline) if there is a disruption or malfunction in the use of NASDAQ’s system covered by proposed Rule 11890(b)(i).

For the same reason, NASDAQ proposes eliminating the words “use or” from the language in paragraph (b) to make clear that the provision only applies to a disruption or malfunction of the NASDAQ’s system (and not of an NASDAQ user’s systems).

Paragraph (b)(ii) gives a Senior Official of NASDAQ the ability on his or her own motion to review transactions as potentially clearly erroneous. Consistent with the goal of achieving more objective and standard results, NASDAQ proposes deleting language in existing paragraph (b) that would allow NASDAQ to deviate from the Numerical Guidelines contained in paragraph (C)(1). In addition, NASDAQ proposes to make clear that any Senior Official reviewing transactions on his or her own motion must follow the guidelines set forth in proposed paragraph (C)(4), if applicable. Accordingly, NASDAQ proposes to modify paragraph (b)(ii) to state that an officer must rely on paragraphs (C)(1)–(4) of Rule 11890 when reviewing transactions on his or her own motion.

Additional Conforming Revisions to Paragraphs (C)(1) and (C)(3)

Based on proposed paragraph (C)(2), NASDAQ has proposed certain conforming changes to paragraphs (C)(1) and (C)(3) of the existing Rule, as described below.

Under current NASDAQ Rule 11890, a transaction may be found to be clearly erroneous only if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth in paragraph (C)(1) of the Rule. The “Reference Price” is currently defined as “the consolidated last sale immediately prior to the execution(s) under review except for in Unusual Circumstances as described in paragraph (C)(2)” of NASDAQ Rule 11890. NASDAQ proposes modifying paragraph (C)(1) consistent with the changes described above such that NASDAQ shall use the consolidated last sale immediately prior to the execution(s) under review as the Reference Price except for: (A) Multi-Stock Events involving twenty or more securities, as described in proposed paragraph (C)(2); (B) transactions not involving a Multi-Stock Event as described in proposed paragraph (C)(2) that trigger a trading pause and subsequent transactions, as described in proposed paragraph (C)(4), in which case the Reference Price shall be determined in accordance with that

<sup>4</sup> The term “Regular Trading Hours” is being renamed from “Core Session” in NASDAQ Rule 11890 (a)(2)(B) as the time between 9:30 a.m. and

4 p.m. Eastern Time. According to rules of the primary listing markets, an individual stock trading pause can be issued based on a Trigger Trade that

occurs at any time between 9:45 a.m. and 3:35 p.m. Eastern Time. See NASDAQ Rule 4120(a)(11), NYSE Rule 80C, and NYSE Arca Rule 7.11.

paragraph (C)(4); and (C) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. NASDAQ also proposes modifying paragraph (C)(1) to reduce uncertainty as to the applicability of the Numerical Guidelines, by requiring a finding that an execution was clearly erroneous if such execution exceeds the Numerical Guidelines, subject only to the Additional Factors included in paragraph (C)(3). Moreover, NASDAQ proposes revising the existing description for Multi-Stock Events that is contained on the Numerical Guidelines chart to make clear that different Numerical Guidelines apply for Multi-Stock Events involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less. In addition, NASDAQ proposes adding to the Numerical Guidelines chart a row that contains the Numerical Guidelines (30%) for Multi-Stock Events involving twenty or more securities whose executions occurred within a period of five minutes or less.

NASDAQ proposes clarifying paragraph (C)(3) to make clear that the additional factors set forth in that paragraph are not intended to provide any discretion to an NASDAQ official to deviate from the guidelines that apply to Multi-Stock Events or to transactions in securities subject to individual stock trading pauses.

Finally, NASDAQ proposes amending paragraph (c)(1), related to appeals of clearly erroneous execution decisions by NASDAQ, to preserve non-appealability of all joint rulings between NASDAQ and one or more other market centers. NASDAQ believes that certainty and consistency is critical to reviews of related executions that span multiple market centers. Accordingly, although NASDAQ has proposed deletion of such language from existing paragraph (C)(3), NASDAQ proposes adding such language back in to paragraph (c)(1) to make clear that joint market rulings are not appealable.

## 2. Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the

requirements of Section 6(b) of the Act.<sup>5</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)<sup>7</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts, including reviews in the context of a Multi-Stock Event involving twenty or more securities and reviews resulting from a Trigger Trade and any executions occurring immediately after a Trigger Trade but before a trading pause is in effect on the Exchange. Further, the Exchange believes that the proposed changes enhance the objectivity of decisions made by the Exchange with respect to clearly erroneous executions.

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

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

### 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

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 such 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. 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 No. SR-NASDAQ-2010-076 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 No. SR-NASDAQ-2010-076. 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 Web site viewing and printing 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 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 No. SR-NASDAQ-2010-076 and should be submitted on or before July 19, 2010.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78k-1(a)(1).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62357; File No. SR-NYSEAmex-2010-54]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 1000 Regarding Order Size Eligible for Automatic Execution

June 22, 2010.

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 17, 2010, 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 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 amend NYSE Amex Equities Rule 1000 regarding order size eligible for automatic execution. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, the Commission’s Web site at <http://www.sec.gov>, 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 1000 to state that the order size eligible for automatic execution is 1,000,000 shares and to provide that upon advance notice to market participants, the Exchange may increase the order size eligible for automatic executions up to 5,000,000 shares on a security-by-security basis. In addition, the Exchange proposes to raise the maximum order size accepted by Exchange systems to 25,000,000 shares.

##### Background

Currently, the maximum order size eligible for automatic execution is 1,000,000 shares. This limit is reflected in Exchange and New York Stock Exchange LLC (“NYSE”) rule filings that have been approved by the Commission, but it is not specifically stated in Rule 1000. In 2006, as part of the approval of the NYSE Hybrid Model, the NYSE amended NYSE Rule 1000 to provide for a phased-in increase of order size eligibility for automatic execution to a maximum size of 3,000,000, but noted that the then-current order size eligibility for automatic execution was 1,000,000 shares.<sup>4</sup> The NYSE determined not to raise the 1,000,000 share maximum in order to avoid any possible issues resulting from routing orders in excess of 1,000,000 shares to another market as other markets also do not offer automatic execution in size greater than 1,000,000 shares.

In 2008, the NYSE implemented on a pilot basis its New Model structure, which is also the model that governs trading at the Exchange.<sup>5</sup> Among other

<sup>4</sup> See Securities Exchange Act Release No. 54820 (November 26 [sic], 2006), 71 FR 70824 (December 6, 2006) (SR-NYSE-2006-65).

<sup>5</sup> The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1-1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE. See Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR-Amex-2008-63); No. 58833 (Oct. 22, 2008), 73 FR 64642 (Oct. 30, 2008) (SR-NYSE-2008-106); No. 58839 (Oct. 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03); No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10); and No. 59027 (Nov. 28, 2008), 73 FR 73681 (Dec. 3, 2008) (SR-NYSEALTR-2008-11). Among the rule changes that the Exchange has proposed to adopt is the NYSE’s New Model structure. See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46); See also

things, the NYSE’s New Model filing included amendments to Rule 1000 to provide for a phased-in increase of order size eligibility for automatic execution from 3,000,000 shares to a maximum of 6,500,000 shares. At that time, the NYSE intended to raise the maximum order size accepted by NYSE systems to 6,500,000 shares. While the rule text states that the order size eligibility is 3,000,000 shares, the New Model filing indicates that the maximum order size eligible for automatic execution is 1,000,000 shares and states that the purpose of the amendment to Rule 1000 was to provide for a new potential maximum order “size eligibility” of 6,500,000 shares.

#### Proposed Amendment to NYSE Amex Equities Rule 1000

The Exchange proposes three amendments to NYSE Amex Equities Rule 1000. First, the Exchange proposes to amend Rule 1000 to state specifically that orders up to 1,000,000 shares are eligible for automatic execution. Second, the Exchange proposes that upon at least 24 hours advance notice to market participants, the execution size of automatic executions may be increased up to 5,000,000 shares on a security-by-security basis. Determination of such securities will be based on factors including the basis of average daily volume and price over a calendar quarter. A list of such securities will be posted on the Exchange Web site. Third, the Exchange proposes to amend Rule 1000 to state that Exchange systems shall accept a maximum order size of 25,000,000 shares.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE.<sup>6</sup>

##### 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Act”)<sup>7</sup> 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

Securities Exchange Act Release Nos. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR-NYSEAmex-2009-65) (extending the operation of the New Model Pilot until the earlier of Securities and Exchange Commission approval to make such pilot permanent or November 30, 2009); 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR-NYSEAmex-2009-83) (extending Pilot to March 30, 2010); and 61725 (March 17, 2010), 75 FR 14223 (May [sic] 24, 2010) (SR-NYSEAmex-2010-28) (extending the operation of the NMM Pilot until the earlier of Securities and Exchange Commission approval to make such pilot permanent or September 30, 2010).

<sup>6</sup> See SR-NYSE-2010-44.

<sup>7</sup> 15 U.S.C. 78a.

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

<sup>8</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.