

Finally, the Exchange has made clarifying amendments to its terminology throughout the Fee Schedule to eliminate extraneous terms and outdated language. The Exchange believes that these amendments should simplify the Fee Schedule to the benefit of its members.

#### *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 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>18</sup> and paragraph (f)(2) of Rule 19b-4<sup>19</sup> thereunder. 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-69 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2010-69. 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 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 publicly available. All submissions should refer to File Number SR-Phlx-2010-69 and should be submitted on or before June 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62143; File No. SR-NYSEAMEX-2010-45]

### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Deleting Rule 413—NYSE Amex Equities To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.**

May 20, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 12,

2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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. 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 delete Rule 413—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.<sup>4</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### **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 the Statutory Basis for, the Proposed Rule Change*

#### **1. Purpose**

The purpose of the proposed rule changes is to delete Rule 413—NYSE Amex Equities (Uniform Forms) to correspond with rule changes filed by FINRA and approved by the Commission.

#### **Background**

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Act, the New York Stock Exchange LLC ("NYSE"), NYSER and FINRA entered into an agreement

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<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> See Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010) (order approving SR-FINRA-2009-093).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

(the “Agreement”) to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (“FINRA Incorporated NYSE Rules”). The Exchange became a party to the Agreement effective December 15, 2008.<sup>5</sup>

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.<sup>6</sup>

#### Proposed Conforming Amendments to NYSE Amex Equities Rules

FINRA recently deleted FINRA Incorporated NYSE Rule 413 (Uniform Forms), which required that each member had to adopt such uniform forms as may be prescribed by the Exchange to facilitate the orderly flow of transactions within the financial community.<sup>7</sup>

In deleting FINRA Incorporated NYSE Rule 413, FINRA noted that several provisions in its By-Laws required its members to provide certain information in the manner and form prescribed by FINRA, including membership applications, registration of branch offices, registration of registered representatives and associated persons, and termination of registered employees. FINRA also noted its proposal to adopt a new Rule 4540 governing information and data reporting and filing requirements.<sup>8</sup>

In order to harmonize the NYSE Amex Equities Rules with the approved

consolidated FINRA Rules, the Exchange correspondingly proposes to delete Rule 413—NYSE Amex Equities.<sup>9</sup> As with FINRA, the Exchange has a number of rules that require members and member organizations to provide certain information in the manner and form prescribed by the Exchange: For example, Rules 301(b)—and 311–313—NYSE Amex Equities deal with membership applications; Rule 342(c)—NYSE Amex Equities requires filing for branch offices (Form BR); Rule 345—NYSE Amex Equities, particularly 345.12, covers applications for registered representatives (Form U–4); and Rules 312(a)—and 345—NYSE Amex Equities require reporting termination of registered persons (Form U–5). In addition, similar to proposed consolidated FINRA Rules 4530 and 4540, Rule 351—NYSE Amex Equities (*see* 351.10) requires members and member organizations to provide the Exchange with certain regulatory and disciplinary information, and Rules 341— and 416A—NYSE Amex Equities require members and member organizations to maintain current contact information with the Exchange.<sup>10</sup>

Notwithstanding these other rules, Rule 416(a)—NYSE Amex Equities broadly provides that members and member organizations must “submit to the Exchange at such times as may be designated in such form and within such time period as may be prescribed such information as the Exchange deems essential for the protection of investors and the public interest.”<sup>11</sup> Thus, deletion of Rule 413—NYSE Amex Equities will not limit the Exchange’s authority to require its members and member organizations to provide information in a prescribed manner as needed.

#### 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>12</sup> in

<sup>9</sup>The NYSE has submitted a companion rule filing amending its rules in accordance with FINRA’s rule changes. *See* SR–NYSE–2010–38.

<sup>10</sup>*See* FINRA Regulatory Notices 08–71 (November 28, 2008) (discussing proposed FINRA Rule 4530) and 09–02 (January 6, 2009) (discussing proposed FINRA Rule 4540). Per the rule harmonization process, the Exchange will likely adopt versions of these rules once they are filed with and approved by the Commission.

<sup>11</sup>FINRA has proposed to delete portions of NYSE Rule 416 as part of its broader proposal to adopt new membership rules. *See* FINRA Regulatory Notice 10–01 (January 4, 2010) (discussing proposed FINRA Rules 1111–1190). Per the rule harmonization process, the Exchange will likely adopt versions of these rules once they are filed with and approved by the Commission.

<sup>12</sup>15 U.S.C. 78f(b).

general, and further the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, in that they are 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 Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules.

#### 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and Rule 19b–4(f)(6) thereunder.<sup>15</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 and Rule 19b–4(f)(6)(iii) thereunder.

<sup>13</sup>15 U.S.C. 78f(b)(5).

<sup>14</sup>15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup>17 CFR 240.19b–4(f)(6).

<sup>5</sup>*See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as “Common Rules”); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

<sup>6</sup>FINRA’s rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE, while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

<sup>7</sup>*See* Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010).

<sup>8</sup>*See* Securities Exchange Act Release No. 61542 (February 18, 2010), 75 FR 8768 (February 25, 2010).

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>18</sup> The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change is merely deleting a rule that is duplicative of other rules in its rulebook.<sup>19</sup> The Exchange has represented that the deletion of the rule will not limit the Exchange's authority to require its members and member organizations to provide needed information.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMEX-2010-45 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-2010-45. 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 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 publicly available. All submissions should refer to File Number SR-NYSEAMEX-2010-45 and should be submitted on or before June 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

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

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**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62147; File No. SR-Phlx-2010-43]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving a Proposed Rule Change Relating to Quote Spread Parameters and Batching of Violations

May 21, 2010.

On March 26, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change relating to quote spread parameters and batching of violations. The proposed rule change was published for comment in the **Federal Register** on April 16, 2010.<sup>3</sup> The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change.

The Exchange proposed to update Advice F-6 to reflect language requiring options quoted electronically to be quoted with a \$5 quote spread after the opening that was previously inadvertently omitted from Advice F-6. With respect to the proposed changes to Advice F-6, the Exchange represented that those who are quoting verbally (in open outcry) must, throughout the trading day, comply with the regular quote spread parameters that apply at the opening. The language of quote spreads not exceeding \$5 after the opening for those quoting options electronically was inadvertently not incorporated into Advice F-6 in a previous rule filing.<sup>4</sup> The Exchange proposed to correct this oversight by inserting this language regarding electronically quoted options into Advice F-6.

The Exchange also proposed to amend the Exchange's fine schedule applicable to Advice F-6, which is administered pursuant to the Exchange's minor rule plan ("MRP"). As amended, the fine schedule would now consist of Warning Letters for the first three violations, and three fines thereafter (\$250, \$500 and \$1,000). A seventh violation would result in referral to the Exchange's Business Conduct Committee ("BCC") for disciplinary action. In addition, the Exchange proposed that the fine schedule would be administered on a one-year running calendar basis, such that violations within one year of the last "occurrence" would count as the next "occurrence." Currently, the fine schedule is administered on a two-year running calendar basis.

Finally, the Exchange proposed amendments to Rules 960.2 and 970 to permit the aggregation or "batching" of quote spread parameter violations. Phlx notes that quoting on the Exchange has become entirely electronic; thus, when there is a quoting error, the error can affect every series that a firm is quoting, generating multiple instances of quote spread violations. The Exchange believes that, rather than taking each

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

<sup>3</sup> See Securities Exchange Act Release No. 61862 (April 16, 2010), 75 FR 20016.

<sup>4</sup> See Securities Exchange Act Release No. 50728 (November 23, 2004), 69 FR 69982 (December 1, 2004) (SR-Phlx-2004-74).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>18</sup> See *id.* Pursuant to Rule 19b-4(f)(6)(iii) under the Exchange Act, the Exchange is required to give the Commission written notice of its intent to file a 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 satisfied this requirement.

<sup>19</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(f).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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