

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 inspection and copying at the principal office of the ISE. 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-ISE-2010-26 and should be submitted by May 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-8537 Filed 4-13-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61864; File No. SR-NYSEAmex-2010-36]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Professional Customers and To Make Certain Other Changes to its Options Fee Schedule

April 7, 2010.

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 April 1, 2010, NYSE Amex LLC (“NYSE Amex” 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. NYSE Amex has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 multiple changes to its Schedule of Fees and Charges (the “Schedule”) effective April 1, 2010. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office, the Commission’s Public Reference Room, and on the Commission’s Web site at <http://www.sec.gov>.

#### 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

NYSE Amex proposes to establish fees for a new type of customer known as a Professional Customer as defined in proposed NYSE Amex rule 900.2NY(18A), effective April 1, 2010, contingent upon the approval of the Professional Customer rule filing.<sup>5</sup> This new designation will treat Professional Customers in the same manner as Broker Dealers for purposes of priority and parity. Consistent with that treatment, the Exchange is seeking to establish fees for Professional Customers that are the same as the fees charged to the execution of Broker Dealer orders. Professional Customer orders that are executed electronically will be subject to a fee of \$.20 per contract. Professional Customer orders executed in open outcry will be subject to a fee of \$.25 per contract. Professional Customer transactions in any product that has a licensing or royalty fee will be assessed that fee as well.

NYSE Amex also proposes to clarify the treatment of Professional Customer

orders as they relate to certain provisions in the Fee Schedule. For purposes of the calculation associated with the Specialist/e-Specialist/DOMM Rights Fee, Professional Customer orders will be treated as Customer orders. The Routing Surcharge will be assessed on all non-customer orders routed to away markets and on Customer orders, including Professional Customer orders, that are charged a transaction fee at another exchange. The Cancellation Fee will not apply to Professional Customer orders. Only public customer electronic orders that trade contra to a market maker will result in the collection of marketing charges under the Exchange’s payment for order flow program. Broker Dealer and Professional Customer electronic orders that trade contra to a market maker will not result in the collection of marketing charges.

The Exchange proposes to restructure certain trade related charges for non-electronic trades. These trades are executed in the Firm range (clearance account “F”) and are currently billed either the Firm Facilitation rate or the Broker Dealer & Firm Manual rate. Under the current rate schedule trades by a firm that facilitate a customer, or Firm Facilitation trades, are subject to a \$.00 rate per contract. Firm transactions not facilitating a customer are subject to a \$.25 Broker/Dealer & Firm Manual rate. Under the revised rate schedule all manual trades clearing in the Firm range will be subject to a rate of \$.25 per contract, subject to tiered pricing as described below. The Exchange believes that billing all Firm Manual transactions at the same rate is a fair and equitable allocation of fees.

NYSE Amex also proposes to adopt a tiered pricing schedule applicable to Firm Proprietary manual executions on behalf of ATP holders that clear in the firm range. The tiered schedule seeks to create an incentive for executing more manual Firm Proprietary volume on the Exchange. At the same time, the Exchange proposes to reduce the fees for electronic executions for Broker Dealers and Firm Proprietary activity from \$.30 per contract to \$.20 per contract. Firm Proprietary electronic trades will now be represented as a separate line on the Schedule. Concurrently, with the implementation of tiered pricing for Firm Proprietary manual volumes, Firm Facilitation trades will be eliminated as a separate category on the fee schedule. All non-Strategy Executions currently executed as Firm Facilitation trades in open outcry or manual trades will fall under the new tiered pricing schedule and the customer side of a Firm Facilitation trade will continue to

<sup>10</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>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> Securities Exchange Act Release No. 61629 (March 2, 2010), 75 FR 10851 (March 9, 2010)(Notice of Filing of SR-NYSEAmex-2010-18).

remain free. The proposed pricing schedule is shown below, and is applicable to volumes executed in any calendar month. This tiered pricing schedule for Firm Proprietary executions is similar in structure to the tiered pricing currently in place at the CBOE.<sup>6</sup>

Firm proprietary manual contract volumes per month	Per contract rate
First 174,999 contracts .....	\$.25
175,000 to 299,999 contracts	.20
300,000 to 399,999 contracts	.15
400,000 to 599,999 contracts	.10
600,000 to 799,999 contracts	.05
800,000 or greater contracts	.02

Manual Broker Dealer and Firm Proprietary Strategy trades will be billed at \$.25 per contract subject to the \$750 cap per day per option class, and further capped at \$25,000 per month, per firm for all Strategy Executions. Additionally, any volumes subject to the Strategy Execution fee cap of \$750 per day per option class or the monthly cap of \$25,000 will not count towards the volume thresholds shown above. The Exchange also proposes to clarify that Flex trades are not eligible for strategy treatment.

Lastly, the Exchange is proposing a reduction in fees charged for a User Activity Extract (Batch) report. Currently, the charge for the report is \$0.0075 per trade plus any development and set up costs. The new rate will be \$0.002 per trade plus any development and set up costs.

The changes are part of the Exchange's continued effort to attract and enhance participation on the NYSE Amex options marketplace. The Exchange believes these proposed fee changes are reasonable and equitable in that they apply uniformly to all similarly situated participants on the NYSE Amex options marketplace.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed fees are reasonable and equitable in that they apply uniformly

to all similarly situated participants on the NYSE Amex options marketplace.

### 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)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-36 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAmex-2010-36. 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2010-36 and should be submitted on or before May 5, 2010.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61872; File No. SR-NASDAQ-2010-045]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Extend the Last Sale Data Feeds Pilot Program

April 8, 2010.

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 March 31, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the

<sup>11</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>6</sup> See CBOE Fee Schedule dated 3/16/2010. <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).