

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62667; File No. SR-NYSEAmex-2010-77)

August 9, 2010

Self-Regulatory Organizations; NYSE Amex, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 995NY

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 2, 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 and II below, which Items have been prepared by the self-regulatory organization. NYSE Amex filed the proposed rule change as a “non-controversial” proposal pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</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 to amend Rule 995NY-Prohibited Conduct, by adding a provision that states that the practice of unbundling an order is considered conduct inconsistent with just and equitable principles of trade. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), on the Commission’s Web site at <http://www.sec.gov>, at the Exchange, and at the Commission’s Public Reference Room. A copy

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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.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

of this filing is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the Exchange's principal office and at the Commission's Public Reference Room.

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 purpose of the proposed rule change is to amend Rule 995NY by adding subsection (d) which will expressly prohibit the splitting-up of an order into smaller orders; a practice also known as unbundling, or trade shredding. More specifically, the Exchange is proposing to add language to its existing rules to prohibit NYSE Amex Options Trading Permit Holders ("ATP" Holders) from splitting orders into multiple smaller orders for any purpose other than best execution.

Unbundling, or trade shredding, is the practice of breaking up an order into multiple smaller orders for some purpose other than best execution of the order. The practice of unbundling has in the past been used for such purposes as improperly maximizing commissions and fees charged to customers, distorting trade data, or circumventing rules pertaining to maximum order size. In addition, the unbundling of a large order into several smaller orders could be done so as to affect the allocation of a trade among market participants pursuant to the

allocation methodology used by the Exchange.<sup>6</sup> Finally, the Exchange believes that the unbundling of orders generally serves no purpose to the customer that entered the order and may cause unnecessary delays in the execution of said orders.

Pursuant to NYSE Amex Rule 476(a)(6), ATP Holders must observe high standards of commercial honor and just and equitable principles of trade. NYSE Amex would consider an ATP Holder to have engaged in conduct inconsistent with just and equitable principles of trade were they to unbundle an order which (1) distorts fees and/or commissions to the detriment of a customer or the Exchange, (2) causes an unnecessary delay in the execution of an order, or (3) circumvents an Exchange rule or federal securities law, including those rules pertaining to order size and trade allocation. ATP Holders engaging in conduct inconsistent with just and equitable principles of trade are subject to formal disciplinary action by the Exchange.

NYSE Amex now proposes to adopt new Rule 995NY(d), which will expressly state that the Exchange considers it to be conduct inconsistent with just and equitable principals of trade for an ATP Holder to split an order into multiple smaller orders for any purpose other than seeking the best execution of the entire order.

The Exchange believes that by adopting this proposed new rule, which serves to codify existing Exchange procedures when dealing with the unlawful unbundling of orders, will deter, and help to prevent this distortive practice, and therefore promote just and equitable principles of trade.

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<sup>6</sup> For example, pursuant to NYSE Amex Options Rule 964NY(b)(C)(iv), all orders of five contracts or less are allocated to a Specialist Pool. If an ATP Holder was to break up a large order into several smaller orders of five contracts or less, the Specialist Pool could unfairly garner a greater trade allocation than it was otherwise entitled to.

The Exchange notes that other US options exchanges have rules prohibiting the unbundling of orders for a variety of reasons and violations of these rules may be considered conduct inconsistent with just and equitable principles of trade.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 rule is designed to deter, and help to prevent the distortive practice of unbundling, or trade shredding, and therefore promote just and equitable principles of trade.

### 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.

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<sup>7</sup> See International Securities Exchange Rule 723 Supplementary Material .01, and NASDAQ OMX PHLX Rule 1015(a)(v).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> Because the proposed rule change does not:

(i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

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:

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

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-2010-77 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-2010-77. 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 10:00 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-2010-77 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>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).