

3. The Fund will post prominently a statement on its (or its Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition B.1.(b) above, and maintain such information on such Web site for at least 24 months.

#### *D. Delivery of 19(a) Notices to Beneficial Owners*

If a broker, dealer, bank or other person ("Financial Intermediary") holds common stock issued by a Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund:

1. Will request that the Financial Intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's shares held through such Financial Intermediary;
2. Will provide, in a timely manner, to the Financial Intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the Financial Intermediary, or its agent, reasonably requests to facilitate the Financial Intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and
3. Upon the request of any Financial Intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the Financial Intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

#### *E. Additional Board Determinations for Funds Whose Common Stock Trades at a Premium*

If:

1. A Fund's common stock has traded on the stock exchange on which it primarily trades at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

2. The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

- (a) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Directors:
  - (1) Will request and evaluate, and the Fund's Adviser will furnish, such information as may be reasonably

necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(2) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and is in the best interests of the Fund and its stockholders, after considering the information in condition E.2.(a)(1) above; including, without limitation: (A) Whether the Plan is accomplishing its purpose(s); (B) the reasonably foreseeable material effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common stock; and (C) the Fund's current distribution rate, as described in condition E.2 above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition E.2, or such longer period as the Board deems appropriate; and

(3) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

(b) The Board will record the information it considers, including its consideration of the factors listed in condition E.2.(a)(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

#### *F. Public Offerings*

A Fund will not make a public offering of the Fund's common stock other than:

1. A rights offering below NAV to holders of the Fund's common stock;
2. An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or
3. An offering other than an offering described in conditions F.1 and F.2 above, provided that, with respect to such other offering:

(a) The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,<sup>7</sup> expressed as a percentage of NAV as of such date, is no more than 1 percentage

<sup>7</sup> If a Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

point greater than the Fund's average annual total return for the 5-year period ending on such date;<sup>8</sup> and

(b) The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under Section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred stock as such Fund may issue.

#### *G. Amendments to Rule 19b-1*

The requested order will expire on the effective date of any amendments to Rule 19b-1 that provide relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

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

[FR Doc. 2010-4908 Filed 3-8-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act 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 Thursday, March 11, 2010 at 2 p.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.

<sup>8</sup> If a Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

The subject matter of the Closed Meeting scheduled for Thursday, March 11, 2010 will be: Formal order of investigation; institution and settlement of injunctive actions; institution and settlement of administrative proceedings; an adjudicatory matter; 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: March 4, 2010.

**Elizabeth M. Murphy,**

Secretary.

[FR Doc. 2010-5053 Filed 3-5-10; 11:15 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61629; File No. SR-NYSEAmex-2010-18]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to the Designation of a "Professional Customer"

March 2, 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 February 25, 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 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 designate any Customer that places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) as a "Professional Customer." The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the

Exchange's principal office 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

Under NYSE Amex rules, a "Customer" is an individual or organization that is not a Broker/Dealer.<sup>4</sup> This term is used in specific NYSE Amex rules that provide certain marketplace advantages to Customer orders over non-customer orders (e.g., orders for the account of ATP holders or broker/dealers). In particular, under NYSE Amex rules, subject to certain exceptions, (i) Customer orders are given priority over non-customer orders and Market-Maker quotes at the same price,<sup>5</sup> and (ii) ATP holders are generally not charged a transaction fee for the execution of Customer orders. The purpose of providing these marketplace advantages to Customer orders is to attract retail investor order flow to the Exchange by leveling the playing field for retail investors over market professionals<sup>6</sup> and to provide competitive pricing.

With respect to these NYSE Amex marketplace advantages, the Exchange does not believe the definition of Customer versus a non-Customer properly distinguishes between non-professional retail investors and certain professionals. The Exchange believes that providing marketplace advantages

based upon whether the order is for the account of a participant that is a registered Broker/Dealer is no longer appropriate in today's marketplace because some non-broker-dealer individuals and entities have access to information and technology that enables them to professionally trade listed options in the same manner as a broker or dealer in securities.<sup>7</sup> These individual traders and entities (collectively, "Professional Customers") have the same technological and informational advantages over retail investors as broker-dealers trading for their own account, which enables them to compete effectively with broker-dealer orders and market maker quotes for execution opportunities in the NYSE Amex marketplace.<sup>8</sup>

The Exchange therefore does not believe that it is consistent with fair competition for these professional account holders to continue to receive the same marketplace advantages as retail investors over Broker/Dealers trading on NYSE Amex. Moreover, because Customer orders at the same price are executed in time priority, retail investors are prevented from fully benefiting from the priority advantage when Professional Customers are afforded Customer order priority.

Accordingly, the Exchange is seeking to adopt a new term that will be used to more appropriately provide NYSE Amex marketplace advantages to retail investors on NYSE Amex. Under the proposal, a "Professional Customer" will

<sup>7</sup> For example, some Broker/Dealers provide professional customers with multi-screened trading stations equipped with trading technology that allows the trader to monitor and place orders on all seven options exchanges simultaneously. These trading stations also provide compliance filters, order management tools, the ability to place orders in the underlying securities, and market data feeds. See Securities Exchange Act Releases 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) (SR-ISE-2006-26) (order approving International Securities Exchange ("ISE") proposal to introduce priority customer and professional orders) and 57254 (February 1, 2008), 73 FR 7345 (February 7, 2008) (SR-ISE-2006-26) (notice of ISE proposal to introduce priority customer and professional orders) at note 8. See also Securities Exchange Act Release 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR-CBOE-2009-078) (order approving CBOE proposal to introduce Professional Customers).

<sup>8</sup> Market Makers enter quotes based on the theoretical value of the option, which moves with various factors in their pricing models, such as the value of the underlying security. Professional customers place and cancel orders in relation to an option's theoretical value in much the same manner as a Market Maker. This is evidenced by the entry of limit orders that join the best bid or offer and by a very high rate of orders that are entered and cancelled. In contrast, retail investors who enter orders as part of an investment strategy (such as a buy/write or directional trade) most frequently enter marketable orders or limit orders that they do not cancel and replace. See, e.g., Securities Exchange Act Release 57254 at note 9.

<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 NYSE Amex Rule 900.2NY(18).

<sup>5</sup> See, e.g., NYSE Amex Rule 963NY Priority and Order Allocation Procedures—Open Outcry, 963.1NY Complex Order Transactions, 964NY Display, Priority and Order Allocation—Trading Systems, and 980NY(b) Priority of Complex Orders in the Consolidated Book.

<sup>6</sup> Market professionals have access to sophisticated trading systems that contain functionality not available to retail investors, including things such as continuously updated pricing models based on real-time streaming data, access to multiple markets simultaneously, and order and risk management tools.