

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2012-131 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-2012-131*. This file number should be included on the subject line if email 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 10:00 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-Phlx-2012-131 and should be submitted on or before December 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-27869 Filed 11-15-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68199; File No. SR-NASDAQ-2012-059]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change To Establish "Benchmark Orders" Under NASDAQ Rule 4751(f)

November 9, 2012.

On May 1, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish various "Benchmark Orders" under NASDAQ Rule 4751(f). The proposed rule change was published for comment in the **Federal Register** on May 17, 2012.³ On June 26, 2012, the Commission extended to August 15, 2012, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁴ On August 14, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁵ In response to the Order Instituting Proceedings, the Commission received two comment letters on the proposed rule change.⁶

Section 19(b)(2) of the Act⁷ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. In this

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66972 (May 11, 2012), 77 FR 29435 (May 17, 2012) ("Notice").

⁴ See Securities Exchange Act Release No. 67258 (June 26, 2012), 77 FR 39314 (July 2, 2012).

⁵ See Securities Exchange Act Release No. 67655 (August 14, 2012), 77 FR 50191 (August 20, 2012) ("Order Instituting Proceedings.").

⁶ See Letters to the Commission from James J. Angel, dated August 16, 2012; and Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated October 5, 2012.

⁷ 15 U.S.C. 78s(b)(2).

case, the proposed rule change was published for notice and comment in the **Federal Register** on May 17, 2012; November 13, 2012, is 180 days from that date, and January 12, 2013, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposal and the issues that commenters have raised concerning the proposal.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁸ designates January 12, 2013, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NASDAQ-2012-059).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-27868 Filed 11-15-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68206; File No. SR-NSX-2012-18]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee and Rebate Schedule

November 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 2012 National Stock Exchange, Inc. ("NSX" or "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 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 is proposing to amend its Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).

Rule 16.1(a) to (i) create a separate definition of average daily volume (“ADV”) as it is used for Automatic Execution Mode (“Auto-Ex Mode”) versus Order Delivery Mode to include shares executed in NMS stocks with quoted prices at less than a dollar in the ADV calculation for Auto-Ex Mode, (ii) provide a fixed per share rebate for Midpoint Peg Zero Display Reserve Orders, and (iii) correct typographical inconsistencies within the Fee Schedule. The text of the proposed rule change is available on the Exchange’s Web site at www.nsx.com, at the Exchange’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 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 is proposing to change its Fee Schedule to (i) create separate definitions of ADV for orders executed using Auto-Ex Mode versus Order Delivery Mode to include within the Auto-Ex Mode ADV calculation shares of NMS stocks with quoted prices less than one dollar, (ii) create a fixed per share rebate for Midpoint Peg Zero Display Reserve Orders,³ and (iii) correct typographical inconsistencies within the Fee Schedule. The proposed changes provide ETP Holders with greater clarity with regard to the application of rebates and fees as well as to provide additional incentives for ETP Holders to direct order flow that may provide investors with greater liquidity and potential price improvement to the Exchange.

Auto-Ex Mode ADV Calculation

The Exchange uses the ADV⁴ calculation to determine the level of

monthly fees (rebates) an ETP Holder will pay (receive) when removing (adding) liquidity. The Exchange is proposing to create separate ADV definitions for Auto-Ex Mode and Order Delivery Mode to include within the Auto-Ex Mode ADV calculation shares of NMS stocks with quoted prices less than one dollar. This change means that the Auto-Ex ADV calculation will include all shares in NMS stocks executed by an ETP Holder using Auto-Ex Mode regardless of the price. The Exchange believes that the proposed change will provide ETP Holders with an incentive to direct additional order flow that may provide investors with price improvement to the Exchange. The Exchange will not change the current ADV calculation for orders executed in Order Delivery Mode because, unlike Auto-Ex mode, ETP Holders that execute orders in Order Delivery Mode are not charged execution fees; they simply receive rebates for their executions. In addition, Order Delivery Mode incurs the Exchange greater regulatory and operational costs than Auto-Ex Mode. The Exchange notes that from May 2009 to September 2012, it included executions in securities priced at less than one dollar in the calculation of volume thresholds used to determine rebates payable for orders executed at one dollar or above.⁵

In addition, the Exchange notes that both EDGX Exchange Inc. (“EDGX”) and BATS Exchange Inc. (“BATS”) have similar rebate structures and do not exclude securities priced below one dollar in the calculation of volume thresholds used to determine rebates payable for orders executed at one dollar or above.⁶

Midpoint Peg Zero Display Reserve Orders

The Exchange also proposes a fixed per share rebate of \$0.0017 for Midpoint Peg Zero Display Reserve Orders⁷ executed through both Order Delivery and Auto-Ex modes. The ADV

ETP Holder has executed on the Exchange in all NMS stocks quoted at prices equal to or greater than a dollar when the Exchange is open for trading (excluding partial trading days) in Auto-Ex Mode or in Order Delivery Mode during the calendar month (or partial month, as applicable).

⁵ See Securities and Exchange Act Release No. 59974 (May 26, 2009), 74 FR 26453 (June 2, 2009) (SR-NSX-2009-03) and Securities Exchange Act Release No. 67816 (September 10, 2012), 77 FR 56886 (September 17, 2012).

⁶ See Note 1 to EDGX’s Fee Schedule available at <http://www.directedge.com/Portals/0/docs/Fee%20Schedule/2012/EDGX/EDGX%20Fee%20Schedule%20-%20October.pdf> (October 1, 2012). See also BATS Fee Schedule available at http://cdn.batstrading.com/resources/regulation/rulebook/BATS-Exchanges_Fee_Schedules.pdf (October 1, 2012).

⁷ NSX Rule 11.11(c)(2)(B).

calculations for both Auto-Ex Mode and Order Delivery Mode will include shares executed through the use of Midpoint Peg Zero Display Reserve Orders. The Exchange will use the ADV calculation to determine the tier applicable for fees ETP Holders will be charged for removing liquidity, and rebates for orders that add liquidity other than Midpoint Peg Zero Display Reserve Orders. Rebates for all other order types remain unchanged. By offering a fixed per share rebate for Midpoint Peg Zero Display Reserve Orders, the Exchange believes it will encourage the use of the order type, while maintaining consistency with the Exchange’s overall pricing philosophy of encouraging displayed liquidity. In addition, the Exchange is setting the rebate at such level in order to incentivize liquidity by encouraging ETP Holders to use Midpoint Peg Zero Display Reserve Orders since this order type provides ETP Holders that enter them and other ETP Holders an additional way to offer/access liquidity inside the NBBO, respectively. Also, EDGX and BATS have similar rebate structures for non-displayed orders.⁸

Typographical Inconsistencies

Finally, the Exchange is correcting typographical inconsistencies within the Fee Schedule by correcting endnote references, renumbering endnotes, and updating the heading in Section I.

Operative Date and Notice

The Exchange intends to make the proposed modifications, which are effective upon filing, operative as of the commencement of trading on November 1, 2012. Pursuant to Exchange Rule 16.1(c), the Exchange will “provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange” through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange’s Web site (www.nsx.com).

2. Statutory Basis

The Exchange believes that the proposed ADV definition changes are consistent with the provisions of Section 6(b) of the Act,⁹ in general, and Section 6(b)(4) of the Act,¹⁰ in particular in that each change is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed ADV

⁸ See *supra* note 4.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

³ NSX Rule 11.11(c)(2)(B).

⁴ As set forth in the current Explanatory Endnotes of the Fee Schedule, “ADV” means, with respect to an ETP Holder, the average number of shares the

definitions are not unfairly discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades and quotes, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.¹¹ The volume adjustments are reasonable methods to incentivize the submission of such orders. All similarly situated ETP Holders are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly-discriminatory.¹² Volume-based rebates and discounts have been widely adopted in the equities markets, and are equitable because they are open to all members on an equal basis and provide rebates that are reasonably related to the value of an exchange's market quality associated with the requirements for the favorable pricing tier.

In addition, the Exchange believes the fixed per share rebate for Midpoint Peg Zero Display Reserve Orders is consistent with Section 6(b)(5) of the Act in that it is equitably allocated and not unfairly discriminatory because all ETP Holders are eligible to submit (or not submit) these types of orders, and may do so at their discretion during the course of the month.¹³ The fixed rebate is a reasonable method to incentivize the submission of such orders amongst all its ETP Holders regardless of which volume tier they are eligible for. The Exchange believes that by encouraging the use of the Midpoint Peg Zero Display Reserve Order, ETP Holders seeking to access liquidity inside the NBBO would be more motivated to direct their orders to NSX because they would have a heightened expectation of the availability of liquidity at the NBBO. The increased liquidity also benefits all investors by deepening NSX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, and improving investor protection. In addition, an ETP Holder whose order is executed against a Midpoint Peg Zero Display Reserve Order would be able to obtain an execution at the NBB or NBO while minimizing the risk that incremental latency associated with routing the order to an away destination may result in an inferior execution. Lastly, the

Exchange believes that offering a fixed per share rebate for Midpoint Peg Zero Display Reserve Order is reasonable because the pricing is similar to analogous order types offered by other exchanges.¹⁴

Lastly, the Exchange believes correcting the typographical inconsistencies and updating the heading in Section I in the Fee Schedule are reasonable in that they provide clarity to ETP holders to how the Exchange's fee and rebate structure operates by clarifying important cross-references. The corrections are equitable and not unfairly discriminatory in that the Fee Schedule applies to all ETP Holders.¹⁵

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

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

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act¹⁶ and subparagraph (f)(2) of Rule 19b-4¹⁷ thereunder, because, as provided in (f)(2), it changes "a due, fee or other charge applicable only to a member" (known on the Exchange as an ETP Holder). At any time within 60 days of the filing of such 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 email to rule-comments@sec.gov. Please include File Number SR-NSX-2012-18 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-NSX-2012-18. This file number should be included on the subject line if email 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 10:00 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-NSX-2012-18 and should be submitted on or before December 7, 2012.

¹¹ 15 U.S.C. 78f(b)(5).

¹² The Exchange believes that not changing the current ADV calculation for orders executed in Order Delivery Mode is not unfairly discriminatory because, unlike Auto-Ex, ETP Holders that execute orders in Order Delivery Mode are not charged execution fees, they simply receive rebates for their executions. In addition, Order Delivery Mode incurs the Exchange greater regulatory and operational costs than Auto-Ex Mode.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See *supra* note 4.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68201; File No. SR-Phlx-2012-131]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Cabinet Trading Pilot Program in Rule 1059

November 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 1, 2012, NASDAQ OMX PHLX LLC ("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 extend the Cabinet Trading Pilot program in Rule 1059. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 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

The Exchange proposes to extend the pilot program in Commentary .02 of Exchange Rule 1059, Accommodation Transactions, which sets forth specific procedures for engaging in cabinet trades, to allow the Commission adequate time to consider permanently allowing transactions to take place on the Exchange in open outcry at a price of at least \$0 but less than \$1 per option contract.³ Prior to the pilot program, Rule 1059 required that all orders placed in the cabinet were assigned priority based upon the sequence in which such orders were received by the specialist. All closing bids and offers would be submitted to the specialist in writing, and the specialist effected all closing cabinet transactions by matching such orders placed with him. Bids or offers on orders to open for the accounts of customer, firm, specialists and ROTs could be made at \$1 per option contract, but such orders could not be placed in and must yield to all orders in the cabinet. Specialists effected all cabinet transactions by matching closing purchase or sale orders which were placed in the cabinet or, provided there was no matching closing purchase or sale order in the cabinet, by matching a closing purchase or sale order in the cabinet with an opening purchase or sale order.⁴ All cabinet transactions were reported to the Exchange following the close of each business day.⁵ Any (i) Member, (ii) member organization, or (iii) other person who was a non-member broker or dealer and who directly or indirectly controlled, was controlled by, or was under common control with, a member or member organization (any such other person being referred to as an affiliated person) could effect any transaction as principal in the over-the-counter market in any class of option contracts listed on the

Exchange for a premium not in excess of \$1.00 per contract.

On December 30, 2010, the Exchange filed an immediately effective proposal that established the pilot program being extended by this filing. The pilot program allowed transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract until June 1, 2011.⁶ These lower priced transactions are traded pursuant to the same procedures applicable to \$1 cabinet trades, except that pursuant to the pilot program (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in options participating in the Penny Pilot Program.⁷ On May 31, 2011, the Exchange filed an immediately effective proposal that extended the pilot program until December 1, 2011 to consider whether to seek permanent approval of the temporary procedure.⁸ On November 30, 2011, the Exchange filed an immediately effective proposal that extended the pilot program until June 1, 2012.⁹ On May 29, 2012, the Exchange filed an immediately effective proposal that extended the pilot program until December 1, 2012.¹⁰ The Exchange now proposes an extension of the pilot program to allow additional time to consider its effects while the pilot program continues uninterrupted.

The Exchange believes that allowing a price of at least \$0 but less than \$1 will better accommodate the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market

⁶ Phlx Rule 1059, Commentary .02; See Securities Exchange Act Release No. 63626 (December 30, 2010), 76 FR 812 (January 6, 2011) (SR-Phlx-2010-185).

⁷ Prior to the pilot, the \$1 cabinet trading procedures were limited to options classes traded in \$0.05 or \$0.10 standard increments. The \$1 cabinet trading procedures were not available in Penny Pilot Program classes because in those classes, an option series could trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). The pilot allows trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier) in all classes, including those classes participating in the Penny Pilot Program.

⁸ See Securities Exchange Act Release No. 64571 (May 31, 2011), 76 FR 32385 (June 6, 2011) (SR-Phlx-2011-72).

⁹ See Securities Exchange Act Release No. 65852 (November 30, 2011), 76 FR 76212 (December 6, 2011) (SR-Phlx-2011-156).

¹⁰ See Securities Exchange Act Release No. 67106 (June 4, 2012), 77 FR 34108 (June 8, 2012) (SR-Phlx-2012-74).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market.

⁴ Specialists and ROTs are not subject to the requirements of Rule 1014 in respect of orders placed pursuant to this Rule. Also, the provisions of Rule 1033(b) and (c), Rule 1034 and Rule 1038 do not apply to orders placed in the cabinet. Cabinet transactions are not reported on the ticker.

⁵ See Exchange Rule 1059.