

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61788; File No. SR-NYSEAmex-2010-07)

March 26, 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 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 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 a new pass-through Routing Surcharge designed to recover routing, clearing and transaction fees for the execution of orders routed to away exchanges. The Exchange will not assess a Routing Surcharge on Customer orders that do not incur a transaction charge at the away exchange.

The Exchange currently routes all orders that are marketable at the National Best Bid/Offer ("NBBO"), but not executable on NYSE Amex, immediately upon receipt, to the away market(s) at the NBBO. For any order executed as a result of routing out, the Exchange currently charges fees in the same manner as if the execution occurred on the Exchange. In the case of Customer orders, the Exchange charges no transaction fee for the execution, despite incurring costs that include clearing charges, routing charges, and in some instances transaction fees.

In recent months, particularly with the replacement of the old Intermarket Options Linkage Plan and the expansion of the Penny Pilot Program, the Exchange is experiencing a rise in the number of contracts that route out, with a related rise in costs incurred for routing such orders.³ Effective February 1, 2010 NYSE Amex will introduce a new Routing Surcharge in order to pass through routing, clearing and transaction charges associated with orders routed to away markets. The Routing Surcharge will be assessed on all non-customer orders routed to

³ This paragraph and the following paragraph were revised via an e-mail sent from Matthew Vaughn, Counsel Director of Compliance, NYSE Amex LLC, to Leah Mesfin, Special Counsel, Division of Trading and Markets, Commission, on February 22, 2010.

away markets and on Customer orders that are charged transaction fees at the executing exchange. If the executing exchange does not charge a transaction fee for the execution of the Customer order, the Routing Surcharge will not be assessed. The Exchange believes these fees are reasonable and represent pass through charges incurred by the Exchange for routing orders to away markets and the cost borne by the Exchange of developing, operating and maintaining smart order routing technology. Customer orders that are not charged an execution fee at the away market will not be charged the Routing Surcharge because in those instances the Exchange is not charged a fee by its routing broker. The Routing Surcharge will be made up of (i) \$0.11 per contract, and (ii) all actual charges assessed by the away exchange(s) (calculated on an order-by-order basis since different away exchanges charge different amounts). The Routing Surcharge is in addition to NYSE Amex's customary execution fees applicable to the order. This fee structure is consistent with a similar fee charged by the CBOE.

The Exchange also proposes to change the Broker Dealer & Firm Electronic fee to \$0.30 per contract (currently \$0.15 per contract). In making this rate change the Exchange seeks to remain competitive with other markets that often charge a higher rate. In proposing this new rate, NYSE Amex also seeks to adopt industry practice which sets the electronic broker dealer rate at a level slightly higher than the manual broker dealer charge. The pricing convention sets a small premium on the electronic broker dealer rate while still providing savings to the trading participant who would otherwise have to pay brokerage fees to a floor broker if it chose to access our markets through a manual execution. The Exchange further notes that this fee was reduced from \$0.45 to its current level in June 2009.

Finally, the Exchange's Cancellation Fee is currently waived until February 1, 2010. Beginning February 1, 2010 the Exchange will begin charging the Cancellation Fee and proposes to remove language from the Schedule referencing the waiver.

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"),⁴ in general, and Section 6(b)(4) of the Act,⁵ 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 proposed fees are reasonable and apply equally to all 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)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

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.

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-2010-07 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-2010-07. 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-2010-07 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.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).