

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63644; File No. SR-NYSEAmex-2010-125)

January 5, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange Price List

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 December 22, 2010, NYSE Amex LLC (“NYSE Amex” or “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 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 amend its 2011 Price List for equities (“Price List”) to increase (i) the fees charged to customers and floor brokers for taking liquidity in Exchange-listed securities priced at \$1.00 or more and (ii) the credits to customers and floor brokers for adding liquidity in Exchange-listed securities priced at \$1.00 or more. The Exchange also proposes to modify the fees and credits applicable to Designated Market Makers (“DMMs”), including the creation of a two-tiered credit structure, based on consolidated average daily volume (“CADV”) in all Exchange-listed stocks, for adding liquidity in Exchange-listed securities priced at \$1.00 or more, and the addition of a flat fee of \$100 per month (in addition to the current rate on transactions) in issues for which the DMM has met its 10% quoting requirement and whose CADV is less than

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

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

50,000 shares per day. Finally, the Exchange proposes to increase the credits applicable to Supplemental Liquidity Providers (“SLPs”) when adding liquidity to the Exchange in securities priced at \$1.00 or more. The amended pricing will take effect on January 3, 2011. The text of the proposed rule change is available at the Exchange, at [www.nyse.com](http://www.nyse.com), at the Commission’s Public Reference Room, and on the Commission’s website at [www.sec.gov](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

The Exchange proposes to amend its Price List for equities to increase (i) the fees charged to customers and floor brokers for taking liquidity in Exchange-listed securities priced at \$1.00 or more and (ii) the credits to customers and floor brokers for adding liquidity in Exchange-listed securities priced at \$1.00 or more.

Customers and floor brokers, with certain exceptions, are currently charged a fee of \$0.0025 per share for transactions in Exchange-listed securities priced at \$1.00 or more that take liquidity from the Exchange. Under the proposal, the fee will be increased

to \$0.0028 per share for such transactions.

Customers and floor brokers currently receive a credit of \$0.0015 per share for transactions in Exchange-listed securities priced at \$1.00 or more that add liquidity to the Exchange. Under the proposal, the credit will be increased to \$0.0016 per share for such transactions.

The Exchange proposes to further amend its Price List for equities to modify the fees and credits applicable to DMMs. Currently, DMMs are charged a fee of \$0.0015 per share for transactions in Exchange-listed securities priced at \$1.00 or more that take liquidity from the Exchange. Under the proposal, the fee will be increased to \$0.0016 per share for transactions that take liquidity.

Additionally, DMMs currently receive a credit of \$0.0035 per share for transactions in Exchange-listed securities priced at \$1.00 or more that add liquidity to the Exchange. The Exchange is proposing to replace this with a two-tiered structure based on the CADV in all Exchange-listed stocks during the current month. CADV for these purposes includes all U.S. trading of Amex-listed stocks across all trading platforms whose volume is included in published numbers, not just shares traded on the Exchange during that month.<sup>3</sup> Under the proposal the credit will be \$0.0042 per share for transactions in Exchange-listed securities priced at \$1.00 or more that add liquidity, if the CADV in all Exchange-listed stocks during the current month is equal to or greater than 135 million shares per day. The credit will be \$0.0045 per share for such transactions if the CADV in all Exchange-listed stocks during the current month is less than 135 million

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<sup>3</sup> See e-mail from William Love, Chief Counsel, NYSE Euronext, to Nathan Saunders, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated January 4, 2011.

shares per day. The higher credit of \$0.0045 per share provided when the CADV in Amex-listed stocks is under 135 million shares will provide the DMMs with a greater incentive to provide liquidity when the markets in Amex-listed stocks are less active. This tiered structure, with a higher credit per share in lower-volume months and a lower credit per share in higher volume months, is also expected to result in more consistent month-to-month payments to DMMs by the Exchange.<sup>4</sup> The Exchange is also adding a footnote stating that, for purposes of determining these liquidity credits that are based on the CADV in all Exchange-listed stocks in the current month, ADV calculations will exclude early closing days.<sup>5</sup>

For transactions in Exchange-listed securities priced below \$1.00 that add liquidity to the Exchange, DMMs currently receive a credit of 0.15% of the total dollar value of the transaction. The Exchange is proposing that the credit for such transactions be increased to 0.25% of the total dollar value of the transaction.

Further, for a less active security with a CADV during the current month of less than 50,000 shares per day for which the DMM has met its 10% quoting requirement in that month, the Exchange is proposing to pay the DMM a monthly credit of \$100 for each such security in addition to the current rate on transactions in that security. This additional flat dollar credit will supplement the DMM rebate in securities that do not trade actively. This flat monthly credit will be applicable to all Exchange-listed stocks regardless of price.

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<sup>4</sup> Id.

<sup>5</sup> The New York Stock Exchange has had a similar footnote in its equities price list in the recent past, excluding early closing days in certain calculations based on average daily volume for a group of stocks. See, e.g., Exhibit 5, footnote 9, in File No. SR-NYSE-2010-34.

Finally, the Exchange proposes to increase the credits applicable to SLPs when adding liquidity to the Exchange in Exchange-listed securities priced at \$1.00 or more. For such transactions in which the SLP also meets the 5% average or more quoting requirement in an assigned security pursuant to Rule 107B (the “5% quoting requirement”), the credit per share for the SLP will increase from the current rate of \$0.0020 to \$0.0027. For such transactions in which the SLP does not meet the 5% quoting requirement, the credit per share for the SLP will increase from the current rate of \$0.0015 to \$0.0016.

The Exchange has also expanded the heading of the first section of the Price List relating to fees and credits applicable to DMMs in Exchange-listed securities to clarify that this section describing DMM fees and credits relates only to securities priced at \$1.00 or more per share. This is a clean-up change and is not substantive in nature.

These changes are intended to be effective immediately for all transactions beginning January 3, 2011.

## 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>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</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 Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure and access to the Exchange’s market is offered

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

on fair and non-discriminatory terms. The Exchange believes that the proposed amendments to its equities Price List represent an equitable allocation of dues and fees in that the proposed increased credit of \$0.0001 per share for adding liquidity is the same for floor brokers and customers, as is the increase of \$0.0003 per share in the charge when taking liquidity. The Exchange further notes that the new equity per share credit of \$0.0016 for adding liquidity is exactly the same for both customers and floor brokers, as is the new equity per share charge of \$0.0028 for taking liquidity.<sup>8</sup>

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 on its members by NYSE Amex.

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<sup>8</sup> See e-mail from William Love, Chief Counsel, NYSE Euronext, to Nathan Saunders, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated January 3, 2011.

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

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

At any time within 60 days of the filing of the 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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-NYSEAmex-2010-125 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-2010-125. 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 website (<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 website 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-NYSEAmex-2010-125 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

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

Elizabeth M. Murphy  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).