

Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-06-09 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov/>). Follow the instructions for submitting comments.

#### 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 S7-06-09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

### III. Conclusion

*It is hereby ordered*, pursuant to Section 36(a) of the Exchange Act, that, until July 16, 2011, the following exemptions connected with CDS clearing by CME contained in the March 2010 CME Exemptive Order are extended: (i) The temporary conditional exemption granted to CME from clearing agency registration under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS; (ii) the temporary conditional exemption of CME and certain of its clearing members from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for certain non-excluded CDS cleared by CME; (iii) the temporary conditional exemption of CME and certain eligible contract participants from certain Exchange Act requirements with respect to certain non-excluded CDS cleared by CME; (iv) the temporary conditional

exemption of certain CME clearing members that receive customer collateral in connection with certain non-excluded CDS cleared by CME from certain Exchange Act requirements; and (v) the temporary conditional exemption from certain Exchange Act requirements granted to registered broker-dealers with respect to certain non-excluded CDS.

By the Commission.

**Elizabeth M. Murphy**,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63381; File No. SR-NYSEAMEX-2010-106]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 5190 To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

November 29, 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 November 19, 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 NYSE Amex. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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 Equities Rule 5190 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission. The text of the proposed rule change is available at the

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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, NYSE Amex 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 amend NYSE Amex Equities Rule 5190 (Notification Requirements for Offering Participants) 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. ("NYSE") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934, as amended (the "Act"), NYSE, NYSE and FINRA entered into an agreement (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"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.<sup>6</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

<sup>6</sup> See Securities Exchange Act Release Nos. 56148 (July 26, 2007); 72 FR 42146 (Aug. 1, 2007) (order approving the Agreement); 56147 (July 26, 2007); 72 FR 42166 (Aug. 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 (Aug. 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.

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>7</sup>

*Proposed Conforming Amendments to NYSE Amex Equities Rules:*

FINRA recently amended FINRA Rule 5190 to amend the notice requirements applicable to distributions of securities that are considered “actively traded” and thus are not subject to a restricted period under Rule 101 of Regulation M.<sup>8</sup> As approved, the substance of the information that must be provided in the notice did not change, only the timing of the notice.

The Exchange previously adopted NYSE Amex Equities Rule 5190 to harmonize the notification requirements for offering participants with FINRA Rule 5190.<sup>9</sup> In order to harmonize the NYSE Amex Equities Rules with the approved FINRA Rules, the Exchange proposes to amend NYSE Amex Equities Rule 5190 to conform to the recently approved amendments to FINRA Rule 5190.<sup>10</sup> Accordingly, the Exchange similarly proposes to amend NYSE Amex Equities Rule 5190(d) to provide that member organizations will be required to provide a single notice under subparagraphs (1) and (2) of Rule 5190(d).

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>11</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>12</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 among NYSE Rules, NYSE Amex Equities Rules, and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual 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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</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>16</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to

waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule change would bring NYSE Amex Equity Rule 5190 into harmony with FINRA Rule 5190. For this reason, the Commission believes that waiving the 30-day operative delay<sup>17</sup> is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.

At any time within the 60-day period beginning on the date of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-2010-106 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-2010-106. 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

<sup>7</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 (“Dual Members”), 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>8</sup> See Securities Exchange Act Release No. 62970 (Sept. 22, 2010); 75 FR 59771 (Sept. 28, 2010) (SR-FINRA-2010-37).

<sup>9</sup> See Securities Exchange Act Release No. 59975 (May 26, 2009); 74 FR 26449 (June 2, 2009) (SR-NYSEALTR-2009-26).

<sup>10</sup> NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. See SR-NYSE-2010-73.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 NYSE's principal office and on its Internet Web site at <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 Number SR-NYSEAMEX-2010-106 and should be submitted on or before December 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63385; File No. SR-BATS-2010-035]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

November 29, 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 November 19, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 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

The Exchange is filing with the Commission a proposal for the BATS Exchange Options Market ("BATS Options") to extend the Penny Pilot Program ("Penny Pilot") in options classes in certain issues ("Pilot Program") previously approved by the Commission through December 31, 2011.<sup>3</sup>

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, 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 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 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 purpose of this filing is to extend the Penny Pilot Program ("Penny Pilot") in options classes in certain issues ("Pilot Program") previously approved by the Commission through December 31, 2011, and to provide revised dates for adding replacement issues to the Pilot Program. The Exchange proposes that the semi-annual dates to replace issues that have been delisted be revised to the second trading day following January 1, 2011 and July 1, 2011. The Exchange also wishes to clarify that the replacement issues will be selected based on trading activity for the six month period beginning June 1, 2010 and ending November 30, 2010 for the January 2011 replacement and the six month period beginning December 1,

<sup>3</sup> The rules of BATS Options, including rules applicable to BATS Options' participation in the Penny Pilot, were approved on January 26, 2010. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031). BATS Options commenced operations on February 26, 2010.

2010 and May 31, 2011 for the July 2011 replacement.

In the Exchange's filing to propose the rules to govern BATS Options,<sup>4</sup> the Exchange proposed commencing operations for BATS Options by trading all options classes that were, as of such date, traded by other options exchanges pursuant to the Penny Pilot and then expanding the Penny Pilot on a quarterly basis, 75 classes at a time, through August 2010. Consistent with this proposal, since it commenced operations the Exchange has twice expanded the options classes subject to the Penny Pilot.<sup>5</sup> The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Penny Pilot.

The Exchange agrees to provide reports that will analyze the impact of the Pilot Program on market quality and options capacity. These reports will include: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>6</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>7</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market

<sup>4</sup> See Securities Exchange Act Release No. 61097 (December 2, 2009), 74 FR 64788 (December 8, 2009) (SR-BATS-2009-031) (Notice of Filing of Proposed Rule Change To Establish Rules Governing the Trading of Options on the BATS Options Exchange).

<sup>5</sup> See Securities Exchange Act Release No. 62595 (July 29, 2010), 75 FR 47043 (August 4, 2010) (SR-BATS-2010-019); Securities Exchange Act Release No. 62033 (May 4, 2010), 75 FR 26301 (May 11, 2010) (SR-BATS-2010-009).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>18</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.