SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65341; File No. SR-NYSEAmex-2011-68)

September 14, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to the Messages to Contracts Traded Ratio Fee in the Options Fee Schedule

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 September 1, 2011, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) 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 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 amend its Options Fee Schedule (the “Schedule”) by adjusting the message ratio used to calculate the Messages to Contracts Traded Ratio Fee (“Messages Fee”). Changes to the Schedule are shown in Exhibit 5. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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 the Schedule by adjusting the message ratio used to calculate the Messages Fee.

The Exchange recently adopted the Messages Fee to help encourage efficient usage of systems capacity by all ATP firms.[3] The Exchange believes that it is in the best interests of all ATP firms and investors who access our markets to encourage efficient usage of capacity.

The Messages Fee takes into consideration quotes as well as orders entered and looks at the number of contracts traded as a result. ATP firms that enter excessive amounts of orders and quotes that produce little or no volume are assessed the Messages Fee based on the ratio of quotes and orders to contracts traded. The Messages Fee is only assessed against ATP firms who exceed one billion quotes and/or orders (collectively, "messages") in a given month in determining whether inefficient utilization of systems capacity has occurred. For those ATP firms exceeding one billion messages in a month, the Exchange currently assesses a fee for those ATP firms that do not execute at least one

[3] See Securities Exchange Act Release No. 64655 (June 13, 2011), 76 FR 35495 (June 17, 2011) (SR-NYSEAmex-2011-37).

contract for every 1,500 messages entered. An ATP firm failing to meet that execution ratio is charged $.01 for every 1,000 messages in excess of one billion messages.

The Exchange proposes to amend the message ratio in the Schedule to reflect a range, namely one contract for every 1,500 to 3,000 messages entered. Under the proposal, the Exchange would be permitted to select the precise number of messages within that range that would be used to calculate the Messages Fees. Any change to the number of messages to be used in setting the Messages Fee would be announced in an Information Memo at least one business day in advance of its implementation and would be applicable in the next calendar month and thereafter until changed. The fee would not be changed mid-month. Thus, for example, if the Exchange determined to change the message ratio as of September 1, 2011, the Exchange would announce the newly selected ratio in an Information Memo not later than August 31, 2011 and that ratio would apply in September 2011 and each succeeding month until changed in accordance with the notice described above. Under the proposed rule change, the Exchange also would be authorized to exclude one or more days of data for purposes of calculating the Messages Fee for an ATP firm if the Exchange determined, in its sole discretion, that one or more ATP Firms or the Exchange was experiencing a bona fide systems problem.[4] Any ATP Firm seeking relief as a result of a systems problem will be required to notify the

[4] Examples of bona fide systems problems include, but are not limited to, an erroneous input (such as an error related to volatility or underlying price) that cause the generation of quotes that are substantially away from the quoted national best bid and offer; or an Exchange systems problem that causes an ATP firm to continually attempt to update or withdraw its quotes, generating a large volume of message traffic. In those cases, where the bona fide systems problem is at the Exchange, the Exchange will exclude that day's activity from the calculation of the Messages Fee for all ATP firms that were impacted by such bona fide systems problem.

Exchange via e-mail with a description of the systems problem. The Exchange shall keep a record of all such requests and whether the request was deemed by the Exchange to be a bona fide systems problem resulting in waiving that day's activity from the calculation of the Messages Fee.

Since implementing the Messages Fee on June 1, 2011, the Exchange has heard from several liquidity providers who raised concerns about the potential for inadvertently incurring a large Messages Fee as a result of a systems problem. Further, several liquidity providers indicated that, as month end approached, they were providing less aggressive liquidity to avoid any possibility of incurring the Messages Fee, particularly when markets are volatile.

After considering recent market conditions, the Exchange believes that the current ratio of 1,500 messages may not be sufficiently flexible and could inadvertently result in higher than anticipated fees being charged to ATP firms that are providing liquidity in volatile, high volume markets. The Exchange does not want to discourage such liquidity provision and believes that it should be able to adjust the message ratio on a monthly basis within the proposed fixed range of 1,500 to 3,000 messages with the notice described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[5] of the Securities Exchange Act of 1934 (the "Act"), in general, and Section 6(b)(4)[6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

and other persons using its facilities. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5)[7] of the Act in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by ensuring that systems capacity is utilized efficiently while still encouraging the provision of liquidity in volatile, high volume markets.

The proposed Messages Fee is equitable and not unfairly discriminatory because it will apply equally to all members who send quotes and/or orders. Additionally, the proposed Messages Fee is reasonable and justified because it will encourage efficient utilization of system bandwidth; unfettered growth in bandwidth consumption can have a detrimental effect on all participants who are potentially compelled to upgrade capacity as a result of the bandwidth usage of other participants.

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

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[7] 15 U.S.C. 78f(b)(5).

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b-4[9] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca [sic].

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.

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. Please include File Number SR-NYSEAmex-2011-68 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-2011-68. This file number should be included on the subject line if e-mail is used. To help the Commission process

8 15 U.S.C. 78s(b)(3)(A).

9 17 CFR 240.19b-4(f)(2).

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, NW, Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. The text of the proposed rule change is available on the Commission's website at http://www.sec.gov. 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-2011-68 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.[10]

Elizabeth M. Murphy
Secretary

[10] 17 CFR 200.30-3(a)(12).