

rule change was an improper attempt to adversely impact a New Member Application Form (“NMA”) filed by ACO and concurrent MC-400 application filed by ACO on Mr. Asensio’s behalf. In the FINRA Response, FINRA contests this assertion. Specifically, the FINRA Response states that the proposed rule change is a separate policy-driven proceeding based on its belief that a new member applicant should enter FINRA membership free of the supervisory and operating concerns raised by association with a statutorily disqualified person or being itself subject to a statutory disqualification.<sup>14</sup> The FINRA Response further notes that the proposed rule change would apply only to NMAs and applications for relief from a statutory disqualification filed on or after the effective date of the proposed rule change and, consequently, would not impact any applications pending before such effective date.

The Asensio Letter also states that the proposed rule change was unnecessary because FINRA already has authority under its current rules to deny an NMA based on the existence of a statutory disqualification and to deny an MC-400 application based on the fact that a disqualified person is proposing to associate with a new member.<sup>15</sup> The FINRA Response contests this assertion by citing the public policy interests underlying the proposed rule change’s objective—to promote initiation of FINRA membership free of statutory disqualification concerns. Moreover, FINRA believes the proposed rule would allow FINRA to conserve regulatory resources that would otherwise be devoted to considering an NMA or MC-400 application that the proposed rule change would preclude at the outset.<sup>16</sup>

The Asensio Letter also states that the proposal would effectively foreclose use of the eligibility proceedings by a disqualified person seeking relief from FINRA sanctions. Specifically, the Asensio Letter states that the eligibility proceedings represent the only avenue for seeking relief outside of an appeal and to effectively use the eligibility proceedings for this purpose, a disqualified person must be able to create a new member applicant to be his sponsor; otherwise, a disqualified person cannot present his arguments for relief free from possible restrictions that could be imposed by a member

sponsor.<sup>17</sup> The FINRA Response states that the eligibility proceedings are not the appropriate forum for reviewing sanctions imposed in a formal disciplinary action brought by FINRA; rather, the correct process for an individual to challenge any FINRA-imposed sanctions is set forth in the FINRA Rule 9300 Series (Review of Disciplinary Proceeding By National Adjudicatory Council and FINRA Board; Application for SEC Review).<sup>18</sup> Accordingly, FINRA believes this objection lacks merit.<sup>19</sup>

The second commenter, ASG Securities, did not oppose the proposed rule change but requested that FINRA amend the proposal to (1) extend from ten business days to twenty business days the period in FINRA Rule 9522(a)(3) (Notice Regarding an Associated Person) during which a member may file a Form MC-400A application for itself and an associated person upon receiving a disqualification notice from FINRA staff; and (2) prohibit a disqualified person or entity from financing a member or providing or lending funds to an associated person for re-investment into a member.<sup>20</sup> The FINRA Response states that the commenter’s suggestions are outside the scope of the rule proposal; as such, it does not intend to expand the proposal to address these additional issues at this time. However, it will consider whether to propose additional changes at a later date.<sup>21</sup>

#### IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA’s response to the comments, and 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 association.<sup>22</sup> In particular, the Commission finds that the proposed rule change is consistent with Section

<sup>17</sup> Asensio Letter.

<sup>18</sup> FINRA Response.

<sup>19</sup> The Asensio Letter also describes the foreclosure of a review of a FINRA-imposed sanction through the eligibility proceedings as “contrary to the most basic ideals of constitutional due process.” As referenced above, FINRA believes that the eligibility proceedings are not the appropriate forum for reviewing FINRA-imposed sanctions; however, a process does exist for individuals to challenge a FINRA-imposed sanction. As such, FINRA also believes the Asensio Letter’s argument lacks merit.

<sup>20</sup> ASG Letter.

<sup>21</sup> FINRA Response.

<sup>22</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

15A(b)(6) of the Act,<sup>23</sup> which, among other things, requires that FINRA rules 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. In particular, the Commission agrees that a new member applicant should enter FINRA membership free of the supervisory and operating concerns raised by association with a statutorily disqualified person or being itself subject to a statutory disqualification.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-FINRA-2010-056), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Cathy H. Ahn,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63934; File No. SR-NYSE-2011-04]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Price List

February 18, 2011.

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 February 14, 2011, New York Stock Exchange LLC (“NYSE” 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 amend its 2011 Price List (“Price List”) for equity

<sup>23</sup> 15 U.S.C. 78o-3(b)(6).

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</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>14</sup> FINRA Response.

<sup>15</sup> Asensio Letter.

<sup>16</sup> FINRA Response.

transactions by revising the description of the Risk Management Gateway ("RMG") fee to clarify that the charge is determined on the basis of the capacity of the end user's connection in inbound messages per second, rather than the actual number of inbound messages. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, <http://www.sec.gov>, 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 Exchange proposes to amend its Price List for equity transactions by revising the description of the RMG fee to clarify that the charge is determined on the basis of the capacity of the end user's connection in inbound messages per second, rather than the actual number of inbound messages.

On February 12, 2009, the Exchange filed a proposed rule change with the Commission that established the fee for its RMG service to facilitate the ability of Sponsoring Member Organizations to monitor and oversee the sponsored access activity of their Sponsored Participants.<sup>4</sup> In the Original RMG Fee Filing, the Exchange established a fee of \$3,000 per month for the first "Connection" plus \$1,000 per month for each additional "Connection." A "Connection" was defined as up to 1,000 messages per second inbound, regardless of the connection's actual capacity.<sup>5</sup> Consequently, if a particular end user's connection has the capacity to support 3,000 messages per second inbound, that end user's connection will be deemed to be three (3) Connections

and the charge will be \$5,000 per month.

Although it is clear from the Original RMG Fee Filing that the key variable in determining an end user's RMG fee is the capacity in messages per second inbound that the end user's connection will support (*i.e.*, the number of Connections), the descriptive language that was added to the Price List at that time was inartfully worded and could be misinterpreted as basing the monthly RMG fee on the actual number of inbound messages. Consequently, the Exchange is proposing to modify the descriptive language for the RMG fee in the Price List to clarify that the fee is based on message capacity. There will be no change to the pricing itself or the basis on which it is currently calculated.

The Exchange notes that NYSE Arca, Inc. ("NYSE Arca"), in a rule filing with the Commission on September 4, 2009,<sup>6</sup> established a fee for its RMG service that is exactly the same as the Exchange's RMG fee, including the computation of the fee based on message capacity. In the NYSE Arca RMG Fee Filing, the descriptive language that was added to the NYSE Arca Fee Schedule describes much more clearly and unambiguously the basis on which the RMG fee is calculated and the Exchange proposes to replace the current descriptive language in its Price List with the corresponding language from the NYSE Arca Fee Schedule.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</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 its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, since there will be no change to the current RMG fee which has been in effect since February 2009, or how it is calculated, only to the description of the fee for the purposes of adding clarity regarding the basis and calculation of the fee.

### 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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of such 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-NYSE-2011-04 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-NYSE-2011-04. 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

<sup>4</sup> See Securities Exchange Act Release No. 59430 (February 20, 2009), 74 FR 9014 (February 27, 2009) (File No. SR-NYSE-2009-15) (the "Original RMG Fee Filing").

<sup>5</sup> Original RMG Fee Filing, 74 FR at 9015.

<sup>6</sup> See Securities Exchange Act Release No. 60664 (September 14, 2009), 74 FR 48110 (September 21, 2009) (File No. SR-NYSEArca-2009-81) (the "NYSE Arca RMG Fee Filing").

<sup>7</sup> 15 U.S.C. 78f.

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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 website 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-NYSE-2011-04 and should be submitted on or before March 18, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63935; File No. SR-NYSEAMEX-2011-07]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Price List

February 18, 2011.

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 February 14, 2011, 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 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 amend its 2011 Price List for equities ("Price List") by revising the description of the Risk Management Gateway ("RMG") fee to clarify that the charge is determined on the basis of the capacity of the end user's connection in inbound messages per second, rather than the actual number of inbound messages. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, <http://www.sec.gov>, 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 Exchange proposes to amend its Price List for equities by revising the description of the RMG fee to clarify that the charge is determined on the basis of the capacity of the end user's connection in inbound messages per second, rather than the actual number of inbound messages.

On February 12, 2009, the Exchange filed a proposed rule change with the Commission that established the fee for its RMG service to facilitate the ability of Sponsoring Member Organizations to monitor and oversee the sponsored access activity of their Sponsored Participants.<sup>4</sup> In the Original RMG Fee Filing, the Exchange established a fee of \$3,000 per month for the first "Connection" plus \$1,000 per month for each additional "Connection." A "Connection" was defined as up to 1,000 messages per second inbound,

regardless of the connection's actual capacity.<sup>5</sup> Consequently, if a particular end user's connection has the capacity to support 3,000 messages per second inbound, that end user's connection will be deemed to be three (3) Connections and the charge will be \$5,000 per month.

Although it is clear from the Original RMG Fee Filing that the key variable in determining an end user's RMG fee is the capacity in messages per second inbound that the end user's connection will support (*i.e.*, the number of Connections), the descriptive language that was added to the Price List at that time was inartfully worded and could be misinterpreted as basing the monthly RMG fee on the actual number of inbound messages. Consequently, the Exchange is proposing to modify the descriptive language for the RMG fee in the Price List to clarify that the fee is based on message capacity. There will be no change to the pricing itself or the basis on which it is currently calculated.

The Exchange notes that NYSE Arca, Inc. ("NYSE Arca"), in a rule filing with the Commission on September 4, 2009,<sup>6</sup> established a fee for its RMG service that is exactly the same as the Exchange's RMG fee, including the computation of the fee based on message capacity. In the NYSE Arca RMG Fee Filing, the descriptive language that was added to the NYSE Arca Fee Schedule describes much more clearly and unambiguously the basis on which the RMG fee is calculated, and the Exchange proposes to replace the current descriptive language in its Price List with the corresponding language from the NYSE Arca Fee Schedule.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</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 its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, since there will be no change to the current RMG fee which has been in effect since February 2009, or how it is calculated, only to the description of the fee for the purposes

<sup>5</sup> *Id.*

<sup>6</sup> See Securities Exchange Act Release No. 60664 (September 14, 2009), 74 FR 48110 (September 21, 2009) (File No. SR-NYSEArca-2009-81) (the "NYSE Arca RMG Fee Filing").

<sup>7</sup> 15 U.S.C. 78f.

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

<sup>11</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. 59429 (February 20, 2009), 74 FR 9016 (February 27, 2009) (File No. SR-NYSEALTR-2009-12) (the "Original RMG Fee Filing").