

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 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 principal office of the self-regulatory organization. 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-BX-2010-030 and should be submitted on or before May 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**

Secretary.

[FR Doc. 2010-9362 Filed 4-21-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61936; File No. SR-NYSEAmex-2010-35]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change To Establish the NYSE Amex Trades Service and the NYSE Amex BBO Service and Related Fees

April 16, 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 April 1, 2010, the NYSE Amex LLC ("NYSE Amex" or "Exchange"), filed with the

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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 Substance of the Proposed Rule Change

NYSE Amex proposes to introduce its NYSE Amex Trades and NYSE Amex BBO services and to establish fees for those services. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at NYSE Amex, 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

###### a. The Services.

NYSE Amex Trades is a new NYSE Amex-only market data service. It allows a vendor to redistribute on a real-time basis the same last sale information that NYSE Amex reports under the CTA Plan and "Nasdaq/UTP Plan"<sup>3</sup> for inclusion in those Plans' consolidated data streams and certain other related data elements ("NYSE Amex Last Sale Information"). NYSE Amex Last Sale Information would include last sale information for all securities that are traded on the Exchange and for which NYSE Amex reports quotes under the CTA Plan or the Nasdaq/UTP Plan. In addition to the information that the Exchange provides under the CTA Plan and the Nasdaq/UTP Plan, NYSE Amex Last Sale Information will also include

a unique sequence number that the Exchange assigns to each trade. It allows an investor to track the context of the trade through such other Exchange market data products as NYSE Amex OpenBook®. NYSE Amex will make the NYSE Amex Trades service available over a single datafeed, regardless of the markets on which the securities are listed.

NYSE Amex BBO is a new NYSE Amex-only market data service that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that NYSE Amex reports under the CQ Plan and the Nasdaq/UTP Plan for inclusion in those Plans' consolidated quotation information data streams ("NYSE Amex BBO Information"). NYSE Amex BBO information would include the best bids and offers for all securities that are traded on the Exchange and for which NYSE Amex reports quotes under the CQ Plan or the Nasdaq/UTP Plan. NYSE Amex will make the NYSE Amex BBO service available over a single datafeed, regardless of the markets on which the securities are listed.

Both services (collectively, the "NYSE Amex Trade and BBO Services") would allow vendors, broker-dealers, private network providers and other entities ("NYSE AMEX-Only Vendors") to make available NYSE Amex Last Sale Information and NYSE Amex BBO Information (collectively, "NYSE Amex Market Data") on a real-time basis. NYSE Amex-Only Vendors may distribute the NYSE Amex Trade and BBO Services to both professional and nonprofessional subscribers.

The Exchange would make NYSE Amex Last Sale Information available through its new NYSE Amex Trades service no earlier than it provides last sale information to the processors under the CTA Plan and the Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis (the "Nasdaq/UTP Plan"), as appropriate. It would make NYSE Amex BBO Information available through its new NYSE Amex BBO service no earlier than it makes that information available to the processors under the CQ Plan and the Nasdaq/UTP Plan.

##### b. Fees

###### i. Access Fee.

For the receipt of access to the NYSE Amex Trades and NYSE Amex BBO datafeeds, the Exchange proposes to charge \$750 per month. One \$750 monthly access fee entitles an NYSE Amex-Only Vendor to receive both the NYSE Amex Trades datafeed as well as the NYSE Amex BBO datafeed. The fee

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> Formally referred to as "the Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis."

applies to receipt of NYSE Amex Market Data within the Vendor's organization or outside of it.

*ii. Professional Subscriber Fees.*

For the receipt and use of NYSE Amex Trades Information, the Exchange proposes to charge \$10 per month per professional subscriber device.

Similarly, for the receipt and use of NYSE Amex BBO Information, the Exchange proposes to charge \$10 per month per professional subscriber device.

For each of the NYSE Amex Trades Information service and the NYSE Amex BBO Information service, the Exchange proposes to offer an alternative methodology to the traditional device fee. Instead of charging \$10 per month per device, it proposes to offer Vendors the option of paying \$10 per month per "Subscriber Entitlement". Each fee entitles the end-user to receive and use NYSE Amex Market Data relating to all securities traded on NYSE Amex, regardless of the market on which a security is listed.

For the purpose of calculating Subscriber Entitlements, the Exchange proposes to adopt the unit-of-count methodology that the Commission approved earlier this year for the proposed rule change that the New York Stock Exchange, LLC ("NYSE") submitted in respect of its NYSE OpenBook® service (the "Unit-of-Count Filing").<sup>4</sup>

Under the unit-of-count methodology that the Commission approved in the Unit-of-Count Filing, the Exchange would not define the Vendor-subscriber relationship based on the manner in which a datafeed recipient or subscriber receives data (*i.e.*, through controlled displays or through data feeds). Instead, the Exchange would adopt billing criteria that are more objective. Those criteria would newly define "Vendors," "Subscribers," "Subscriber Entitlements" and "Subscriber Entitlement Controls" as the basis for setting professional subscriber fees. The Exchange believes that these changes more closely align with current data consumption and will reduce costs for the Exchange's customers.

The following basic principles underlie this proposal.

*A. Vendors.*

• "Vendors" are market data vendors, broker-dealers, private network providers and other entities that control Subscribers' access to data through Subscriber Entitlement Controls.

*B. Subscribers.*

- "Subscribers" are unique individual persons or devices to which a Vendor provides data. Any person or device that receives data from a Vendor is a Subscriber, whether the person or device works for or belongs to the Vendor, or works for or belongs to an entity other than the Vendor.

- Only a Vendor may control Subscriber access to data.
- Subscribers may not redistribute data in any manner.

*C. Subscriber Entitlements.*

- A Subscriber Entitlement is a Vendor's permissioning of a Subscriber to receive access to data through an Exchange-approved Subscriber Entitlement Control.
- A Vendor may not provide data access to a Subscriber except through a unique Subscriber Entitlement.

- The Exchange will require each Vendor to provide a unique Subscriber Entitlement to each unique Subscriber.

- At prescribed intervals (normally monthly), the Exchange will require each Vendor to report each unique Subscriber Entitlement.

*D. Subscriber Entitlement Controls.*

- A Subscriber Entitlement Control is the Vendor's process of permissioning Subscribers' access to data.

- Prior to using any Subscriber Entitlement Control or changing a previously approved Subscriber Entitlement Control, a Vendor must provide the Exchange with a demonstration and a detailed written description of the control or change and the Exchange must have approved it in writing.

- The Exchange will approve a Subscriber Entitlement Control if it allows only authorized, unique end-users or devices to access data or monitors access to data by each unique end-user or device.

- Vendors must design Subscriber Entitlement Controls to produce an audit report and make each audit report available to the Exchange upon request. The audit report must identify:

1. Each entitlement update to the Subscriber Entitlement Control;
2. The status of the Subscriber Entitlement Control; and
3. Any other changes to the Subscriber Entitlement Control over a given period.

- Only the Vendor may have access to Subscriber Entitlement Controls.

Subject to the rules set forth below, the Exchange will require NYSE Amex-Only Vendors to count every Subscriber Entitlement, whether it be a person or a device. This means that the Vendor must include in the count every person and device that has access to the data, regardless of the purposes for which the

person or device uses the data. The Exchange will require Vendors to report and count all entitlements in accordance with the following rules.

A. The count shall be separate for the NYSE Amex Trades and NYSE Amex BBO services. This means that a device that is entitled to receive both NYSE Amex Last Sale Information and NYSE Amex BBO Information would count as a Subscriber Entitlement for the purposes of the NYSE Amex Trades service and as a separate Subscriber Entitlement for the purposes of the NYSE Amex BBO service.

B. In connection with a Vendor's external distribution of either type of NYSE Amex Market Data (*i.e.*, NYSE Amex Last Sale Information or NYSE Amex BBO Information), the Vendor should count as one Subscriber Entitlement each unique Subscriber that the Vendor has entitled to have access to that type of Market Data. However, where a device is dedicated specifically to a single person, the Vendor should count only the person and need not count the device.

C. In connection with a Vendor's internal distribution of a type of NYSE Amex Market Data, the Vendor should count as one Subscriber Entitlement each unique person (but not devices) that the Vendor has entitled to have access to that type of Market Data.

D. The Vendor should identify and report each unique Subscriber. If a Subscriber uses the same unique Subscriber Entitlement to receive multiple services, the Vendor should count that as one Subscriber Entitlement. However, if a unique Subscriber uses multiple Subscriber Entitlements to gain access to one or more services (*e.g.*, a single Subscriber has multiple passwords and user identifications), the Vendor should report all of those Subscriber Entitlements.

E. The Vendor should report each Subscriber device serving multiple users individually as well as each person who may access the device. As an example, for a single device to which the Vendor has granted two people access, the Vendor should report three Subscriber Entitlements. Only a single, unique device that is dedicated to a single, unique person may be counted as one Subscriber Entitlement.

F. Vendors should report each unique person who receives access through multiple devices as one Subscriber Entitlement so long as each device is dedicated specifically to that person.

G. The Vendor should include in the count as one Subscriber Entitlement devices serving no users.

<sup>4</sup> See Release No. 34-59544; 74 Federal Register 11162 (March 16, 2009); File No. SR-NYSE-2008-131.

By way of examples, if a Subscriber's device has no users or multiple users, the Vendor should count that device as one Subscriber Entitlement. If a Vendor entitles five individuals to use one of a Subscriber's devices, the Vendor should count five individual entitlements and one device entitlement, for a total of six Subscriber Entitlements. If a Vendor entitles an individual to receive a type of NYSE Amex Market Data over a Subscriber device that is dedicated to that individual, the Vendor should count that as one Subscriber Entitlement, not two.

*iii. No Program Classification Fee.*

The Exchange does not propose to impose any program classification charges for the use of NYSE Amex Last Sale Information or NYSE Amex BBO information. The Exchange recognizes that each Vendor and Subscriber will use NYSE Amex Market Data differently and that the Exchange is one of many markets with whom Vendors and Subscribers may enter into arrangements for the receipt and use of data. In recognition of that, the Exchange's proposed unit-of-count methodology does not restrict how Vendors may use NYSE Amex Market Data in their display services and encourages Vendors to create and promote innovative uses of NYSE Amex Market Data. For instance, a Vendor may use NYSE Amex BBO information to create derived information displays, such as displays that aggregate NYSE Amex BBO information with quotation information from other markets.<sup>5</sup>

*iv. Nonprofessional Subscriber Fee.*

The Exchange proposes to charge each NYSE Amex-Only Vendor \$5.00 per month for each nonprofessional subscriber to whom it provides NYSE Amex BBO Information. The Exchange proposes to impose the charge on the NYSE Amex-Only Vendor, rather than on the nonprofessional Subscriber. At this time, the Exchange does not propose to establish a nonprofessional subscriber fee for NYSE Amex Last Sale Information because the Commission recently approved an inexpensive alternative to that product, the NYSE Amex Realtime Reference Prices service.<sup>6</sup>

In addition, the Exchange proposes to establish as an alternative to the fixed

<sup>5</sup> In the case of derived displays, the Vendor is required to: A. Pay the Exchange's device fees (described below); b. include derived displays in its reports of NYSE Amex Market Data usage; and c. use reasonable efforts to assure that any person viewing a display of derived data understands what the display represents and the manner in which it was derived.

<sup>6</sup> See Release No. 34-61403; 75 **Federal Register** 4598 (January 28, 2010); File No. SR-NYSEAmex-2009-85.

\$5.00 monthly fee a fee of \$0.005 for each response that a NYSE Amex-Only Vendor disseminates to a nonprofessional Subscriber's inquiry for a best bid or offer under the NYSE Amex BBO service. The Exchange proposes to limit a NYSE Amex-Only Vendor's exposure under this alternative fee. It proposes to set at \$5.00 per month, the same amount as the proposed fixed monthly nonprofessional Subscriber flat fee, as the maximum fee that a NYSE Amex-Only Vendor would have to pay in respect of each nonprofessional Subscriber for the receipt of the NYSE Amex BBO service in any calendar month.

In order to take advantage of the per-query fee, a NYSE Amex-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries from each nonprofessional Subscriber and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange will impose the per-query fee only on the dissemination of best bids and offers to nonprofessional Subscribers. The per-query charge is imposed on NYSE Amex-Only Vendors, not end-users, and is payable on a monthly basis. NYSE Amex-Only Vendors may elect to disseminate the NYSE Amex BBO service pursuant to the per-query fee rather than the fixed monthly fee.

In establishing nonprofessional Subscriber fees for the NYSE Amex BBO service, the Exchange proposes to apply the same criteria for qualification as a "nonprofessional subscriber" as the CTA and CQ Plan Participants use. As is true under the CTA and CQ Plans, classification as a nonprofessional subscriber is subject to Exchange review and requires the subscriber to attest to his or her nonprofessional subscriber status. A "nonprofessional subscriber" is a natural person who uses the data solely for his personal, non-business use and who is neither:

A. Registered or qualified with the Securities and Exchange Commission, ("SEC"), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association;

B. Engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that act), nor

C. Employed by a bank or other organization exempt from registration under Federal and/or State securities laws to perform functions that would

require him/her to be so registered or qualified if he/she were to perform such function for an organization not so exempt.

*c. Justification of Fees.*

The proposed monthly access fee, professional subscriber fees and nonprofessional subscriber fees for the NYSE Amex Trade service and NYSE Amex BBO service enable NYSE Amex-Only Vendors and their subscribers to contribute to the Exchange's operating costs in a manner that is appropriate for the distribution of NYSE Amex Market Data in the form taken by the proposed services.

In setting the level of the proposed fees, the Exchange took into consideration several factors, including:

(i) NYSE Amex's expectation that the NYSE Amex Trades and BBO Services are likely to be premium services, taken by investors most concerned with receiving NYSE Amex Market Data on a low latency basis;

(ii) the fees that the CTA and CQ Plan Participants, the Nasdaq/UTP Plan Participants, Nasdaq, NYSE and NYSE Arca are charging for similar services (or that NYSE Amex anticipates they will soon propose to charge);

(iii) consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed service;

(iv) the contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;

(v) the contribution that revenues accruing from the proposed fee will make to meet the overall costs of the Exchange's operations;

(vi) the savings in administrative and reporting costs that the NYSE Amex Trades and BBO Services will provide to NYSE Amex-Only Vendors (relative to counterpart services under the CTA, CQ and Nasdaq/UTP Plans); and

(vii) the fact that the proposed fees provide alternatives to existing fees under the CTA, CQ and Nasdaq/UTP Plans, alternatives that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the levels of the fees are consistent with the approach set forth in the order by which the Commission approved ArcaBook fees for NYSE Arca.<sup>7</sup> In the ArcaBook Approval Order, the Commission stated that "when possible, reliance on competitive forces is the most appropriate and effective means to

<sup>7</sup> See Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) (the "ArcaBook Approval Order").

assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.”<sup>8</sup> It noted that if significant competitive forces apply to a proposal, the Commission would approve it unless a substantial countervailing basis exists.

NYSE Amex Market Data constitutes “non-core data.” The Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes the product voluntarily.

In the case of both the NYSE Amex Trades service and the NYSE Amex BBO service, both of the two types of competitive forces that the Commission described in the ArcaBook Approval Order are present: The Exchange has a compelling need to attract order flow and the product competes with a number of alternative products.

The Exchange must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as the NYSE Amex Trades and BBO Services. The Exchange hopes that the proposed NYSE Amex Trades and BBO Services will enable vendors to distribute NYSE Amex Market Data widely among investors, and thereby provide a means for promoting the Exchange’s visibility in the marketplace.

In addition to the need to attract order flow, the availability of alternatives to the NYSE Amex Trades and BBO Services significantly constrain the prices at which the Exchange can market those services. All national securities exchanges, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data, as well as the core data feeds under the CTA, CQ and Nasdaq/UTP Plans, are all sources of competition for the NYSE Amex BBO service. Currently:

(i) the Nasdaq Stock Market offers its last sale information and best-bid-and-offer information under services that would provide an alternative to the proposed NYSE Amex services;

(ii) NYSE and NYSE Arca offer last sale information in services that are substantially similar to the NYSE Amex Trades Service; and

(iii) the Exchange anticipates that NYSE and NYSE Arca will soon propose to provide best-bid-and-offer services that are substantially similar to the NYSE Amex BBO Service.

As an alternative, investors can receive NYSE Amex BBO Information from NYSE Amex OpenBook. The

information available in the NYSE Amex Trades and BBO Services is also included in the calculation of the consolidated last sale price information and best-bid-and-offer calculations under the CTA, CQ and Nasdaq/UTP Plans, which comprise core datafeeds. Investors may select the NYSE Amex Trade service or the NYSE Amex BBO service as less expensive alternatives to the CTA and CQ Plan’s consolidated data streams for certain purposes. (Rule 603(c) of Regulation NMS requires vendors to make the consolidated, core datafeeds available to customers when trading and order-routing decisions can be implemented.)

#### *d. Administrative Requirements.*

The Exchange will require each Vendor to enter into the form of “vendor” agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the “Consolidated Vendor Form”). That agreement will authorize the Vendor to provide its NYSE Amex Market Data service to its customers or to distribute the data internally.

In addition, the Exchange will require each professional end-user that receives NYSE Amex Market Data from a vendor or broker-dealer to enter into the form of professional subscriber agreement into which the CTA and CQ Plans require end users of Network A data to enter. It will also require Vendors to subject nonprofessional subscribers to the same contract requirements as the CTA and CQ Plan Participants require of Network A nonprofessional subscribers. The Network A Participants submitted the Consolidated Vendor Form and the professional subscriber form to the Commission for comment and notice.<sup>9</sup>

#### 2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the “Act”) for this proposed rule change are the requirement under Section 6(b)(4)<sup>10</sup> that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)<sup>11</sup> that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their

prompt access to real-time last sale information and best-bid-and-offer information contained in the NYSE Amex Trades and BBO Services and by providing a modern methodology alternative for counting fee-liable units. In addition, the Exchange believes that the proposed fee would allow entities that are most likely to take advantage of the proposed service to make an appropriate contribution towards meeting the overall costs of the Exchange’s operations.

The Exchange notes that Nasdaq, NYSE and NYSE Arca already impose charges for services that are similar to the NYSE Amex Trades service and Nasdaq already imposes charges for services that are similar to the NYSE Amex BBO service. NYSE Amex anticipates NYSE and NYSE Arca will soon propose to establish fees for best-bid-and-offer services that are substantially similar to the NYSE Amex BBO service. Thus, the Exchange’s proposed fees offer any vendor that wishes to provide its customers with a single market’s last sale information or best-bid-and-offer information (as opposed to a more expensive consolidated last sale or quotation information service) an alternative to Nasdaq, NYSE and NYSE Arca.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The NYSE Amex Trades and BBO Services propose to provide an alternative to existing services that the Participants make available under the CTA, CQ and Nasdaq/UTP Plans. The proposed fees do not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq, NYSE and NYSE Arca make available or will soon make available. For those reasons, the Exchange does not believe that this proposed rule change will result in 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*

The Exchange has discussed this proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Amex Trades and BBO Services by becoming NYSE Amex-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and this proposed rule change reflects their

<sup>8</sup> See Securities Exchange Act Release Nos. 34-22851 (January 31, 1986), 34-28407 (September 10, 1990), 34-49185 (February 4, 2004), and 34-22851 (January 31, 1986).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

input. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### 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*. Please include File No. SR-NYSEAmex-2010-35 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAmex-2010-35. 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 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 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 available publicly. All submissions should refer to File Number SR-NYSEAmex-2010-35 and should be submitted on or before May 13, 2010.

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

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010-9361 Filed 4-21-10; 8:45 am]

**BILLING CODE 8011-01-P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-61920; File No. SR-NYSEArca-2010-29]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.4 Commentary .04.**

April 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 12, 2010, NYSE Arca, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder,<sup>4</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 Rule 6.4 Commentary .04 to permit the concurrent listing of \$3.50 and \$4

strikes for classes that participate in both the \$0.50 Strike and \$1 Strike Programs. 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

The purpose of this filing is to amend Rule 6.4 Commentary .04 to permit the concurrent listing of \$3.50 and \$4 strikes for classes that participate in both the \$0.50 Strike and \$1 Strike Programs.

The Exchange recently implemented a rule change that permits strike price intervals of \$0.50 for options on stocks trading at or below \$3.00 ("\$0.50 Strike Program").<sup>5</sup> As part of the filing to establish the \$0.50 Strike Program, the Exchange contemplated that a class may be selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program.

Under the \$1 Strike Program, new series with \$1 intervals are not permitted to be listed within \$0.50 of an existing \$2.50 strike price in the same series, except that strike prices of \$2 and \$3 are permitted to be listed within \$0.50 of a \$2.50 strike price for classes also selected to participate in the \$0.50 Strike Program. Under NYSE Arca's existing rule, for classes selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program, the Exchange may either: (a) List a \$3.50 strike but not list a \$4 strike; or (b) list a \$4 strike but not list a \$3.50 strike. For example, under the Exchange's current rules, if a \$3.50 strike for an option class in both the \$0.50 and \$1 Strike

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>13</sup> 15 U.S.C. 78s(b)(1).

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

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

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

<sup>5</sup> See Exchange Act Release No. 60721 (September 25, 2009) 74 FR 50858 (October 1, 2009).