

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62488; File No. SR-NYSEAmex-2010-69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Establishing a Fee and Credit Structure for Trading Nasdaq-Listed Securities on the Exchange Pursuant to Unlisted Trading Privileges and Implementing a New Fee for Crossing Session II for Both Listed and Traded Securities

July 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 12, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") 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 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 (i) establish a fee and credit structure for trading Nasdaq-listed securities on the Exchange pursuant to a grant of unlisted trading privileges ("Nasdaq Securities") and (ii) implement a new fee for Crossing Session II for both listed and traded securities. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, on the Commission's Web site at <http://www.sec.gov>, and at <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 (i) establish a fee and credit structure for trading Nasdaq Securities and (ii) implement a new fee for Crossing Session II for both listed and traded securities.

a. Background

In a related filing, the Exchange has proposed to trade Nasdaq Securities as a pilot program on NYSE Amex Equities, using the same market structure, systems and facilities it uses to trade its listed securities in accordance with the same trading rules, subject to a few differences. The Exchange has proposed that the Nasdaq Security pilot program commence on July 13, 2010.³

b. Proposed Fees and Rebates for Trading Nasdaq Securities

As with listed securities, the principal categories of market participants for trading Nasdaq Securities will include: Members and member organizations, customers, Floor brokers, Designated Market Makers ("DMMs") and Supplemental Liquidity Providers ("SLPs"). Thus, the Exchange's proposed fee and credit structure for trading Nasdaq Securities is very similar to that for its listed securities.

The principle [sic] difference between the pricing for Exchange-listed securities and Nasdaq Securities is that, because there will not be an opening or closing auction for Nasdaq Securities on the Exchange, there are no limit or market "At the Close" ("MOC/LOC"), "At the Opening" ("OPG"), or "Closing Offset" ("CO") orders and thus no differentiated pricing for such transactions.

The Exchange notes that the initial pricing proposed herein is subject to review and may be changed.

i. Fees for Taking Liquidity

For transactions in Nasdaq Securities with a share price of at least \$1.00, the Exchange proposes a fee of \$0.0021 per share for taking liquidity from the Exchange; however, for Floor broker discretionary e-quotes and verbal agency interest the Exchange proposes to charge \$0.0005 per share. For transactions in Nasdaq Securities with a price of less than \$1.00, the Exchange proposes a fee of .20% of the total dollar

value of the transaction for all market participants.

ii. Routing Fees

The Exchange proposes a single set of routing fees for Nasdaq Securities across all market participants. For transactions in Nasdaq Securities with a share price of at least \$1.00, the Exchange proposes a routing fee of \$0.0029 per share, and for transactions in Nasdaq Securities with a price of less than \$1.00, the Exchange proposes a routing fee equal to .29% of the total dollar value of the transaction.

iii. Customer, Floor Broker, Member and Member Organization Credits⁴

For customers, Floor brokers, members and member organizations, the Exchange proposes to pay a credit of \$0.0019 per share when adding liquidity, including displayed and non-displayed orders, in Nasdaq Securities with a trading price of at least \$1.00 per share. When adding liquidity in Nasdaq Securities with a trading price below \$1.00, the Exchange is proposing to not pay any credit; Floor brokers, however, would be paid a credit of .10% of the total dollar value of the transaction.

Floor broker agency cross trades (*i.e.* a trade where a member has customer orders to buy and sell an equivalent amount of the same security) and agency transactions between Floor brokers in the Crowd will not be charged any fees.

iv. DMM Credits

Because DMMs have special obligations as market makers, the Exchange proposes different credits for DMM transactions in Nasdaq Securities.⁵ For DMM transactions adding liquidity in Nasdaq Securities with a price of at least \$1.00 per share, the Exchange proposes to pay a credit of \$0.0021 per share. For DMM transactions adding liquidity in Nasdaq Securities with a trading price below \$1.00, the Exchange proposes to pay a credit of .20% of the total dollar value of the transaction.

v. SLP Credits

The Exchange proposes different credits for SLP transactions in Nasdaq Securities contingent upon SLPs meeting their quoting requirements in

⁴ As with its listed securities, the Exchange proposes different credits for DMMs and SLPs trading Nasdaq Securities.

⁵ Text in this sentence as set forth in the Exchange's Form 19b-4 and Exhibit 1 thereto has been deleted at the request of the Exchange. See e-mail from Jason Harman, Consultant, NYSE Amex, to Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, dated July 12, 2010.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61890 (April 12, 2010), 75 FR 20401 (April 19, 2010) (SR-NYSEAmex-2010-31).

accordance with Rule 107B—NYSE Amex Equities.⁶ For SLP transactions adding liquidity in Nasdaq Securities with a price of at least \$1.00 per share, the Exchange proposes to pay a credit of \$0.0021 per share if the SLP meets its quoting requirements and \$0.0019 per share if the SLP does not meet its quoting requirements. For SLP transactions adding liquidity in Nasdaq Securities with a trading price below \$1.00, the Exchange is proposing to not pay any credit regardless of whether or not the SLP meets its quoting requirements.

vi. Odd-Lot Transactions

The Exchange proposes that the fees for odd-lot transactions in Nasdaq Securities are as follows: \$0.0021 per share for stocks priced above \$1.00, and 0.20% of the total dollar value of the transaction for stocks priced below \$1.00. The Exchange further proposes that DMMS receive a credit for adding liquidity in odd-lots, including the odd-lot portions of partial round-lots, of \$0.0011 per share, regardless of price.⁷

c. Proposed Fee for Transactions in Crossing Session II

Currently, there is no charge for executions of basket trades in Crossing Session II. The Exchange proposes to implement a fee of \$0.0001 per share charged to both sides of a basket trade executed in Crossing Session II. This fee would apply to executions involving both listed and traded securities, including Nasdaq Securities. The fee would be subject to a \$50,000 cap per month per member organization for (i) NYSE Amex Equities listed securities, and separately (ii) NYSE Amex traded securities.

Finally, the Exchange proposes that the fees and credits described herein be made effective as of the same date the Exchange's pilot program for trading Nasdaq Securities is made effective.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the provisions of Section 6⁸ of the

Act,⁹ in general, and Section 6(b)(4),¹⁰ in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees or other charges, as all similarly situated Exchange participants will be subject to the same fee structure.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2010-69 on the subject line.

⁹ 15 U.S.C. 78a, *et seq.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

Paper Comments

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

All submissions should refer to File Number SR-NYSEAmex-2010-69. 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 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 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-NYSEAmex-2010-69 and should be submitted on or before August 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

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⁶ Text in this sentence as set forth in the Exchange's Form 19b-4 and Exhibit 1 thereto has been deleted at the request of the Exchange. *See id.*

⁷ The Exchange has filed and expects to receive approval of a rule filing to incorporate the receipt and execution of odd-lot interest into the round lot market and to decommission the use of the odd-lot system ("trading-in-shares"). *See* Securities Exchange Act Release No. 62169 (May 25, 2010), 75 FR 31494 (June 3, 2010) (SR-NYSEAmex-2010-43). Nasdaq Securities will trade in accordance with these rule changes and the pricing for odd-lots will be the same as for round-lots once they are approved.

⁸ 15 U.S.C. 78f.

¹³ 17 CFR 200.30-3(a)(12).