

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60123; File No. SR-NYSEAmex-2009-28)

June 17, 2009

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Available Without Charge the NYSE Amex OpenBook™ Datafeeds

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 June 12, 2009, 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 and II 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 make available without charge the NYSE Amex OpenBook datafeeds. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](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

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<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.

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 make available without charge the NYSE Amex OpenBook datafeeds.

The Service

NYSE Amex OpenBook responds to the desire of some market participants for depth-of-market data. It is a compilation of limit order data resident in the NYSE Amex limit order book for both equities and options traded on NYSE Amex (collectively, “NYSE Amex Data”) that the Exchange provides through two real-time datafeeds, one for NYSE Amex OpenBook data relating to equity securities that trade through NYSE Amex facilities and one for NYSE Amex OpenBook data relating to options traded through NYSE Amex facilities.<sup>4</sup> The Exchange updates NYSE Amex OpenBook information upon receipt of each displayed limit order. For every limit price, NYSE Amex OpenBook includes the aggregate order volume. The Exchange makes the datafeeds available to market data vendors, broker-dealers, private network providers and other entities (collectively, “Vendors”).

Some of the depth-of-book information included in NYSE Amex OpenBook is not available through the CQ Plan, the “Reporting Plan for Nasdaq/National Market System

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<sup>4</sup> The NYSE Amex OpenBook datafeed has been operational since December 1, 2008 and has been provided free of charge.

Securities Traded on an Exchange on an Unlisted or Listed Basis” (the “UTP Plan”)<sup>5</sup> or the OPRA Plan.<sup>6</sup> By making NYSE Amex Data available, NYSE Amex OpenBook enhances market transparency and fosters competition among orders and markets. The Exchange makes the datafeeds available to members and non-members, and permits Vendors to make it available to both professional and nonprofessional subscribers.

NYSE Amex contemplates that it will propose to impose fees for the receipt, display and use of NYSE Amex OpenBook. NYSE Amex will submit a proposed rule change to the Commission in order to implement those fees.

### Contracts

The Exchange will require each recipient of a datafeed containing NYSE Amex Data to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the “Consolidated Vendor Form”). That agreement will authorize the datafeed recipient to provide NYSE Amex Data services to its customers or to distribute the data internally.

In addition, the Exchange will require each professional end-user that receives NYSE Amex Data displays from a vendor or broker-dealer to enter into the form of professional subscriber agreement into which the CTA and CQ Plans require end users of Network A data to

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<sup>5</sup> The Exchange does not currently trade securities for which reporting takes place under the UTP Plan (“UTP Plan Securities”), though it has done so in the past and anticipates doing so in the near future. Once that [sic] trading re-commences, the NYSE Amex OpenBook equities datafeed will include data relating to UTP Plan Securities, as well as data relating to securities that report under the CTA Plan (“CTA Plan Securities”). For that reason, the proposed rule change applies to NYSE Amex Data relating to UTP Plan Securities, as well as to NYSE Amex Data relating to CTA Plan Securities.

<sup>6</sup> The Exchange notes that it makes available to vendors the best bids and offers that are included in NYSE Amex OpenBook data no earlier than it makes those best bids and offers available to the processors under the CQ Plan, the UTP Plan and the OPRA Plan.

enter and to require vendors and broker-dealers to subject nonprofessional subscribers to the same contract requirements as the CTA and CQ Plan Participants require of Network A non-professional subscribers.

The Network A Participants drafted the vendor and Network A professional subscriber agreements as one-size-fits-all forms to capture most categories of market data dissemination. They are sufficiently generic to accommodate NYSE Amex Data, subject to the Exhibit C requirements described below. The Network A Participants submitted the Consolidated Vendor Form and the professional subscriber form to the Commission for comment and notice.<sup>7</sup>

Because it was recognized that the Consolidated Vendor Form could not anticipate every aspect of a vendor's receipt and use of market data or future advances in technology or new product offerings, Paragraph 19(a) of the form provides that "Exhibit C, if any, contains additional provisions applicable to any non-standard aspects of Customer's Receipt and Use of Market Data."

NYSE Amex proposes to subject NYSE Amex OpenBook datafeed recipients to the same "additional" provisions as NYSE imposes on recipients of NYSE OpenBook in an Exhibit C that is substantially the same as the NYSE OpenBook Exhibit C. (Exhibit 5 presents the form of Exhibit C that the Exchange proposes to use for NYSE AmexOpenBook.) Those Exhibit C terms and conditions would:

- require any display or montage that incorporates NYSE Amex OpenBook data with limit orders or other market information that any source other than NYSE

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<sup>7</sup> See Securities Exchange Act Release Nos. 22851 (January 31, 1986), 51 FR 5135 (February 11, 1986); 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (File No. 4-281); and 49185 (February 4, 2004), 69 FR 6704 (February 11, 2004) (SR-CTA/CQ-2003-01).

Amex makes available (an “Integrated Display”) to associate the identifier “NYSE Amex” with each element or line of NYSE Amex OpenBook data that is included in the Integrated Display, or require the Vendor to provide a second integrated display (an “Attributed Integrated Display”) that includes such an identifier.

- require the Vendor to indicate in any Attributed Integrated Display the number of shares attributable to the NYSE Amex OpenBook bids and offers at each price level.
- require any Vendor that makes Integrated Displays available to also:
  - a. make NYSE Amex OpenBook Information available as a product that is separate and apart from information products that include other market centers’ information; and
  - b. make its subscribers aware of the availability of the stand-alone NYSE OpenBook product in the same manner as it makes its subscribers aware of the integrated product; and (iv).
- require each Vendor to add to Exhibit A a sample of each new screen shot to demonstrate the manner of the display and any modification to previous displays.

The Vendor is required to submit the new screen shot no later than at the time it first commences to provide the new or modified display to others.

The display requirements do not apply insofar as the data recipient distributes NYSE AMEX OpenBook data to its officers, partners and employees or to those of its affiliates.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> 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. The Exchange believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of NYSE Amex OpenBook data.

### 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 not solicited, and does not intend to solicit, comments regarding this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing in order to immediately provide market participants that use NYSE Amex OpenBook with more information about the current state of the NYSE Amex market and provide increased transparency to market participants. The Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>11</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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:

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2009-28 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-NYSEAmex-2009-28. 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 10:00 a.m. and 3:00 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-2009-28 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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