

Display Orders in AutoEx. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

#### Operative Date and Notice

The Exchange intends to make the proposed modifications, which are effective on filing of this proposed rule, operative for trading on February 1, 2010. Pursuant to Exchange Rule 16.1(c), the Exchange will “provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange” through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange’s Web site (<http://www.nsx.com>).

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</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 the facilities of the Exchange. Moreover, the proposed rule change is not discriminatory in that all ETP Holders are eligible to submit (or not submit) trades and quotes at any price in AutoEx in all tapes, as either displayed or undisplayed, and as liquidity adding or liquidity taking, and may do so at their discretion.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because, as provided in (f)(2), it changes “a due, fee or other charge applicable only to a member”

(known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2010-01 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-NSX-2010-01. 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-NSX-2010-01 and should be submitted on or before March 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-2740 Filed 2-8-10; 8:45 am]

BILLING CODE 8011-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61471; File No. SR-NYSEAmex-2010-06]

#### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding 75 Options Classes to the Penny Pilot Program

February 2, 2010.

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 (the “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 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 identify the next 75 options classes to be added to the Penny Pilot Program for Options (“Penny Pilot” or “Pilot”) on November 2, 2009 [sic].<sup>3</sup> There are no changes to the Rule text. A copy of this filing is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office, at the Commission’s Public Reference Room and on the Commission’s Web site at <http://www.sec.gov>.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The Commission notes that the form 19b-4 correctly notes that the 75 new classes were added to the Penny Pilot on February 1, 2010.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</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

NYSE Amex proposes to identify the next 75 options classes to be added to the Penny Pilot effective February 1, 2010. The Exchange recently filed to

extend and expand the Pilot through December 31, 2010.<sup>4</sup> In that filing, the Exchange had proposed expanding the Pilot on a quarterly basis to add the next 75 most actively traded multiply listed options classes based on national average daily volume for the six-months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six month analysis.<sup>5</sup>

Nat'l ranking	Symbol	Company name	Nat'l ranking	Symbol	Company name
131	ABT	Abbott Laboratories.	192	LEAP	Leap Wireless International Inc.
169	AEM	Agnico-Eagle Mines Ltd.	205	LLY	Eli Lilly & Co.
151	AET	Aetna Inc.	162	LO	Lorillard Inc.
156	AFL	Aflac Inc.	152	LOW	Lowe's Co.s Inc.
181	AKAM	Akamai Technologies Inc.	176	M	Macy's Inc.
178	AMAT	Applied Materials Inc.	155	MCO	Moody's Corp.
117	AMR	AMR Corp.	217	MET	MetLife Inc.
166	ANF	Abercrombie & Fitch Co.	187	MMM	3M Co.
172	APC	Anadarko Petroleum Corp.	140	MU	Micron Technology Inc.
209	ATVI	Activision Blizzard Inc.	177	NUE	Nucor Corp.
145	BBB	Banco Bradesco SA.	157	OXY	Occidental Petroleum Corp.
190	BCRX	BioCryst Pharmaceuticals Inc.	158	PARD	Ponard Pharmaceuticals Inc.
218	BK	Bank of New York Mellon Corp./ The.	150	PEP	PepsiCo. Inc./NC.
194	BRCM	Broadcom Corp.	141	PM	Philip Morris International Inc.
184	BTU	Peabody Energy Corp.	185	PNC	PNC Financial Services Group Inc.
144	BX	Blackstone Group LP.	216	QID	ProShares UltraShort QQQ.
200	CAL	Continental Airlines Inc.	149	SHLD	Sears Holdings Corp.
211	CF	CF Industries Holdings Inc.	175	SLM	SLM Corp.
142	CMCSA	Comcast Corp.	212	SLW	Silver Wheaton Corp.
203	CSX	CSX Corp.	215	SQNM	Sequenom Inc.
143	CVS	CVS Caremark Corp.	153	STEC	STEC Inc.
174	CX	Cemex SA.B de CV.	219	STX	Seagate Technology.
183	DD	EI du Pont de Nemours & Co.	202	SU	Suncor Energy Inc.
146	ERTS	Electronic Arts Inc.	207	TCK	Teck Resources Ltd.
121	EWJ	iShares MSCI Japan Index Fund.	196	TEVA	Teva Pharmaceutical Industries Ltd.
186	FDX	FedEx Corp.	135	TLT	iShares Barclays 20+ Year Treasury Bond Fund.
118	FNM	Federal National Mortgage Asso- ciation.	214	TZA	Direxion Daily Small Cap Bear 3X Shares.
182	FRE	Federal Home Loan Mortgage Corp.	168	UAUA	UAL Corp.
179	GILD	Gilead Sciences Inc.	154	URE	ProShares Ultra Real Estate.
198	GLW	Corning Inc.	180	UTX	United Technologies Corp.
170	HBC	HSBC Holdings PLC.	204	WFR	MEMC Electronic Materials Inc.
197	HES	Hess Corp.	115	WFT	Weatherford International Ltd.
161	HL	Hecla Mining Co.	165	WLP	WellPoint Inc.
193	HOG	Harley-Davidson Inc.	191	XLB	Materials Select Sector SPDR Fund.
206	HON	Honeywell International Inc.	173	XRX	Xerox Corp.
210	JOYG	Joy Global Inc.	148	XTO	XTO Energy Inc.
213	JWN	Nordstrom Inc.	130	YRCW	YRC Worldwide Inc.
137	KFT	Kraft Foods Inc.			

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) 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 identifying the options classes added to the Pilot in a manner consistent with prior approvals and filings.

<sup>4</sup> See Exchange Act Release No. 61106 (December 3, 2009) 74 FR 65193 (December 9, 2009).

<sup>5</sup> Index products would be included in the expansion if the underlying index level was under 200.

### *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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Exchange Act<sup>6</sup> and Rule 19b-4(f)(1) thereunder,<sup>7</sup> in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-06 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-2010-06. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at NYSE Amex's principal office and on its Web site at [www.nyse.com](http://www.nyse.com). 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 No. SR-NYSEAmex-2010-06 and should be submitted on or before March 2, 2010.

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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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61486; File No. SR-Phlx-2010-18]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change To Codify Prices for Co-Location Services**

February 3, 2010.

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 January 29, 2010, NASDAQ OMX PHLX ("Phlx" or "Exchange") 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

substantially 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 the Substance of the Proposed Rule Change**

NASDAQ OMX PHLX is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to codify pricing for co-location services. The text of the proposed rule change is available at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, on the Commission's Web site at <http://www.sec.gov>, at the Exchange's principal office, and at the Commission's Public Reference Room. The Exchange will implement the proposed rule change on the first day of the month immediately following Commission approval (or on the date of approval, if on the first business day of a month).

### **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 Exchange 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 these 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 aspects 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 is proposing to codify fees for its existing co-location services. Co-location services are a suite of hardware, power, telecommunication, and other ancillary products and services that allow market participants and vendors to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange. Phlx provides co-location services and imposes fees through Nasdaq Technology Services LLC and pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and trading facilities and co-located customer equipment are

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

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

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

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

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