

proposed rule change is proper, and indeed necessary, in light of the need to have rules that permit the listing of identical expiration months across exchanges for products that are multiply listed and fungible with one another. The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934<sup>7</sup> (the "Act") in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is 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. In particular, the proposed rule change will permit the Exchange to accommodate requests made by its permit holders and other market participants to list the additional expiration months and thus encourage competition without harming investors or the public interest.

### *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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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, it has become effective pursuant to Section

19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal should promote competition by allowing the Exchange to list and trade option series that are trading on other options exchanges without undue delay. Therefore, the Commission designates the proposal operative upon filing.<sup>11</sup>

At any time within 60 days 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-2011-33 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-2011-33. 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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 Commission has waived the five-day pre-filing requirement in this case.

<sup>11</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).

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 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 the 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-2011-33 and should be submitted on or before June 15, 2011.

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

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

[FR Doc. 2011-12874 Filed 5-24-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64524; File No. SR-NYSEAmex-2011-30]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule With Respect to Electronic Complex Order Executions

May 19, 2011.

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 11, 2011, 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, II, and III below, which Items have been

<sup>12</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.

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

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

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 Options Fee Schedule (the "Schedule") to (1) reinstitute the standard marketing charges for electronic complex order executions that had been temporarily waived, (2) eliminate the fee charged to Customers (other than Professional Customers) for electronic complex order executions and (3) provide that the per contract fee for electronic complex order executions will no longer be capped for Specialists, e-Specialists and Market Makers even though such executions and the related fees will count toward existing thresholds in the Schedule applicable to such participants that will otherwise still cap their per contract fees on other types of executions. The proposed changes will be operative on May 11, 2011.

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 Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange is proposing to reinstitute the standard marketing charges<sup>3</sup> for electronic complex order executions that had been temporarily waived in July 2010 pending the enabling of directed order functionality for executions in the complex matching

<sup>3</sup> The standard marketing charges are \$0.25 per contract for any electronic Customer order in a Penny Pilot option that trades with a market maker and \$0.65 per contract for any electronic Customer order in a non-Penny Pilot option that trades with a market maker.

engine. The pool of monies from the collection of marketing charges on electronic public Customer orders from market makers who trade with such orders is available for distribution as payment for order flow under the Exchange's rules. The Exchange is still intending to develop directed order functionality; however, the implementation is taking longer than anticipated. In the interim, the Exchange has heard from several order flow providers and liquidity providers that the absence of marketing charges for Customer executions in the complex order book is hindering their ability to route and/or attract complex order flow to the Exchange, particularly since competing exchanges do allow for the collection of marketing charges on complex orders.<sup>4</sup> Consequently, the Exchange therefore proposes to resume its prior practice of treating electronic complex orders in the same manner as any other orders for the purpose of assessing payment for order flow charges in order to remain competitive.

The Exchange further proposes to eliminate the fees charged to Customers (other than Professional Customers) for electronic complex order executions. Currently, Customers trade without a charge for non-complex order executions as provided in the Schedule, and the Exchange is proposing to extend that treatment to complex order executions. With this change, the execution of Customer electronic complex orders will be priced identically with the execution of any other Customer order, complex or otherwise, in the Exchange's system. The Exchange notes that other competing exchanges also have a \$0.00 per contract rate charge for non-professional customers for the execution of complex orders.<sup>5</sup>

Finally, the Exchange proposes that the per contract fee for electronic complex order executions will no longer be capped for Specialists, e-Specialists and Market Makers even though such executions and the related fees will still

<sup>4</sup> Chicago Board Options Exchange ("CBOE"), NASDAQ OMX PHLX ("PHLX"), and International Securities Exchange ("ISE") all assess marketing charges against market makers who trade with customer complex orders. PHLX and ISE except their "make/take" symbols from the collection of marketing charges, but all other options are included.

<sup>5</sup> See ISE Schedule of Fees, "Rebates and Fees for Adding and Removing Liquidity" on page 16 of 17 at <http://www.ise.com/assets/documents/OptionsExchange/legal/fee/feeschedule.pdf>; see also CBOE Fees Schedule, "Options Transaction Fees: Equity Options" on page 1 of 15 at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>, which includes complex orders even though there is no separate pricing for such orders on the CBOE.

count toward existing dollar and volume thresholds in the Schedule applicable to such participants that will otherwise still cap their per contract fees on other types of executions. For example, the Schedule currently provides that the fees of a Market Maker will be aggregated and capped at \$250,000 per month for all types of executions, so a Market Maker that has reached this level would not be charged a fee for additional order executions, including electronic complex order executions, until a volume level of 2,500,000 contracts is reached for that month. In the latter instance, the Market Maker would only be charged a fee of \$0.01 per contract for executions in excess of the 2,500,000 contract level, including electronic complex order executions. With the elimination of the current \$0.05 per contract fee that is charged to Customers for electronic complex order executions, the Exchange could be in the position of receiving either no revenue at all or only \$0.01 per contract for electronic complex order executions in which a Market Maker trades with a Customer. Consequently, it is proposed that the current fee caps will no longer be applicable to electronic complex order executions, which would continue to incur a fee of \$0.05 per contract on the Market Maker's side of a trade regardless of whether either or both of the foregoing monthly thresholds have been met. Such executions would, however, still count toward meeting those threshold levels and could therefore impact the fees paid on other types of executions by such a Market Maker.

The proposed changes will be operative on May 11, 2011.

##### **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>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</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 marketing charges that will be reinstated to fund payment for order flow for electronic complex order executions are charges that were previously in effect on the Exchange. The Exchange believes that these charges are reasonable and equitable because they are identical to the marketing charges assessed by

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

competing exchanges CBOE and ISE, as referenced herein, and slightly less than the marketing charge of \$0.70 per contract assessed by competing exchange PHLX for an electronic customer order in a non-Penny Pilot option that trades with a market maker.

The Exchange further believes that the re-imposition of marketing charges on market makers who trade with electronic Customer orders in the complex order book is reasonable and equitable because it is based on the need to attract additional Customer complex order flow to the Exchange, which will benefit all market participants. The Exchange notes that reinstating marketing charges as proposed will simplify the fee schedule, thereby making it easier for market makers in particular to factor these charges into the models that [sic] use to make trading decisions. Finally, the Exchange believes that reinstating marketing charges as proposed is not unfairly discriminatory because it means that electronic complex orders will be treated in the same manner as any other orders for the purpose of assessing payment for order flow charges.

The preferential rate of \$0.00 proposed to be charged to Customers (other than Professional Customers) is reasonable and equitable because it will extend to electronic complex order executions the same fee treatment that the Exchange currently provides to Customers for non-complex order executions. The Exchange also notes that, as discussed above, competing exchanges have extended the same preferential treatment to customer fees for the execution of complex orders and the Exchange believes it is reasonable and equitable to adjust its fees accordingly to remain competitive with the fees charged by other venues. The Exchange notes that historically Customers have been afforded preferential treatment such as priority at a price over non-Customers<sup>8</sup> and preferential fees. This is in exchange for forsaking the ability to place orders on both sides of the market in the same series<sup>9</sup> and for being subject to generally higher margin requirements as compared to non-Customers.<sup>10</sup> On this basis, the Exchange feels that this change is not unfairly discriminatory. The reduction of such fees is expected to attract additional Customer complex order flow to the Exchange, which will benefit all market participants.

<sup>8</sup> See NYSE Amex Rule 964NY Display, Priority, and Order Allocation—Trading Systems.

<sup>9</sup> See NYSE Amex Rule 995NY Prohibited Conduct.

<sup>10</sup> See NYSE Amex Rule 462 Minimum Margins.

Additionally, by making this change, the fee schedule is being simplified, making it easier for market participants to make trading decisions.

Finally, the removal of the cap applicable to Specialists, e-Specialists and Market Makers as it applies to the execution of electronic complex orders effectively removes a “tier” for such market participants in the fees applicable to such orders, thereby instituting a \$0.05 per contract side fee that is equally applicable to all types of market participants, other than Customers, for the same trade. This change will further simplify the Schedule as it applies to the execution of electronic complex orders. The Exchange believes that the removal of the cap currently applicable to the aforementioned market participants is reasonable, equitable and not unfairly discriminatory as it relates to those market participants because, even though they will be paying \$0.05 per contract for executions that previously would have cost them \$0.01 or \$0.00 per contract under the cap, they will have the opportunity to interact with the additional complex order flow attracted to the Exchange by the elimination of the Customer rate charge. In addition, the new rate of \$0.05 per contract for those executions is fair and equitable in that it is not a large increase and it will continue to be less than those same market participants are charged for electronic executions outside of the complex order book, which can be as much as \$0.17 per contract.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or discriminatory. The Exchange believes that the complex order fees and rebates it assesses must be competitive with fees and rebates assessed on other exchanges. The Exchange believes that this competitive marketplace impacts the fees and rebates present on the Exchange today and influences the proposals set forth above.

#### *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>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

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-NYSEAmex-2011-30 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-2011-30. 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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 the filing also will be available for inspection and copying at the NYSE's principal office, and on its Web site at <http://www.nyse.com>. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. 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-2011-30 and should be submitted on or before June 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

[FR Doc. 2011-12963 Filed 5-24-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64521; File No. SR-NYSEAmex-2011-34]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Equities Rule 70.40(3) To Permit Member Organizations to Engage in Proprietary Trading From Their Approved Booth Premises in Certain OTC Bulletin Board and OTC Markets Securities

May 19, 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 May 11, 2011, 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 amend NYSE Amex Equities Rule 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTC Bulletin Board ("OTCBB") and OTC Markets<sup>4</sup> securities. The text of the proposed rule change is available at the Exchange, at <http://www.nyse.com>, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### 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 Equities Rule 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTCBB and OTC Markets securities.<sup>5</sup>

In June 2007, the New York Stock Exchange LLC ("NYSE") adopted NYSE Rule 70.40, which permits a member organization to operate its booth premises on the NYSE Floor in a manner similar to its "upstairs" office, thereby allowing member organizations to access other markets and trade a wider array of products from their booth premises and thus operate more

efficiently and competitively.<sup>6</sup> At the time that NYSE Rule 70.40 was adopted, it included certain conditions and limitations on such trading, including that only trading on behalf of customers would be permitted. In October 2008, the Exchange adopted NYSE Amex Equities Rule 70.40, which is identical to NYSE Rule 70.40.<sup>7</sup> As such, NYSE Rule Amex Equities 70.40(3) prohibits member organizations approved to operate booth premises pursuant to such Rule from effecting any transaction from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion on the Exchange.

After more than two years of experience with NYSE Amex Equities Rule 70.40, member organizations have requested that certain types of proprietary trading be permitted under the Rule, and the Exchange has determined that it is appropriate to do so. Therefore, the Exchange proposes to revise NYSE Amex Equities Rule 70.40(3) to permit member organizations to effect transactions in the common, preferred, and debt securities of an operating company that is quoted on the OTC Bulletin Board or OTC Markets (an "OTC Security") from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion, except that such member organizations could not effect such transactions in an OTC Security that is related to a security listed or traded on the Exchange or NYSE.<sup>8</sup> Because trading would be limited to the common, preferred, and debt securities of an operating company, a member organization could not trade in an index-based or derivative security (e.g.,

<sup>6</sup> See Securities Exchange Act Release 55908 (June 14, 2007), 72 FR 34056 (June 20, 2007) (SR-NYSE-2007-51) (notice of filing and immediate effectiveness of proposed rule change permitting member organizations to operate booth as upstairs office). Under NYSE Rule 70.40, only Floor brokers may conduct activity from booth premises.

<sup>7</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (Order Granting Approval of Proposed Rule Change to Establish New Membership, Member Firm Conduct, and Equity Trading Rules Following the Exchange's Acquisition by NYSE Euronext). Under NYSE Amex Equities Rule 70.40, only Floor brokers may conduct activity from booth premises.

<sup>8</sup> Since the merger of NYSE and NYSE Amex in 2008, the exchanges have conducted equity trading from the same Trading Floor, and NYSE Amex has conducted options trading in rooms adjacent the Trading Floor. See Securities Exchange Act Release No. 58673 (September 29, 2008) (SR-Amex-2008-62 and SR-NYSE-2008-60), 73 FR 57707 (October 3, 2008), and NYSE Rule 6A.

<sup>13</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> The OTCBB and OTC Markets Group Inc. each operate electronic quotation systems for broker-dealers to trade unlisted securities. The marketplaces operated by OTC Markets Group Inc. include OTCQX, OTCQB and OTC Pink.

<sup>5</sup> The Exchange's affiliate, New York Stock Exchange LLC ("NYSE"), has proposed to adopt the same rule. See SR-NYSE-2010-22.