

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66959; File No. SR-NYSEAmex-2012-28)

May 10, 2012

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Amex Equities Price List for Certain Fees Relating to Transactions in Exchange-Listed Securities and Trading Pursuant to Unlisted Trading Privileges of Securities Listed on the Nasdaq Stock Market LLC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on April 30, 2012, NYSE Amex LLC (“NYSE Amex” or the “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

The Exchange proposes to amend the NYSE Amex Equities Price List (“Price List”) for certain fees relating to transactions in Exchange-listed securities and trading pursuant to unlisted trading privileges (“UTP”) of securities listed on the Nasdaq Stock Market LLC (“Nasdaq”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 its Price List for certain fees relating to transactions in Exchange-listed securities and trading pursuant to UTP of securities listed on Nasdaq.

The Exchange proposes to charge a transaction fee of \$0.0005 for at the opening and at the opening only orders for Exchange-listed securities with a per share price of \$1.00 or more. In addition, the Exchange proposes to charge a transaction fee of 0.3% of the total dollar value of the transaction for at the opening and at the opening only orders for Exchange-listed securities with a per share price below \$1.00. The aggregate fees for at the opening and at the opening only orders with a per share price of \$1.00 or more and a per share price below \$1.00 will be capped at \$15,000 per month per member organization. Currently there are no charges for these transactions. The proposed fees will be the same as those currently charged on the New York Stock Exchange (“NYSE”) for at the opening and at the opening only orders.³

Additionally, the Exchange proposes certain changes to equity transaction fees and credits for Nasdaq securities traded pursuant to UTP. For fees and credits applicable to market participants, the Exchange proposes to eliminate the \$0.0030 equity per share credit per transaction when adding liquidity, including displayed and non-displayed orders, when the share price is \$1.00 or more.⁴ The Exchange proposes to change the \$0.0027 equity per share charge

³ See NYSE Price List 2012, dated March 1, 2012, available at https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_price_list_04_01_12.pdf.

⁴ The Exchange also proposes to make conforming changes to reflect that a credit is “Not Applicable” rather than “No Charge.”

for all other transactions (i.e., when taking liquidity) with a per share price of \$1.00 or more to a \$0.0003 equity per share credit and eliminate the fee for all other transactions with a per share price below \$1.00. The Exchange proposes to reduce the equity per share credit per transaction for displayed liquidity when adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least \$5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, from \$0.0036 to \$0.0020.

For fees and credits applicable to Designated Market Makers (“DMMs”) for transactions in Nasdaq securities traded pursuant to UTP, the Exchange proposes to reduce the equity per share credit per transaction when adding liquidity from \$0.0031 to \$0.0020 when the share price is \$1.00 or more. The Exchange proposes to change the \$0.0027 equity per share charge for all other transactions with a per share price of \$1.00 or more to a \$0.0003 equity per share credit and eliminate the fee for all other transactions with a per share price below \$1.00. The Exchange proposes to reduce the equity per share credit per transaction for the displayed portion of s-Quotes when adding liquidity in s-Quotes that display 2,000 shares or more at the time of execution with a trading price of at least \$5.00 per share from \$0.0036 to \$0.0020.

For fees and credits applicable to Supplemental Liquidity Providers (“SLPs”) for transactions in Nasdaq securities traded pursuant to UTP, the Exchange proposes to reduce the equity per share credit per transaction when adding liquidity, if the SLP meets quoting requirements pursuant to Rule 107B, from \$0.0031 to \$0.0005 when the share price is \$1.00 or more. The Exchange proposes to eliminate the \$0.0030 equity per share credit per transaction when adding liquidity, if the SLP does not meet the quoting requirement pursuant to Rule 107B when the share price is \$1.00 or more. Lastly, the Exchange proposes to reduce the equity per

share credit per transaction for displayed liquidity when adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least \$5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, from \$0.0036 to \$0.0020.

The Exchange also proposes to make certain conforming changes to the footnotes in the Price List.

The Exchange proposes to make the rule change operative on May 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁵ in general, and Section 6(b)(4) of the Act,⁶ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fee changes are equitably allocated because all similarly situated DMMs, SLPs, and market participants will be subject to the same fee structure, and access to the Exchange’s market is offered on fair and non-discriminatory terms.

With respect to the fees for at the opening and at the opening only orders for Exchange-listed securities, the Exchange believes that the proposed changes are reasonable because both the fees and the fee cap are the same as those charged by the NYSE.⁷ With respect to the proposed elimination of transaction fees for market participants and DMMs that take liquidity in UTP securities at all prices and creation of a new credit for taking liquidity in UTP securities priced at \$1.00 or more, the Exchange believes that the change will attract more volume to the

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ See supra note 4.

Exchange from market participants and DMMs that are seeking to lower their overall transaction costs and thereby will result in a more competitive market in the trading of Nasdaq securities pursuant to UTP. The Exchange further believes that the proposed elimination or reduction of other credits for market participants, DMMs, and SLPs that add liquidity in UTP securities is appropriate in light of the proposed elimination of the transaction fees and creation of the new credit for taking liquidity.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which customers may qualify for higher liquidity provider credits.

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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes a due, fee, or other

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

charge imposed by the 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. Please include File Number SR-NYSEAmex-2012-28 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-2012-28. 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 website (<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 10:00 a.m. and 3:00 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-2012-28 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).