

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on June 1, 2010, through 11:59 p.m. EDT on June 14, 2010.

By the Commission.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62168; File No. SR-NYSEAmex-2010-44]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Certain Violations of its Communications and Give-up Policies to its MRVP

May 25, 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 May 12, 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 NYSE Amex Disciplinary Rule 476A to add Rule 36—NYSE Amex Equities (Communications Between Exchange and Members' Offices) to Part 1A: List of Exchange Rule Violations and Fines Applicable Thereto ("Minor Rule Violation Plan").<sup>3</sup> The text of the proposed rule change is available on NYSE Amex's Web site at <http://www.nyse.com>, on the Commission's

Web site at <http://www.sec.gov>, at NYSE Amex, 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 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 NYSE Amex Disciplinary Rule 476A to add Rule 36—NYSE Amex Equities (Communications Between Exchange and Members' Offices) to Part 1A of its Minor Rule Violation Plan.

###### Background

Effective October 1, 2008, NYSE Euronext, acquired the parent company of the Exchange's predecessor, the American Stock Exchange LLC, pursuant to an Agreement and Plan of Merger (the "Merger").<sup>4</sup> In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on its legacy trading systems and facilities located at 86 Trinity Place, New York, New York to systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation").<sup>5</sup> Similarly, on March 2, 2009, the Exchange relocated all its options trading to trading systems and facilities located at 11 Wall Street, New York, New York (the "Options Relocation").<sup>6</sup> As a result of the Equities and Options Relocations, the NYSE and NYSE Amex Equities Trading Floors are located within the 11 Wall Street

building in a room adjacent to the NYSE Amex Options Trading Floor.

###### Current Rule 36—NYSE Amex Equities

Rule 36—NYSE Amex Equities governs two primary areas: (i) communications between the Floor and other locations, and (ii) the use and/or possession of portable or wireless communication or trading devices.

First, Rule 36—NYSE Amex Equities broadly prohibits members and member organizations from establishing or maintaining any telephonic or electronic communication between the Floor and any other location without Exchange approval. In addition, there are several supplementary provisions that provide more detailed prescriptions for members and member firms.

Rule 36.10—NYSE Amex Equities advises members and member organizations that the phone company will not install or disconnect any line between the Floor and any other location without Exchange approval and that such requests should be sent to the Exchange's Market Operations Division. Rule 36.60—NYSE Amex Equities further prohibits members and member organizations from listing a phone line in the name of a non-member.

Rule 36.20—NYSE Amex Equities provides that Floor brokers may maintain a phone line at their booth locations on the Floor, or use an Exchange issued and authorized portable phone, to communicate with non-members off the Floor. Only Exchange issued and authorized portable phones may be used on the Floor in accordance with the prescriptions of Rule 36.21—NYSE Amex Equities, and the use of personal phones is expressly prohibited. Rule 36.21—NYSE Amex Equities provides that Floor brokers using an Exchange issued and authorized portable phone may communicate directly from the point of sale on the Floor with someone off-Floor. In addition to processing orders, Floor brokers may also provide "market look" observations over the phone. When taking orders over the phone, Floor brokers must comply with Rule 123(e)—NYSE Amex Equities, which requires entry of the order into an electronic system, as well as any and all other record retention requirements under Rule 440—NYSE Amex Equities and SEC Rules 17a-3 and 17a-4. Exchange issued phones do not permit call-forwarding or call-waiting and may not block a caller's identification. Floor brokers may not use an Exchange authorized and provided portable phone used to trade equities while on the Exchange's Options Trading Floor.

<sup>4</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex-2008-62) (order approving the Merger).

<sup>5</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (order approving the Equities Relocation).

<sup>6</sup> See Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR-NYSEALTR-2008-14) (order approving the Options Relocation).

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

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

<sup>3</sup> The Exchange's corporate affiliate, New York Stock Exchange LLC ("NYSE"), submitted a companion rule filing proposing corresponding amendments to NYSE Rule 476A. See SR-NYSE-2010-37.

Notwithstanding the prescriptions of Rule 36.20—NYSE Amex Equities, Rule 36.23—NYSE Amex Equities provides that members and employees of member organizations may use personal portable or wireless communications devices, including phones, outside the Exchange's Equities Trading Floor.<sup>7</sup> In addition, members and employees of member organizations may not use personal portable or wireless communication devices on the Exchange's Options Trading Floor unless they are also registered to trade options on the Exchange.

Rule 36.30—NYSE Amex Equities provides that, subject to Exchange approval, a DMM Unit may maintain a phone line at its post to communicate with its off-Floor business operations and/or its clearing firm. For trading purposes, a DMM Unit's phone line may only be used to enter hedging orders through the firm's off-Floor office or clearing firm, or through a member of an options or futures exchange as permitted under Rules 98— and 105—NYSE Amex Equities.

Under Rule 36.30—NYSE Amex Equities, a DMM Unit may also maintain a wired or wireless device that has been registered with the Exchange, such as a computer terminal or laptop, to communicate with the DMM Unit's off-Floor algorithms. A DMM Unit using such a wired or wireless device must certify that the device operates in accordance with all SEC and Exchange rules, policies, and procedures. In addition, the DMM Unit must create and maintain records of all messages generated by the wired or wireless device in compliance with Rule 440—NYSE Amex Equities and SEC Rules 17a-3 and 17a-4.

To address concerns regarding improper information sharing between the Exchange's Equities Trading Floor and the adjacent Options Trading Floor, Rule 36.70—NYSE Amex Equities prohibits members and member firm employees from (i) using or possessing any wireless trading device that may be used to view or enter orders into the Exchange's Equities trading systems while on the Options Trading Floor, and (ii) using or possessing any wireless trading device that may be used to view or enter orders into the Exchange's Options trading systems while on the

Equities Trading Floor. These prohibitions apply to any and all wireless trading devices, including devices issued by the Exchange or NYSE, as well as devices that are proprietary to a member, member organization or other entity.

Finally, Rules 36.40— and 36.50—NYSE Amex Equities prescribe certain timing and handling requirements for “give-up” or “step out” transactions, whereby a member or member organization executes a customer trade on behalf of another member. While not directly related to member or member organization communications or the use and/or possession of portable or wireless communication or trading devices, these requirements are important for ensuring that members and member organizations properly document these types of transactions.

#### Proposed Rule Change

As noted above, the Exchange proposes to add Rule 36—NYSE Amex Equities to Part 1A of its Minor Rule Violation Plan under NYSE Amex Disciplinary Rule 476A.

Under Part 1A of the Exchange's Minor Rule Violation Plan, the Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, principal executive, approved person, or registered or non-registered employee of a member or member organization for a minor violation of specified Exchange rules. Such fines provide a meaningful sanction for rule violations where the facts and circumstances of the violation do not warrant the initiation of a formal disciplinary procedure under NYSE Amex Disciplinary Rule 476, but do require a regulatory response that is more significant than an admonition letter.

Currently, because Rule 36—NYSE Amex Equities is not part of the Exchange's Minor Rule Violation Plan, if a member or member firm employee were to violate the prohibitions set forth in Rule 36—NYSE Amex Equities the Exchange would be limited to issuing either an admonition letter or initiating formal proceedings under NYSE Amex Disciplinary Rule 476. This is the case whether or not the member or member firm employee violated the rule once or many times, and regardless of whether he or she made an inadvertent error or an intentional one.

The Exchange believes that the current regulatory approach for dealing with Rule 36—NYSE Amex Equities violations is too inflexible. The Exchange recognizes that members or member firm employees may violate the prescriptions of Rule 36—NYSE Amex

Equities intentionally, as well as accidentally or inadvertently. When a violation is intentional, formal disciplinary measures in accordance with NYSE Amex Disciplinary Rule 476 may be warranted. However, while an admonition letter might be appropriate for an isolated accidental or inadvertent violation, in other cases an admonition letter would be inadequate even though a formal proceeding may not be warranted. The Exchange believes that the addition of Rule 36—NYSE Amex Equities to Part 1A of its Minor Rule Violation Plan under NYSE Amex Disciplinary Rule 476A will provide a more flexible and appropriate enforcement tool that preserves the Exchange's discretion to seek formal discipline under appropriate circumstances.

#### 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,<sup>8</sup> in that it is 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 proposed rule change also furthers the objectives of Section 6(b)(6) of the Act,<sup>9</sup> in that it provides for appropriate discipline for violations of Exchange rules and regulations.

The Exchange believes that the proposed rule change will provide the Exchange with greater regulatory flexibility to enforce the prescriptions of Rule 36—NYSE Amex Equities in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted.

#### *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.

<sup>7</sup> Rule 6A—NYSE Amex Equities defines “Trading Floor” as the restricted-access physical areas designated by the Exchange for the trading of equities securities, commonly known as the “Main Room” and the “Garage.” The Exchange's Equities Trading Floor does not include the areas where its listed options are traded, commonly known as the “Blue Room” and the “Extended Blue Room,” also known as the “NYSE Amex Options Trading Floor.”

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(6).

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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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-2010-44 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-2010-44. 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 available publicly. All submissions should refer to File Number SR-NYSEAmex-2010-44 and should be submitted on or before June 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62188; File No. SR-NYSEArca-2010-23]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Modify the Fees for NYSE Arca Trades, To Establish the NYSE Arca BBO Service and Related Fees, and To Provide an Alternative Unit-of-Count Methodology for Those Services

May 27, 2010.

#### I. Introduction

On April 1, 2010, the NYSE Arca, Inc. ("NYSE Arca" or the "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 to modify fees for NYSE Arca

Trades and to establish the NYSE Arca BBO service and related fees. The proposed rule change was published for comment in the **Federal Register** on April 23, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

NYSE Arca proposes: (i) To establish NYSE Arca BBO, a service that will make available the Exchange's best bids and offers; (ii) to establish fees for NYSE Arca BBO; (iii) to modify the professional subscriber fees for NYSE Arca Trades; and (iv) to provide an alternative unit-of-count methodology to the traditional device fee for NYSE Arca Trades and NYSE Arca BBO.

##### a. Service

NYSE Arca BBO is a NYSE Arca-Only market data service that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that NYSE Arca reports under the CQ Plan and the Nasdaq/UTP Plan for inclusion in the NYSE Arca BBO Information. NYSE Arca BBO Information would include the best bids and offers for all securities that are traded on the Exchange and for which NYSE Arca reports quotes under the CQ Plan or the Nasdaq/UTP Plan. NYSE Arca will make the NYSE Arca BBO available over a single datafeed, regardless of the markets on which the securities are listed.

NYSE Arca BBO would allow vendors, broker-dealers, private network providers and other entities ("NYSE Arca-Only Vendors") to make available NYSE Arca BBO Information on a real-time basis. NYSE Arca-Only Vendors may distribute the NYSE Arca BBO to both professional and nonprofessional subscribers. The Exchange would make NYSE Arca BBO Information available through NYSE Arca BBO Service no earlier than it makes that information available to the processor under the CQ Plan or the Nasdaq/UTP Plan, as applicable.

##### b. Fees

###### i. Access Fee

NYSE Arca currently charges \$750 for access to the NYSE Arca Trades. The Exchange proposes to charge \$750 per month for the receipt and use of NYSE Arca BBO and NYSE Arca Trades. One \$750 monthly access fee entitles an NYSE Arca-Only Vendor to receive NYSE Arca BBO and NYSE Arca Trades (collectively, "NYSE Arca Market Data").

<sup>3</sup> See Securities Exchange Act Release No. 61937 (April 16, 2010), 75 FR 21378.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the 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>12</sup> 17 CFR 200.30-3(a)(12) and 200.30-3(a)(44).

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

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