

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66032; File No. SR-NYSEAmex-2011-99)

December 22, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Supplementary Material .26 (Pegging for d-Quotes and e-Quotes) to NYSE Amex Equities Rule 70

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 December 14, 2011, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) 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. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Supplementary Material .26 (Pegging for d-Quotes and e-Quotes) to NYSE Amex Equities Rule 70. The text of the proposed rule change is available at the Exchange, at [www.nyse.com](http://www.nyse.com), the Commission’s Public Reference Room, and at [www.sec.gov](http://www.sec.gov).

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

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<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)(iii).

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

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

The Exchange proposes to amend Supplementary Material .26 (Pegging for d-Quotes and e-Quotes) to NYSE Amex Equities Rule 70.

Paragraph (i) of Supplementary Material .26 states that an e-Quote may be set to provide that it will be available for execution at the national best bid ("NBB") (for an e-Quote that represents a buy order) or at the national best offer ("NBO") (for an e-Quote that represents a sell order) as the national best bid or offer ("NBBO") changes, so long as the NBBO is at or within the e-Quote's limit price. Paragraph (x) of Supplementary Material .26 further provides that, as long as the NBB or NBO is within the pegging price range selected by the Floor broker, the pegging e-Quote or d-Quote will join the NBB or NBO as it is autoquoted. As such, pegging interest may peg to a price that may not be displayed at the Exchange. For example, if the NBB is \$10.05 and the Exchange best bid is \$10.04, a pegging e-Quote to buy will display at the Exchange at \$10.05, thus creating a new Exchange best bid.

Because pegging interest automatically pegs to the NBBO, under current rules and functionality, a pegging e-Quote could peg to an NBB or NBO that is locking or crossing an existing Exchange best bid or offer. For example, if the Exchange best bid is \$10.04 and the NBO locks it at \$10.04, a pegging e-Quote to sell would peg to the \$10.04 NBO price and then immediately execute against the Exchange's best bid of \$10.04. In such scenario, a pegging e-

Quote, which is intended to be reactive, becomes taker interest. Similarly, if automatic executions on the buy (sell) side are suspended at the Exchange, for example, if a liquidity replenishment point is reached pursuant to NYSE Rule 1000, the NYSE would not be displaying a protected bid (offer) and therefore other markets could display a protected offer (bid) that crosses the Exchange best bid (offer). In such scenario, if the NBO moved to below the Exchange best bid of \$10.04, a pegging e-Quote to sell would peg to that NBO, which would cross the Exchange best bid.

The Exchange proposes to add new paragraph (x)(A) to Supplementary Material .26 to provide that a pegging e-Quote or d-Quote to buy (sell) would not peg to an NBB (NBO) that is locking or crossing the Exchange best offer (bid), but would instead join the next available best-priced non-pegging interest that does not lock or cross the Exchange best offer (bid).<sup>5</sup>

Customers have requested this change because in the infrequent circumstances when the NBBO is locking or crossing the Exchange best bid or offer,<sup>6</sup> customers do not want their pegging interest, for which the ultimate goal is to be passive liquidity for purposes of execution, to become taker interest. Because the next available best-priced non-pegging interest may be on an away market, the Exchange further proposes to amend paragraph (vii) to Supplementary .26 to specify that the non-pegging interest against which pegging interest pegs may either be available

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<sup>5</sup> When an exception to the prohibition against trade-throughs is in effect, pursuant to Rule 611(b)(4) of Regulation NMS, technically, there are no available protected bids or offers against which an e-Quote or d-Quote can peg. In such situations, the pegging interest would peg to the next available best-priced non-pegging interest on the Exchange that is within the price range selected by the Floor broker.

<sup>6</sup> The Exchange would re-price pegging interest only if the NBBO is locking or crossing the Exchange best bid or offer and not if the NBBO is “locking” or “crossing” undisplayed liquidity at the Exchange. For example, where the Exchange best bid and offer is \$10.02 and \$10.04 and there is “dark” reserve buy interest at \$10.03, if the NBO becomes \$10.03, pegging sell interest will peg to the \$10.03 NBO and will execute against the Exchange “dark” reserve interest priced at \$10.03.

on the Exchange or may be a protected bid or offer on an away market. The Exchange believes that this is already implied in Supplementary .26, particularly because pegging interest can peg to the NBB or NBO, which may or may not be a displayed price at the Exchange,<sup>7</sup> and is proposing this change only to add greater specificity to Supplementary Material .26.

The Exchange also proposes to add new paragraph (x)(B) to Supplementary Material .26 to provide that the converse of paragraph (x) is also true. Specifically, if the NBB (NBO) is not within the pegging price range selected by the Floor broker, then a pegging e-Quote or d-Quote to buy (sell) will join the next available best-priced non-pegging interest that is within the price range selected by the Floor broker.

Finally, the Exchange proposes to amend paragraph (xiii) to Supplementary Material .26 to delete the text that permits Floor brokers to specify a maximum size validation for e-Quotes and d-Quotes. Floor brokers have not availed themselves of this functionality and the Exchange has therefore decided to eliminate it from Supplementary Material .26. In addition, because pegging interest is considered when assessing the minimum volume size of same-side interest against which to peg, the Exchange proposes to delete the last sentence of paragraph (xiii) to Supplementary Material .26.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date and related roll-out schedule, if applicable, via Trader Update.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act

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<sup>7</sup> See Securities Exchange Act Release No. 61081 (December 1, 2009), 74 FR 64105 (December 7, 2009) (SR-NYSEAmex-2009-76).

of 1934 (the “Act”),<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Specifically, the Exchange believes that the proposed changes to Supplementary Material .26 to NYSE Amex Equities Rule 70 would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market because they would reduce the potential for the Exchange best bid or offer to be locked or crossed. The proposed changes would also promote transparency by adding greater specificity with respect to the interest to which pegging e-Quotes and d-Quotes may peg and would remove text corresponding to a functionality that Floor brokers have not availed themselves of and therefore is no longer necessary to promote just and equitable principles of trade.

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 does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by

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

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

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, it 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 summarily may temporarily suspend 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-2011-99 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-2011-99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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 10:00 a.m. and 3:00 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-2011-99 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill  
Deputy Secretary

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