

All submissions should refer to File Number SR–NYSEArca–2012–09. This file number should be included on the subject line if email 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 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–NYSEArca–2012–09 and should be submitted on or before March 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66371; File No. SR–NYSEAmex–2011–101]

### Self-Regulatory Organizations; NYSE Amex LLC.; Order Granting Approval of Proposed Rule Change Amending NYSE Amex Equities Rules 504 and 509 To Modify the Quoting Requirements Applicable to Designated Market Maker Units Registered in Nasdaq Stock Market Securities Traded on the Exchange Subject to the Unlisted Trading Privileges Pilot Program

February 10, 2012.

#### I. Introduction

On December 15, 2011, NYSE Amex LLC (“NYSE Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to modify the quoting requirements applicable to Designated Market Maker (“DMM”) units registered in Nasdaq Stock Market securities traded on the Exchange pursuant to a grant of unlisted trading privileges (“UTP”). The proposed rule change was published for comment in the **Federal Register** on December 30, 2011.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Certain securities listed on Nasdaq may be traded on NYSE Amex pursuant to a grant of unlisted trading privileges as part of a pilot program on the Exchange (“UTP Pilot Program”).<sup>4</sup> NYSE Amex's proposal seeks to modify the UTP Pilot Program's obligations imposed on DMM units who quote in such securities.

Currently, under NYSE Amex Equities Rule 509(a)(1), DMM units who are registered in securities subject to the UTP Pilot Program must maintain continuous two-sided quotes at the National Best Bid or Offer (“NBBO”) with reasonable size for each such security for at least 10% of the time during the regular business hours of the

Exchange for each calendar month.<sup>5</sup> The proposal would amend NYSE Amex Equities Rule 509(a)(1) to lower a DMM unit's quoting obligations for “more active”<sup>6</sup> securities in the UTP Pilot Program from at least 10% of the time during the regular trading day to at least 5% of the time during the regular trading day.<sup>7</sup> The proposed quoting obligations would continue to apply on a security-by-security basis. The current quoting obligation for “less active” securities, *i.e.*, those with a consolidated average daily volume of less than one million shares per calendar month, would remain unchanged at 10% of the time during the regular trading day.

The Exchange also proposes to delete from NYSE Amex Equities Rule 504(b)(1)(A) the text that references NYSE Amex Equities Rule 103B(II), which provides for security allocation eligibility. The Exchange represented that this reference is not necessary within Rule 504(b)(1)(A), and that, despite the proposed deletion, DMM units would remain subject to NYSE Amex Equities Rule 103B(II) with respect to security allocation eligibility.

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest.<sup>10</sup> The Commission also finds that the proposed rule change is consistent with Section 12(f) of the Act,<sup>11</sup> because it furthers the goals of maintaining fair and orderly markets, and protecting investors and the public

<sup>5</sup> These obligations are also included within current NYSE Amex Equities Rule 504.

<sup>6</sup> Under NYSE Amex Equities Rule 103B(II)(C), “more active” securities are those with a consolidated average daily volume equal to or greater than one million shares per calendar month.

<sup>7</sup> The Exchange proposed to make conforming changes to NYSE Amex Equities Rule 504(b)(1)(A), which contains a requirement similar to NYSE Amex Equities Rule 509(a)(1) requiring DMM Units to quote at the NBBO on average at least 10% of the trading day.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Securities Exchange Act Release No. 66043 (December 23, 2011), 76 FR 82329 (“Notice”).

<sup>4</sup> The UTP Pilot Program is scheduled to expire on the earlier of Commission approval to make such pilot permanent or July 31, 2012. See Securities Exchange Act Release No. 66040 (December 23, 2011), 76 FR 82324 (December 30, 2011).

<sup>31</sup> 17 CFR 200.30–3(a)(12).

interest, for securities traded pursuant to UTP.

The Exchange proposes to reduce DMM units' quoting obligations applicable to "more active" securities traded in the UTP Pilot Program to quoting at the NBBO for 5% of the trading day. The Commission notes that this percentage would reflect the quoting requirement currently applicable to DMM units quoting non-UTP Pilot Program securities, *i.e.*, those listed on the Exchange.<sup>12</sup> There would be one significant difference between the proposed quoting obligation for the UTP Pilot Program and the current quoting obligation for non-UTP Pilot Program securities—UTP Pilot Program quoting obligations are and would continue to be calculated on a security-by-security basis, rather than averaged across a portfolio of all of a DMM unit's assigned securities. The Commission believes that this security-by-security basis calculation is reasonably designed to maintain robust quotes for all UTP Pilot Program securities. In addition, the Exchange's proposal would reduce quoting obligations only for "more active" securities, which by definition are more liquid and may, therefore, be less reliant on quoting obligations for continued liquidity. Finally, based on the Exchange's experience during the UTP Pilot Program, the proposed quoting obligation is designed to ensure the continued active participation by DMM units in such securities.

The Commission also finds that the proposed deletion in NYSE Amex Equities Rule 504(b)(1)(A) to the reference to NYSE Amex Equities Rule 103B(II) is consistent with the Act. The Exchange represented that this reference is not necessary within Rule 504(b)(1)(A), and that, despite the proposed deletion, DMM units would remain subject to NYSE Amex Equities Rule 103B(II) with respect to security allocation eligibility.

For the foregoing reasons, the Commission finds that the proposal to amend the UTP Pilot Program is consistent with the requirements of the Act.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSEAmex-2011-101) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66377; File No. SR-NYSEArca-2012-12]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Changes to the NYSE Arca Options Fee Schedule Relating to Post Liquidity Credits

February 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on January 31, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule") to increase the Post Liquidity credits on Customer posted electronic executions and to delete references to Royalty Fees for foreign currency options, which the Exchange no longer trades. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](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 proposes to amend the Fee Schedule to increase the Post Liquidity credits on Customer posted electronic executions and to delete references to Royalty Fees for foreign currency options, which the Exchange no longer trades. The Exchange proposes to make the rule change operative on February 1, 2012.

##### Post Liquidity Credits

Electronic transactions in Penny Pilot issues<sup>3</sup> are assessed Take Liquidity fees and credited with Post Liquidity credits. Under the current Fee Schedule, the Post Liquidity credit is \$0.25 per contract for Customers, \$0.32 per contract for Lead Market Makers and Market Makers, and \$0.10 per contract for Firms and Broker Dealers. OTP Holders that provide aggregated Customer posting volume in Penny Pilot issues that exceeds certain thresholds receive higher Post Liquidity credits on all Customer posted electronic executions. Specifically, an OTP Holder sending Customer orders that in the aggregate exceed 500,000 contracts executed in a month from posting liquidity receives a Post Liquidity credit of \$0.32 per contract on all executions resulting from posted liquidity. If such aggregated Customer orders exceed 800,000 contracts executed in a month from posting liquidity, the OTP Holder receives a Post Liquidity credit of \$0.34 per contract on all executions resulting from posted liquidity. If such aggregated Customer orders exceed 1,200,000 contracts executed in a month from posting liquidity, the OTP Holder receives a Post Liquidity credit of \$0.38 per contract on all executions resulting from posted liquidity. The volume thresholds are intended to incentivize firms to route additional Customer orders to the Exchange.

The Exchange proposes to amend the volume thresholds for the Post Liquidity credits by lowering the initial volume threshold to qualify for the first level of higher Post Liquidity credits, generally raising the amount of the Post Liquidity

<sup>3</sup> Under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade in a minimum price variation of \$0.01 as part of a pilot program that is scheduled to expire on June 30, 2012.

<sup>12</sup> See NYSE Amex Equities Rule 104(a)(1)(A).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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