

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65933; File No. SR-NYSEAmex-2011-96)

December 9, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule

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 December 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 proposes to [sic] amend the NYSE Amex Options Fee Schedule (“Fee Schedule”) to permit the Exchange to exclude data from the calculation of Excessive Bandwidth Utilization Fees and Cancellation Fees if one or more ATP Firms or the Exchange experiences a bona fide systems problem and make other technical changes. The proposed change will be operative on December 1, 2011. 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).

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

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

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 the Fee Schedule to permit the Exchange to exclude data from the calculation of Excessive Bandwidth Utilization Fees and Cancellation Fees if one or more ATP Firms or the Exchange experiences a bona fide systems problem and make other technical changes.

The Exchange presently has three fees related to use of systems capacity: (1) the Cancellation Fee, (2) the Order To Trade Ratio Fee, and (3) the Messages To Contracts Traded Ratio Fee. The latter two fees are referred to as Excessive Bandwidth Utilization Fees. Under the current Fee Schedule, if an ATP Firm is liable for either or both of the Excessive Bandwidth Utilization Fees and/or for charges pursuant to the Cancellation Fee in a given month, that firm would only be charged the largest one of those three fees for the month.<sup>3</sup> The Exchange may exclude one or more days of data in calculating the Messages To Contracts Traded Ratio Fee for an ATP Firm if the Exchange determines, in

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<sup>3</sup> See current Fee Schedule at n. 13.

its sole discretion, that one or more ATP Firms or the Exchange experienced a bona fide systems problem. The Exchange proposes to amend the Fee Schedule to extend its discretion to exclude data in the event of a bona fide systems problem to the calculation of the Order To Trade Ratio Fee and the Cancellation Fee as well as the Messages To Contracts Traded Ratio Fee and to move the relevant text to proposed endnote 12.<sup>4</sup>

The Exchange also proposes to move the placement of the Cancellation Fee in the Fee Schedule to a more logical location and renumber the endnotes accordingly.

The proposed change will be operative on December 1, 2011.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>5</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)<sup>6</sup> 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 and other persons using its facilities. The Exchange believes that the proposed change is equitable because it will apply to all ATP Firms equally. The Exchange believes that a bona fide systems problem is just as likely to cause an unfair result in the calculation of the Order To Trade Ratio Fee and the Cancellation Fee as it would in the calculation of the Messages To Contracts Traded Ratio Fee. Extending the Exchange’s discretion to

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<sup>4</sup> An ATP Firm seeking relief as a result of a systems problem will be required to notify the Exchange via e-mail with a description of the systems problem and the Exchange will keep a record of all such requests. The Exchange will keep records of its determinations as to whether one or more ATP Firms or the Exchange experienced a bona fide systems problem and any exclusion of that day's activity from the calculation of an Excessive Bandwidth Utilization Fee or Cancellation Fee.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

adjust such fees in such an event would help to prevent the imposition of an unreasonable fee.

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>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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-2011-96 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-2011-96. 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, NW, Washington, D.C. 20549, 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-2011-96 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).