

threshold to a higher amount,<sup>52</sup> and one suggested requiring the reporting of all settlements regardless of dollar amount.<sup>53</sup>

FINRA believes that a dollar threshold within the questions is appropriate to address those instances where matters are settled for a nuisance value; at the same time, FINRA is not persuaded by the comments suggesting that an increase to greater than \$15,000 is warranted at this time.

(c) Proposed Revisions to Form U5 To Allow Firms To Amend the "Reason for Termination" and the "Date of Termination"

Eight commenters responded to the proposal to allow firms to amend the "Reason for Termination" and "Date of Termination."<sup>54</sup> Six commenters affirmatively supported this proposal on the basis that it would result in more accurate information being reported to regulators and recorded in the CRD system.<sup>55</sup> Of the two commenters that generally opposed this proposal, one opposed allowing firms to amend the Reason for Termination or Date of Termination except in cases of clerical error.<sup>56</sup> The other commenter supported allowing changes to the Date of Termination, but opposed allowing changes to the Reason for Termination based on a concern about the potential for abuse by firms.<sup>57</sup>

FINRA believes that a firm should have the ability to correct inaccurate information that it filed on a Form U5 regarding terminations through an amendment to that original Form filing. FINRA also believes that limiting such changes to clerical errors is unnecessary in light of: (1) the attendant requirement that firms provide a reason for the Form U5 amendment; and (2) the monitoring of such amendments by FINRA and other regulators. FINRA believes that such monitoring, in particular, will protect against any potential misuse by firms.

(d) Proposed Technical and Conforming Changes to the Forms

No commenters opposed the proposed technical and conforming changes to the Forms, and four commenters affirmatively supported them.<sup>58</sup>

### 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 Number SR-FINRA-2009-008 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-FINRA-2009-008. 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 the filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2009-008 and should be submitted on or before April 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>59</sup>

**Florence E Harmon,**

*Deputy Secretary.*

[FR Doc. E9-6830 Filed 3-26-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59611; File No. SR-Phlx-2009-22]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Administration of Certain Rules in Respect of Index Data Dissemination

March 20, 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 March 16, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 reflect in the administration of its rules the expected discontinuation by the NASDAQ OMX Futures Exchange, Inc. ("NFX") of index value distribution over NFX's Market Data Distribution Network ("MDDN"). Index values will continue to be distributed via another NASDAQ OMX data dissemination service, and the discontinuation of MDDN index value dissemination will not have any impact on the listing or trading of any instruments on the

<sup>59</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.

<sup>52</sup> ARM; R. Long/Wachovia; Williams/Woodforest.

<sup>53</sup> PIABA.

<sup>54</sup> ARM; FSI; Gross/Pace; Jacobson/Cornell; NASAA; Nationwide; PIABA; ProEquities.

<sup>55</sup> ARM; FSI; Gross/Pace; NASAA; Nationwide; ProEquities.

<sup>56</sup> Jacobson/Cornell.

<sup>57</sup> PIABA.

<sup>58</sup> FSI; Gross/Pace; NASAA; Nationwide.

Exchange, or on any facility of a national securities exchange within the meaning of the Act. The Exchange is not proposing to amend the text of any rules, but simply to change the administration of certain rules, as described below.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>.

## 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

Currently, the values of the Exchange's various proprietary indexes are disseminated in parallel over two separate data services operated by The NASDAQ OMX Group, Inc. ("NASDAQ OMX").<sup>3</sup> These values are included both in NFX's MDDN<sup>4</sup> and NASDAQ OMX's data dissemination service. The purpose of this filing is to reflect the pending discontinuation by NFX of its index data dissemination service over MDDN as redundant and unnecessary.<sup>5</sup>

<sup>3</sup> NASDAQ OMX acquired the Exchange on July 24, 2008. NFX, which was previously known as the Philadelphia Board of Trade and became a subsidiary of NASDAQ OMX on the same date, is a Designated Contract Market within the meaning of the Commodities Exchange Act.

<sup>4</sup> MDDN is an Internet protocol multicast network, which was developed by NFX for the purpose of, among other things, transmitting current and closing index values.

<sup>5</sup> The Exchange's rule book and fee schedule do not reference MDDN. As explained herein, MDDN is not a service being provided by the Exchange (rather, it is a service of NFX, a designated contract market under the Commodities Exchange Act), and even if MDDN were an Exchange-supplied service, it would not constitute a facility of a national securities exchange, making its inclusion in the Exchange's rule book unnecessary. See, e.g., Securities Exchange Act Release No. 34-58897 (November 3, 2008), 73 FR 66952 (November 12, 2008) (SR-NASDAQ-2008-018) (NASDAQ's index dissemination service is not a facility of a national securities exchange, and its terms are not rules that must be filed with the Commission).

Exchange rules condition the listing and trading of index options on, among other things, the dissemination of underlying index values periodically during the trading day and closing index values after the close of the trading day. Rule 1009A(b)(10) provides that the current underlying index value for narrow-based indexes will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange.<sup>6</sup> Additionally, Rule 1100A(a) provides that the Exchange shall disseminate or shall assure that the closing index value is disseminated after the close of business and the current index value is disseminated from time-to-time on days on which transactions in index options are made on the Exchange.<sup>7</sup>

The Exchange lists options on several proprietary indexes.<sup>8</sup> Under this proposed rule change, discontinuation of the MDDN index value dissemination service will not affect the eligibility of such options to be listed and traded because dissemination of the underlying index data will not stop and will not be interrupted. All index values included in MDDN are currently also being disseminated over another NASDAQ OMX index dissemination service, making the MDDN index dissemination duplicative and no longer necessary.<sup>9</sup> In the future, the Exchange will continue dissemination of its index data either through NASDAQ OMX's index

<sup>6</sup> See also Rule 1009A(c)(1) (regarding reporting requirements for continued listing of narrow-based indexes underlying options); and Rules 1009A(d)(11) and 1109A(e)(1) (regarding reporting requirements for initial and continued listing of broad-based indexes underlying options).

<sup>7</sup> See also Securities Exchange Act Release No. 53790 (May 11, 2006), 71 FR 28737 (May 17, 2006) (SR-Phlx-2006-04) (regarding, among other things, transmission over MDDN of current and closing index values underlying four index options that were approved by Commission order: XAU, OSX, SOX, and UTY).

<sup>8</sup> The proprietary indexes listed on the Exchange include: PHLX Chemicals Index (XCM); PHLX Defense Sector (DFX); PHLX Drug Sector (RXS); PHLX Europe Sector (XEX); PHLX Gold/Silver Sector (XAU); PHLX Housing Sector (HGX); PHLX Marine Shipping Index (SHX); PHLX Medical Device Index (MXZ); PHLX Oil Service Sector (OSX); PHLX Semiconductor Sector (SOX); PHLX Sports Index (SXP); and PHLX Utility Sector (UTY). DFX, RXS, HGX, OSX, and SOX are listed and options are traded pursuant to Rule 1009(A), which provides for trading of options on indexes pursuant to Rule 19b-4(e) of the Act. XAU and UTY, being two of the oldest indexes that pre-date Rule 19b-4(e), are listed and options are traded pursuant to Commission orders. See Securities Exchange Act Release Nos. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (XAU); and 24889 (September 9, 1987), 52 FR 35021 (September 16, 1987) (UTY). XCM, XEX, SHX, MXZ, and SXP are no longer listed or traded and have no open options interest.

<sup>9</sup> It is expected that other MDDN data streams will continue to operate as a service of NFX to distribute NFX trading data.

dissemination service or through one or more other (NASDAQ OMX-owned or unrelated) major market data vendors.<sup>10</sup>

The Exchange believes that, just like NASDAQ's index dissemination service,<sup>11</sup> NFX's MDDN index dissemination service is not a facility of any national securities exchange within the meaning of the Act and that the Exchange is not required under Section 19(b)(1) of the Act<sup>12</sup> and Rule 19b-4 thereunder<sup>13</sup> to file rule changes regarding administration of such service. If, at a later date, the Exchange proposed to modify the manner in which it disseminates index values, causing the relevant index dissemination service to fit within the definition of a facility of an exchange, or the Exchange proposed to tie the fees for receiving data from the index dissemination service to fees for usage of exchange services (to include, for example, listing and trading), the Exchange would file a proposed rule change with the Commission.<sup>14</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>16</sup> in particular, in that it is 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 by clarifying how underlying index data is to be disseminated.

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

The Exchange does not believe that the proposed rule change will impose

<sup>10</sup> As is the case with the values of proprietary indexes, current and closing index values of certain non-proprietary indexes underlying options listed on the Exchange (Hapoalim American Israeli Index, SIG Coal Producers Index, SIG Energy MLP Index, and SIG Oil Production & Exploration Index) and data regarding foreign currencies underlying options listed on the Exchange (Australian dollars, British pounds, Canadian dollars, Euros, Japanese Yen and Swiss Francs) will likewise continue to be distributed over the NASDAQ OMX index dissemination service or one or more other (NASDAQ OMX-owned or unrelated) major market data vendors.

<sup>11</sup> See Securities Exchange Act Release No. 34-58897 (November 3, 2008), 73 FR 66952 (November 12, 2008) (SR-NASDAQ-2008-018) (NASDAQ's index dissemination service is not a facility of a national securities exchange, and its terms are not rules that must be filed with the Commission).

<sup>12</sup> 15 U.S.C. 78s(b)(1).

<sup>13</sup> 17 CFR 240.19b-4.

<sup>14</sup> See Securities Exchange Act Release No. 58897 (November 3, 2008), 73 FR 66952 (November 12, 2008) (SR-NASDAQ-2008-018).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

any burden on competition 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 either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder. Pursuant to the Act, the proposed rule change has been designated by the Exchange as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. Specifically, as described above, the Exchange has stated how it will administer the enumerated portions of Phlx Rules 1009A and 1100A in light of the discontinuation of index data dissemination over NFX's MDDN. 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.

As discussed above, the Exchange believes that the MDDN index dissemination service is not a "facility of a national securities exchange," and the terms and conditions of this service are therefore not included in the text of the Exchange's rules. Because of this, no changes are being made to the Exchange rule book or fee schedule, and this filing should be viewed as a statement of how the Exchange will administer its existing rules in light of the impending discontinuation of a non-exchange service (MDDN index dissemination) by a sister company (NFX).

It must be noted in this regard that rule changes to discontinue important exchange services (as opposed to non-exchange services, as is the case here) have in the past been accepted by the Commission on immediately effective basis under paragraph (f)(1) of Rule 19b-4.<sup>17</sup> It stands to reason that discontinuation of a non-exchange

service should receive the same treatment under paragraph (f)(1).

In its recent interpretive guidance regarding the self-regulatory organizations' rule filing process, the Commission stated that certain SRO proposals "may be filed as an immediately effective rule so long as it is based on and similar to another SRO's rule" and raises no new policy issues.<sup>18</sup> Filings in this category are eligible to be submitted under paragraph (f)(6) of Rule 19b-4.<sup>19</sup> As explained below, paragraph (f)(6) could serve as a separate basis for this filing's designation under Rule 19(b)(3), but the Exchange believes that designation under paragraph (f)(1) is more appropriate in this case.

The Commission recently approved removal of index dissemination from the rule book of another exchange, NASDAQ,<sup>20</sup> and in its impact, the present filing is similar to the NASDAQ filing. With the shut-down of MDDN index dissemination, both the PHLX and NASDAQ index values will continue to be distributed by the same index dissemination service, and since that service is not a facility of any national securities exchange (either NASDAQ or PHLX), its terms are not rules of an exchange within the meaning of the Act. This similarity to another SRO's rule makes the present filing eligible for immediate effectiveness under paragraph (f)(6) of Rule 19(b)(4).

However, unlike the NASDAQ proposal, the present filing does not require any modifications to codified rule text and relates to a service that is being proposed for discontinuation. As explained above, even when the service to be discontinued is an important facility of a national securities exchange, its discontinuation has in the past been accepted as immediately effective under paragraph (f)(1) of Rule 19b-4. Based on prior Commission practice, while paragraph (f)(6) of Rule 19b-4 would certainly apply to this filing, paragraph (f)(1) of this Rule is the appropriate basis for its immediate effectiveness.

Based on the foregoing, the Exchange designates this filing as immediately effective under paragraph (f)(1) of Rule 19b-4. It is expected that notice of the impending discontinuation of MDDN index dissemination will be given as soon as practicable and the actual

discontinuation will occur shortly thereafter, on a timetable that would minimize any possible inconvenience to its users.

**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-Phlx-2009-22 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-Phlx-2009-22. 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-Phlx-2009-22 and should be submitted on or before April 17, 2009.

<sup>17</sup> See, e.g., Securities Exchange Act Release No. 58613 (Sept. 22, 2008), 73 FR 57181 (Oct. 1, 2008) (SR-PHLX-2008-065) (immediately effective filing to change the administration of Exchange rules as a result of the shutdown of the entire XLE equity trading).

<sup>18</sup> Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> Securities Exchange Act Release No. 58897 (November 3, 2008), 73 FR 66952 (November 12, 2008) (SR-NASDAQ-2008-018) (NASDAQ's index dissemination service is not a facility of a national securities exchange, and its terms are not rules that must be filed with the Commission).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-6826 Filed 3-26-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59614; File No. SR-NYSEALTR-2009-27]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC Amending NYSE Alternext Equities Rule 124 To Execute the Odd-Lot Portion of a Part of a Round-Lot Order Pursuant to the Same Pricing Methodology Used for Odd-Lot Orders

March 20, 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 March 11, 2009, NYSE Alternext U.S. LLC (the “Exchange” or “NYSE Alternext”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 Alternext Equities Rule 124 (Odd-Lot Orders) to execute the odd-lot portion of a part of a round-lot (“PRL”) order pursuant to the same pricing methodology used for odd-lot orders.

#### 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

Through this filing the Exchange seeks to amend NYSE Alternext Equities Rule 124 (Odd-Lot Orders) to execute the odd-lot portion of a part of a round-lot (“PRL”) order pursuant to the same pricing methodology used for odd-lot orders.<sup>4</sup>

These amendments are proposed to conform to amendments filed by the New York Stock Exchange (“NYSE”).<sup>5</sup>

##### Background

As described more fully in a related rule filing,<sup>6</sup> NYSE Euronext acquired The Amex Membership Corporation (“AMC”) pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the “Merger”). In connection with the Merger, the Exchange’s predecessor, the American Stock Exchange LLC (“Amex”), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext U.S. LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the “Act”).<sup>7</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York (the “86 Trinity Trading Systems”), to trading systems and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”). The Exchange’s equity trading systems and facilities at 11 Wall Street (the “NYSE Alternext Trading Systems”) are operated by the NYSE on behalf of the Exchange.<sup>8</sup>

<sup>4</sup> PRL orders are for a size within the standard unit (round-lot) of trading, which is 100 shares for most stocks, but contains a portion that is smaller than the standard unit of trading, e.g. 199 shares. It should be noted that for certain securities trading on the NYSE Alternext Trading Systems the standard unit of trading is 10 shares.

<sup>5</sup> See SR-NYSE-2009-27 (to be filed March 11, 2009).

<sup>6</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the Merger).

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

<sup>8</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

In order to implement the Equities Relocation, the Exchange adopted Rules 1-1004 of the New York Stock Exchange LLC as the NYSE Alternext Equities Rules to govern the equities trading on the NYSE Alternext Trading Systems.

#### Current Execution of Odd-Lot Orders

Currently, odd-lot orders on the Exchange are processed in a separate system on the Exchange from the Exchange systems that execute round-lot orders. Odd-lots are executed systemically by Exchange systems designated solely for odd-lot orders (the “Odd-lot System”).<sup>9</sup> The odd-lot System executes all odd-lot orders against the DMM as the contra party.<sup>10</sup>

Pursuant to NYSE Alternext Equities Rule 124(c), after odd-lot market orders and marketable odd-lot limit orders are received by the Odd-lot System, they are automatically executed at the price of the next round-lot transaction in the subject security on the Exchange. Specifically, marketable odd-lot orders and marketable odd-lot limit orders are executed in time priority of receipt at the price of the next round-lot transaction, pursuant to the net process described in footnote 14 [*sic*]. The imbalance of marketable odd-lot orders that do not receive an execution as a result of the netting provision are executed in time priority of receipt at the price of the NBBO, subject to a volume limitation.<sup>11</sup> Any imbalances of odd-lot limit orders that were non-marketable upon receipt that subsequently become marketable receive an execution at their limit price.<sup>12</sup> Marketable odd-lot orders which would otherwise receive a partial

<sup>9</sup> See NYSE Alternext Equities Rule 124(a).

<sup>10</sup> *Id.* Odd-lot orders are in effect netted against one another and executed; however, since the DMM is buying the same amount that he or she is selling, there is no economic consequence to the DMM in this type of pairing-off of orders. Any imbalance of buy or sell odd-lot market orders are executed against the DMM, up to the size of the round-lot transaction or the BID/OFFER size which ever is less.

<sup>11</sup> The volume limitation in section (c) of the rule is defined as the lesser of either the number of shares in the last round-lot transaction or the number of shares available at the national best bid (in the case of an odd-lot order to sell), or the national best offer (in the case of an odd-lot order to buy).

<sup>12</sup> Pursuant to NYSE Alternext Equities Rule 124(d) odd-lot limit orders that are non-marketable upon receipt that become marketable are eligible to be netted and executed at the price of the next round-lot transaction. If odd-lot limit orders do not receive an execution pursuant to the netting provision, then the orders are eligible to be executed, at its limit price, subject to the volume limitation of section (c) of the rule.

<sup>21</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.