

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-13723 Filed 6-10-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Joint Hearing with the Department of Labor to examine target date funds and similar investment options on Thursday, June 18, 2009 beginning at 9 a.m.

The Joint Hearing will take place in the Auditorium of the Department of Labor's headquarters at 200 Constitution Avenue, NW., Washington, DC. The Joint Hearing will be open to the public with seating on a first-come, first-served basis. Visitors will be subject to security checks.

Discussion topics at the Joint Hearing will include issues related to how target date fund managers determine asset allocations and changes to asset allocations (including glide paths) over the course of a fund's operation; how they select and monitor underlying investments; how the foregoing and related risks are disclosed to investors; and the approaches or factors for comparing and evaluating target date funds. Joint Hearing participants will include representatives of plan participants and beneficiaries, plan sponsors, investor organizations, academia and the financial services industry.

For further information, please contact: The Office of the Secretary at (202) 551-5400.

Dated: June 5, 2009.

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60045; File No. SR-NYSE-2009-55]

### Self-Regulatory Organizations; New York Stock Exchange LLC, Notice of Filing of a Proposed Rule Change Amending Rule 70.25 To Permit All Available Contra-side Liquidity To Trigger the Execution of a d-Quote

June 4, 2009.

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 2, 2009, New York Stock Exchange LLC ("NYSE" or the "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 NYSE. 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 Rule 70.25 to permit all available contra-side liquidity to trigger the execution of a d-Quote. 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

The Exchange proposes to amend NYSE Rule 70.25(c)(iii) to provide that all available contra-side liquidity within the possible execution range of a d-

Quote will be considered when determining whether to activate a d-Quote.<sup>3</sup>

#### Background

Rule 70.25 governs the entry, validation, and execution of bids and offers represented by a Floor broker on the Floor of the Exchange via agency interest files ("e-Quotes") that include discretionary instructions as to size and/or price ("d-Quotes"). The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price at which the d-Quote may trade and the number of shares to which the discretionary price instruction applies.

Rule 70.25(c) provides that a Floor broker may designate the amount of his or her e-Quote to which discretionary pricing instructions apply. Floor brokers may also designate a minimum or maximum size of contra-side volume with which the Floor broker is willing to trade using discretionary pricing instructions. However, under current Rule 70.25(c)(iii), Exchange systems currently look only at the contra-side displayed interest on the Display Book<sup>®4</sup> ("Book") to determine whether the contra-side volume is within the d-Quote's discretionary size range. Therefore, the displayed bid or offer must meet the minimum volume of the d-Quote before a d-Quote can be activated.

For example, assuming the Exchange Best Bid and Offer ("BBO") is .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote bidding for .05 with four cents of price discretion and a minimum share volume subject to such discretionary pricing instructions of 4,000 shares would not be activated because the displayed offer of 1,000 shares is not sufficient to fill the discretionary size instructions. Accordingly, that d-Quote would not trade.

Similarly, the d-Quote would not be activated even if the Book has contra-side undisplayed interest that could meet both the discretionary pricing and volume instructions of the d-Quote. Taking the same example as above, if

<sup>3</sup> The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. See SR-NYSEAmex-2009-24.

<sup>4</sup> The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMs, contains the Book, and provides a mechanism to execute and report transactions and publish 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>1</sup> 15 U.S.C. 78s(b)(1).

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

Exchange systems have 3,000 shares offered at .09, which is not part of the displayed offer but is both within the discretionary pricing and volume instructions of the d-Quote (1,000 shares at the displayed offer at .08 plus 3,000 shares of contra-side volume at .09 meets the 4,000 minimum size and price instruction of the d-Quote), the d-Quote would not trade. Or, if in addition to the 1,000 shares offered at .08 that is displayed, there is an additional 3,000 shares offered at .08 in reserve interest, notwithstanding that the displayed offer and reserve interest at the .08 price point would meet the discretionary volume instructions of the d-Quote, the d-Quote would not trade.

The Exchange notes that decreasing the minimum discretionary size of the d-Quote would not permit the d-Quote to trade with the contra-side liquidity because the discretionary pricing instructions of a d-Quote are active only for that portion of an e-Quote that also has discretionary size instructions.<sup>5</sup> For example, if a d-Quote for 1,000 shares has a discretionary price range of .04 and a minimum volume of 100 shares, in the above example, only those 100 shares would trade against the displayed offer. The remaining 900 shares would be treated as an e-Quote bid for .05 and would not be eligible to trade with the displayed offer or any other interest within the discretionary price instructions.

### Proposed Amendment

The Exchange proposes to amend Rule 70.25(c)(iii) to remove the restriction that only the displayed interest will be considered when determining whether the contra-side volume is within the discretionary pricing instructions of the d-Quote. The Exchange believes that all interest willing to trade at certain price points should be permitted to trade. Because Exchange systems have both displayed and undisplayed liquidity, considering only displayed contra-side liquidity does not take into account the true state of liquidity when determining whether to activate a d-Quote. The current rule therefore restricts which interest may be considered rather than allow willing interest to interact.

As proposed, if all available contra-side volume within the discretionary price and size instructions of a d-Quote is considered, such d-Quote will trade against such contra-side liquidity in the

same manner that a market order or a marketable limit order would execute against such available contra-side liquidity. For example, assuming that the Exchange BBO is still .05 bid for 1,000 shares and offering 1,000 shares at .08, if a market order or marketable limit order to buy 4,000 shares entered Exchange systems, such order would trade not only with the displayed offer of .08, but would also trade with any reserve interest that is better than the displayed offer (e.g., if there is non-displayed interest offered at .07), reserve interest at the price of the displayed offer, and if there is insufficient liquidity at the displayed offer price or better, the market order would sweep up the Book. Similarly, as proposed, if the d-Quote bid for .05 had four cents of price discretion for a minimum size of 4,000 shares, that d-Quote would interact with the market the same as a market order or a marketable limit order to buy 4,000 shares.

The Exchange notes that the d-Quote functionality sought with this rule proposal provides Floor brokers with functionality similar to that previously available to Floor brokers. As permitted by former Rule 123A.30(a), a CAP-DI order was the elected or converted portion of a percentage order that was convertible on a destabilizing tick and designated for immediate execution or cancel election. When elected, a CAP-DI order would have automatically executed against any contra-side volume available at the electing price and was eligible to participate in a sweep. The Rule 70.25(c)(iii) limitation that only displayed interest is considered when determining whether the contra-side volume meets the d-Quotes discretionary size instructions was added during a time when Floor brokers still had the ability to enter CAP-DI orders.

In connection with the Next Generation Market Model, the Exchange eliminated CAP orders in part because the manner in which such orders were processed impeded the efficiency of the Book.<sup>6</sup> Accordingly, Floor brokers no longer have the capability to enter an order into Exchange systems that would be elected at certain price points and then be eligible to trade with any available contra-side liquidity.

The Exchange notes that, when it eliminated CAP orders, it did not have the technology to permit d-Quotes to fully replicate the functionality of a CAP order. Moreover, when d-Quote functionality was introduced in October

2006, the Exchange did not offer the ability to enter fully dark reserve interest. Since that time, the Exchange has added two new order types, the Minimum Display Reserve Order and the Non-Displayable Reserve Order.<sup>7</sup> By restricting d-Quotes to be active only when the displayed interest meets the discretionary size instructions, d-Quotes are limited in their ability to interact with the type of liquidity that exists at the Exchange.

The Exchange therefore believes that the modernization of d-Quote functionality proposed in this rule filing enables willing interest to trade with all willing contra-side liquidity, including reserve interest, which will result in greater executed volume, better fill rates, new price improvement opportunities for incoming orders, and improved overall market quality. Additionally, the proposed functionality for d-Quotes is consistent with the initial purpose of providing Floor brokers with functionality to replicate the functionalities and characteristics that Floor brokers exercised in an auction-market model and to modernize such tools as the manner of trading at the Exchange evolves. As such, this enhancement does not expand functionality available to Floor brokers but merely restores functionality that previously existed, albeit in a slightly different format.

The Exchange further believes that providing this improved functionality provides customers with a greater array of execution and representation choices when routing an order to the Exchange. For example, a customer currently can choose, among others, to: route an order directly to the Book electronically from an off-Floor location; Route an order to a Floor broker for the Floor broker to represent on the Floor of the Exchange; or, route an order to the New York Block Exchange ("NYBX Facility"), an Exchange facility that allows for the interaction of non-displayed liquidity with the aggregate of displayed and non-displayed liquidity on the Book.<sup>8</sup> Each option provides different benefits for the customer. For example, routing an order directly to Exchange systems provides the benefit of an ultra low latency execution, which is particularly important for an algorithmically-driven trading strategy. Additionally, a customer may choose to use a Floor broker because that customer wants the benefit of that broker's expertise in managing complex orders, performing price discovery, and exercising discretion at the point of sale. Similarly,

<sup>5</sup> See Rule 70.25(a)(iv) ("Discretionary instructions will be applied only if all d-Quoting prerequisites are met. Otherwise, the d-Quote will be handled as a regular e-Quote, notwithstanding the fact that the Floor broker has designated the e-Quote as a d-Quote.").

<sup>6</sup> See Securities Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR-NYSE-2008-46).

<sup>7</sup> See *id.*

<sup>8</sup> See Rule 1600.

a customer may choose to route an order to NYBX in order to include more flexible instructions in the order. For example, an order entered in the NYBX Facility can include a minimum triggering volume ("MTV") instruction, which would require that the Book have sufficient contra-side liquidity before the order in NYBX attempts to execute. No execution of an NYBX order will be attempted if the MTV is not met.

The Exchange believes that the proposed d-Quote functionality is similar to how orders in the NYBX Facility are treated, in that orders in that facility do not require the Exchange contra-side liquidity to be at the Exchange BBO before the NYBX order is triggered for execution. Therefore, the benefit from this proposed d-Quote functionality is already available in another form to customers via the NYBX Facility. By modernizing d-Quote functionality, the Exchange is therefore not only replacing functionality that was previously eliminated, but is also providing customers who elect to use a Floor broker with functionality that is already available in another format, thereby meeting the diverse needs of all customers.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act<sup>9</sup> which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>10</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that permitting d-Quotes to consider all available contra-side liquidity when determining whether the discretionary size range of the d-Quote has been met meets such goals because it ensures that customer orders eligible to trade will execute against willing contra-side liquidity.

### *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**

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

### **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-2009-55 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-55. 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 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-55 and should be submitted on or before July 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-13721 Filed 6-10-09; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60048; File No. SR-CBOE-2009-035]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees**

June 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 29, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "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 prepared by the CBOE. The Commission is publishing this notice to

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

<sup>10</sup> 15 U.S.C. 78k-1(a)(1).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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