

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61615; File No. SR-NYSEAmex-2010-10)

March 1, 2010

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on February 1, 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, II, and III 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 Schedule of Fees and Charges (the “Schedule”) effective February 1, 2010. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy 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

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

<sup>2</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 aspects 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 multiple changes to its Schedule effective February 1, 2010. A more detailed description of the proposed changes follows.

**Specialists, E-Specialists and DOMM Rights Fee:**

Presently we charge to Specialists, E-Specialists and Directed Order Market Makers, on a pro rata basis, a monthly rights fee that is based on a tiered scale according to how much Average Daily National Customer Volume was executed during a rolling 3 month period. Effective February 1, 2010, the Exchange will reduce the rights fee by 50% in each tier as shown below.

Average National Daily Customer Contracts Per Issue:	Monthly Base Rate:
0 to 2,000	[\$150] <u>\$75</u>
2,001 to 5,000	[\$400] <u>\$200</u>
5,001 to 15,000	[\$750] <u>\$375</u>
15,001 to 100,000	[\$1,500] <u>\$750</u>
Over 100,000	[\$3,000] <u>\$1,500</u>

**Non-Directed Market Maker Fee and Market Maker Fee Cap:**

The Exchange is also proposing to increase the per contract rate paid by Non-Directed Market Makers from \$.17 to \$.18 per contract. Concurrently, the Exchange also proposes to

introduce a fee cap for all Market Makers.<sup>3</sup> The fee cap will be set at \$250,000 per month plus an incremental rate of \$.01 per contract for all Specialist, e-Specialist and Market Maker (both Directed and non-Directed) volume executed in excess of 2,500,000 contracts per month. For example, today a Non-Directed Market Maker who executes 3,000,000 contracts in a given month would pay \$510,000 (3,000,000 x \$.17). The introduction of the fee change would result in the same Non-Directed Market Maker paying \$255,000 (3,000,000 x \$.18 = \$540,000 which is then reduced to \$250,000 plus 500,000 [incremental volume over 2,500,000] x \$.01 = \$5,000 resulting in the monthly charge of \$255,000). Specialist, e-Specialist, and Market Maker (both Directed and non-Directed) fees will be aggregated for purposes of the cap. The Exchange will exclude any fees or volume associated with a Strategy Trade (reversals and conversions, dividend spreads, box spreads, short stock interest spreads, merger spreads, and jelly rolls). Any fees or volume attributable to a Strategy Trade will not be counted towards either the \$250,000 fee cap, or the volume threshold of 2,500,000 contracts. All Royalty Fees will continue to be charged and do not count toward the \$250,000 fee cap.

NYSE Amex is continuously monitoring our fees in an attempt to ensure that we remain competitive while also ensuring that we allocate our costs equitably across all participants. NYSE Amex believes that proposed changes are equitable and apply uniformly to all similarly situated ATP Holders.

## 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>4</sup> in general, and Section 6(b)(4) of

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<sup>3</sup> Market Makers include all Specialists, e-Specialists, Non-Directed Market Makers and Directed Market Makers.

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

the Act,<sup>5</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. NYSE Amex believes that proposed changes are equitable and apply uniformly to all similarly situated ATP Holders.

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 either 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>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

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.

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<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

#### 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-2010-10 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-2010-10. 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 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-2010-10 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>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).