

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act; Notice of Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, September 29, 2010 at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, September 29, 2010 will be:

institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: September 23, 2010.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62961; File No. SR-NYSEAmex-2010-80]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Amending Its Price List To Reflect Fees Charged for Co-Location Services

September 21, 2010.

On August 4, 2010, NYSE Amex LLC ("Amex" 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 amend its Price List to reflect fees charged for co-location services. The proposed rule change was published for comment in the **Federal Register** on August 20, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

In its proposal, Amex proposed to amend its Price List to identify fees pertaining to co-location services, which allow Users<sup>4</sup> of the Exchange to rent space on premises controlled by the Exchange so that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems. Amex represented that it planned to begin operating a data center in Mahwah, New Jersey, from which it will offer co-location services. The Exchange represented that it will offer space at the data center in cabinets with power usage capability of either four or eight kilowatts (kW).<sup>5</sup> In addition, the Exchange stated that it will offer Users services related to co-location, including cross connections, equipment and cable installation, and remote "hot-hands" services, which allow Users to use on-site data center personnel to maintain User equipment. The Exchange proposed tiered co-location fees based on the level of service (1Gb circuit, 10Gb circuit and various bundled options), and additional fees for related services.

Amex represented that Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from or superior to that of Users that do not receive co-location services. The Exchange noted that all orders sent to Amex enter the Exchange's trading and execution systems through the same

order gateway regardless of whether the sender is co-located in the Exchange's data center or not. Furthermore, Amex noted that co-located Users do not receive any market data or data service product that is not available to all Users. Users that receive co-location services normally would expect reduced latencies in sending orders to the Exchange and receiving market data from the Exchange.

In addition, the Exchange represented that co-located Users have the option of obtaining access to the Exchange's Liquidity Center Network ("LCN"), a local area network available in the data center.<sup>6</sup> Co-located Users have the option of using either the LCN or the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network, to which all Users have access. Because it operates as a local area network within the data center, the LCN provides reduced latencies in comparison with SFTI. Other than the reduced latencies, the Exchange believes that there are no material differences in terms of access to the Exchange between Users that choose to co-locate and those that do not. According to Amex, SFTI and LCN both provide Users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products. User access to non-proprietary market data products is available through SFTI and not through LCN.

Amex represented that it offers co-location space based on availability and the Exchange believes that it has sufficient space in the Mahwah data center to accommodate current demand on an equitable basis for the foreseeable future. In addition, the Exchange believes that any difference among the positions of the cabinets within the data center does not create any material difference to co-location Users in terms of access to the Exchange.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section

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

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

<sup>3</sup> See Securities Exchange Act Release No. 62731 (Aug. 16, 2010), 75 FR 51512 ("Notice").

<sup>4</sup> For the purposes of this filing, the term "Users" includes any "member organization," as that term is defined in NYSE Amex Equities Rule 2(b) and any "Sponsored Participant," as that term is defined in NYSE Amex Equities Rule 123B.30(a)(ii)(B).

<sup>5</sup> The Exchange represented that it also allows Users, for a monthly fee (*i.e.*, 40% of the applicable monthly per kW fee), to obtain an option for future use on available, unused cabinet space in proximity to their existing cabinet space. Specifically, Users may reserve cabinet space of up to 30% of the cabinet space under contract, which the Exchange will endeavor to provide as close as reasonably possible to the User's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange.

<sup>6</sup> Amex represented that pricing for LCN access is provided on a stand-alone basis and on a bundled basis in combination with SFTI connections and optic connections to outside access centers and within the data center. The SFTI and optic connections are not related to the co-location services.

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

6(b)(4) of the Act,<sup>8</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed tiered fees for co-location and related services are reasonable and equitably allocated insofar as they are applied on the same terms to similarly situated market participants. In addition, the Commission believes that the connectivity options described in the proposed rule change are not unfairly discriminatory because Amex makes the co-location services uniformly available to all Users who voluntarily request them and pay the fees as detailed in the proposal. As represented by Amex, these fees are uniform for all such customers and may vary from User to User due to each User's choice of service package. Finally, the Commission believes that the proposal will further the protection of investors and the public interest because it will provide greater transparency regarding the connectivity options available to market participants.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSEAmex-2010-80) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. 2010-24063 Filed 9-24-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62953; File No. SR-FINRA-2010-049]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Quotation Requirements on the Alternative Display Facility

September 20, 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 September 17, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 6272 to enhance quotation requirements on the Alternative Display Facility ("ADF").

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, 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, FINRA 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. FINRA 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

In 2002, FINRA created the ADF to ensure that any FINRA member, including alternative trading systems, seeking to display quotations for NMS

stocks in the over-the-counter ("OTC") market, rather than through an exchange platform, has an alternative venue through which to post its OTC quotations and report trades.<sup>3</sup>

FINRA and numerous exchanges are filing proposed rule changes to enhance the minimum quotation requirements for market makers by requiring market makers for each stock in which they are registered to continuously maintain two-sided quotations within a designated percentage of the National Best Bid and National Best Offer (or if there is not a National Best Bid or Offer, the last reported sale). These proposed rule changes are intended to eliminate trade executions against market maker "placeholder" quotations that are priced far away from the inside market, commonly known as "stub quotes." Under these proposed rules, limitations on permissible quotations are determined by the individual character of the security, the time of day in which the quote is entered, and any applicable stock trading pause triggers.

In order to ensure consistency in quotation requirements across markets, FINRA is proposing to amend Rule 6272 to impose the same limitations on a Registered Reporting ADF Market Maker's quotations on the ADF that will apply to market makers on national securities exchanges. The proposed rule change would thus require all Registered Reporting ADF Market Makers to have systems in place to ensure that any quotations displayed on the ADF met the requirements of Rule 6272.

FINRA will announce the implementation date on its Web site.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>4</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will ensure consistent treatment of quotations across markets and could prevent the execution of numerous transactions at

<sup>3</sup> Initially, the ADF was limited to quotations and trade reports in Nasdaq securities. See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002). In 2006, the ADF was expanded to include all NMS stocks. See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006).

<sup>4</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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.