

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69810; File No. SR-NYSE-2013-41)

June 20, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 1000 to Increase the Price Threshold for Those Securities Ineligible for Automatic Executions From \$1,000.00 or More to \$10,000.00 or More

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 7, 2013, New York Stock Exchange LLC (the “Exchange” or “NYSE”) 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 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 Rule 1000 to increase the price threshold for those securities ineligible for automatic executions from \$1,000.00 or more to \$10,000.00 or more. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), 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 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

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

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

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 is proposing to amend Rule 1000(a)(vi) (“Automatic Executions”) to increase the price level at which a security would be considered “high-priced” and thus ineligible for automatic execution. Rule 1000(a)(vi) prohibits automatic executions if the closing price for a security, or if the security did not trade, the closing bid price of the security on the Exchange on the immediate previous trading day, is \$1,000 or more. The Exchange is proposing to increase this price level from \$1,000 or more to \$10,000 or more.<sup>3</sup>

The Exchange is proposing to make a conforming amendment to Rule 60(d)(iii)(B)(I), which provides that the Exchange keeps Autoquote<sup>4</sup> active, even if automatic executions are suspended under Rule 1000, if an order or a cancellation of an order arrives that would not result in a locked or crossed market in a security priced at \$1,000 or more. The Exchange proposes to increase this price level to \$10,000 or more to conform the provision to the proposed amendment to Rule 1000(a)(vi).

Securities priced at \$1,000 or more are traded manually by the assigned Designated Market Maker (“DMM”). Rule 610 of Regulation NMS under the Act prohibits national securities exchanges and national securities associations from locking or crossing protected

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<sup>3</sup> As a result of the proposed amendment, six additional securities would be eligible for automatic execution as of the date of this filing.

<sup>4</sup> Pursuant to Rule 60(d), the Exchange autoquotes the NYSE’s highest bid or lowest offer to reflect interest in the Book, and when the highest bid or lowest offer has been traded with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders at the next highest (in the case of a bid) or lowest (in the case of an offer) price.

quotations,<sup>5</sup> and Rule 611 of Regulation NMS prohibits trade-throughs only of protected quotations.<sup>6</sup> Rule 600 of Regulation NMS, however, requires a protected quotation to be automated.<sup>7</sup> The Exchange's quotations in high-priced securities, therefore, are not protected quotations for purposes of Regulation NMS. The proposed rule change would allow the affected securities to be eligible for automatic execution and auto-quoting, which would allow the Exchange to protect its quotations and remain competitive with other market centers. For the affected securities, the proposal would align the availability of automatic executions on the Exchange with the availability of such executions on other exchanges.<sup>8</sup>

The Exchange is also proposing to make a conforming amendment to Rule 1000(a)(iv)(C), which sets out value ranges used to determine liquidity replenishment points ("LRPs"). LRPs are pre-determined price points that function to moderate volatility in a particular security, improve price continuity, and foster market quality by temporarily converting the electronic market to an auction market and permitting new trading interest to add liquidity.<sup>9</sup> Pursuant to Rule 60(d)(i), Autoquote is suspended when an LRP is reached.

LRPs are calculated by adding and subtracting an LRP value to a security's last sale price. The Exchange sets and disseminates a specific LRP value from a range of potential values. That range, in turn, is based upon a security price category (*e.g.*, \$5 to \$9.99) and the

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<sup>5</sup> 17 C.F.R. § 240.610(d)(1)(i).

<sup>6</sup> 17 C.F.R. § 240.611(a)(1).

<sup>7</sup> 17 C.F.R. § 240.600(b)(57)(iii).

<sup>8</sup> The Exchange is not aware of any other exchange that, by rule, does not issue protected quotations for a stock on a regular basis.

<sup>9</sup> The Exchange recently amended its rules to phase out the functionality associated with LRPs to coincide with the implementation of the Limit Up – Limit Down Plan. See Securities Exchange Act Release No. 69295 (April 4, 2013), 78 FR 21457 (April 10, 2013).

average daily volume of the security to which the value is being added. The LRP value chosen within an LRP value range is based on an examination of trading data. Because the Exchange is increasing the highest price per share at which automatic execution is available, the Exchange is making a conforming amendment to the highest security price category used to determine LRP values from \$250 to \$1000 to \$250 to \$10,000.

## 2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that the proposal is consistent with (i) Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and (ii) Section 11A(a)(1) of the Act,<sup>12</sup> in that it seeks to ensure the economically efficient execution of securities transactions, fair competition among brokers and dealers and among exchange markets, and the practicability of brokers executing investors' orders in the best market.

Specifically, the Exchange believes that increasing the dollar threshold for high-priced securities would expand the eligibility of orders for automatic executions on the Exchange, thus removing impediments to and perfecting the mechanism of a free and open market and a national market system. Further, the Exchange believes the proposed amendment will foster cooperation and coordination with persons engaged in facilitating transactions in securities because the

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<sup>10</sup> 15 U.S.C. § 78f(b).

<sup>11</sup> 15 U.S.C. § 78f(b)(5).

<sup>12</sup> 15 U.S.C. § 78k-1(a)(1).

securities that will be affected by the amendment are already eligible for automatic executions on other markets. Thus, the proposal will align the Exchange's treatment of such securities with that of other exchanges.

Additionally, the Exchange believes that the proposal will further the objectives of Section 11A(a)(1) of the Act because, by increasing the number of securities eligible for automatic execution, the proposal will ensure that quotes on the Exchange will be protected from trade-throughs and not be locked or crossed by other markets. Exchange quotes in the affected securities will be included in the protected quotations and increase competition in the market. This increased competition and requirement that brokers respect Exchange quotes in the affected securities will increase the ability of brokers to execute investors' orders in the best market. Further, the proposal will assure the fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets because the proposal will promote order interaction and ensure that the Exchange's quotes in the affected securities will not be isolated from other market centers.<sup>13</sup>

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. The Exchange believes that the proposed rule changes will increase competition among execution venues and encourage additional liquidity. By allowing the affected securities to be eligible for automatic execution, the Exchange's quotes in such securities will be considered protected

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<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (Reg. NMS Adopting Release) (quoting H.R. Rep. 94-123, 94th Cong., 1st Sess. 50 (1975)) (“[W]hen Congress mandated the establishment of an NMS, it well stated this basic principle: ‘Investors must be assured that they are participants in a system which maximizes the opportunities for the most willing seller to meet the most willing buyer.’”).

quotes and thus away markets will be required to route to the Exchange when better prices are available on the Exchange. The proposal will therefore increase order interaction and encourage competition in the affected securities.

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 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>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay will allow the Exchange to align its treatment of the affected securities with that of other exchanges, thereby assuring the economically efficient execution of securities transactions and fostering efficiency in the marketplace. Therefore, the Commission designates the proposal operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</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.

<sup>16</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).

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>17</sup> of the Act to determine whether the proposed rule change should be approved or 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 Number SR-NYSE-2013-41 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-2013-41. 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 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

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<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSE-2013-41 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>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).