

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="26"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2012"/> - * <input type="text" value="10"/> Amendment No. (req. for Amendments *) <input type="text"/>
Proposed Rule Change by NYSE Amex LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>
Section 19(b)(2) * <input checked="" type="checkbox"/> Section 19(b)(3)(A) * <input type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/>		
Rule		
<input type="checkbox"/> Pilot	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>	
Description Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). <input type="text" value="Proposes to amend NYSE Amex Rule 476A to update its List of Equities Rule Violations and Fines Applicable Thereto"/>		
Contact Information Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change. First Name * <input type="text" value="Clare"/> Last Name * <input type="text" value="Saperstein"/> Title * <input type="text" value="Vice President NYSE Regulation Inc."/> E-mail * <input type="text" value="csaperstein@nyx.com"/> Telephone * <input type="text" value="(212) 656-2355"/> Fax <input type="text" value="(212) 656-2223"/>		
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer. Date <input type="text" value="02/16/2012"/> By <input type="text" value="Janet McGinness"/> Corporate Secretary <input type="text"/> (Name *) (Title *) NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.		
<input type="button" value="NYX Janet McGinness,"/>		

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) NYSE Amex, LLC (“NYSE Amex” or “Exchange”) proposes to amend NYSE Amex Rule 476A to update its “List of Equities Rule Violations and Fines Applicable Thereto.”¹ The text of the proposed rule changes is attached hereto as Exhibit 5, and is available on the Exchange’s website at www.nyse.com, at the Exchange’s principal office, and at the Public Reference Room of the Securities and Exchange Commission (the “Commission”).
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management approved the proposed rule change pursuant to authority delegated to it by the Board of Directors. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Clare F. Saperstein
Vice President
NYSE Regulation
(212) 656-2355

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to amend NYSE Amex Rule 476A to update its “List of Equities Rule Violations and Fines Applicable Thereto” (“Rule 476A List”) to (i) make technical, non-substantive changes to conform the list to previously-approved changes in Exchange rules, (ii) update the rules relating to conduct by Designated Market Makers (“DMM”); and (iii) add rules relating to conduct by DMMs.

¹ New York Stock Exchange LLC (“NYSE”) has submitted a companion rule filing proposing corresponding amendments to NYSE Rule 476A. See SR-NYSE-2012-05, formally submitted February 7, 2012.

Background

Under the Exchange's Minor Rule Violation Plan, NYSE Amex Rule 476A ("Rule 476A"), the Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, principal executive, approved person or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules (a "summary fine"). Summary fines provide a meaningful sanction for rule violations when the violation calls for stronger discipline than an admonition or cautionary letter, but the facts and circumstances of the violation do not warrant initiation of a formal disciplinary proceeding under Rule 476.

Proposed Non-Substantive Changes to Rule 476A List

The Exchange proposes the following non-substantive changes to update the Rule 476A List, as follows:

- Update the title of NYSE Amex Equities Rule 105
- Update rule references that have been renumbered or harmonized with a FINRA rule: NYSE Amex Equities Rules 72(b) to 72(d); 79A.30 to 79A.20; 103.12 to 103.11; and 346(b) to 3270
- Delete references to rules that have been deleted: NYSE Amex Equities Rules 104.12 (DMM investment account rule); 123A.30 (percentage orders); 304(h)(2) (reporting rule violation); 346(c), (e), and (f) (Limitations on member organization employment and failure to obtain Exchange approval rule violations); 421 (reporting rule violation); 440F (reporting rule violation); and 440G (reporting rule violation)²
- Further harmonize the list with the NYSE Minor Rule Violation Plan ("NYSE MRVP"), upon which the Rule 476A List is based, by adding a violations not currently included in the Exchange's list: Rule 123C – NYSE Amex Equities - Failure to adhere to entry and cancellation procedures for limit-at-the-close and market-at-the-close orders; and Rule 15 – NYSE Amex Equities (Pre-Opening Indications)
- Update the description to rules that have been amended: NYSE Amex Equities Rules 411(b) (replacing the description to reflect

² The Exchange also proposes to fix a typographical error in the entry concerning Rule 343 – NYSE Amex Equities and replace the term "officer" with "office."

the amended rule); and 345(a) – NYSE Amex Equities (deleting the reference to Securities Trader Supervisor)

Proposed Updates to Rule 476A List for DMM Conduct Rules

The current Rule 476A List includes rules that govern DMM conduct, *e.g.*, NYSE Amex Equities Rules 104(a)(1)(A) and 104.10. The Exchange proposes to update the Rule 476A List with current rules governing DMM conduct, and, in conformance with the existing NYSE MRVP, add NYSE Amex Equities Rule 123D (“Rule 123D”) to the Rule 476A List. The Exchange further proposes to expand the references to NYSE Amex Equities Rules 104 (“Rule 104”) and 123D to add new elements to the Rule 476A List.

The Exchange believes that the updates proposed below will provide the Exchange with sufficient flexibility to address DMM failure to meet their obligations. The Exchange recognizes that DMMs may, for many reasons, fail to meet their affirmative obligations as prescribed under Rules 104 or duties under Rule 123D. In some circumstances, formal disciplinary measures in accordance with Rule 476 are warranted. However, in other instances, formal discipline may be unwarranted, and the Exchange believes that the addition of these Rules to Rule 476A List will provide a more flexible and appropriate tool to enforce potential failure by DMMs to adhere to the requirements set forth in those rules, while preserving the Exchange’s discretion to seek formal discipline under the appropriate circumstances. The Exchange believes that the proposed updated rule references cover the same subject matter as are already addressed in the Rule 476A List, albeit in outdated references. In addition, the Exchange believes it is also appropriate to add new elements relating to Rule 104 and 123D to the Rule 476A List.

Rule 104

Rule 104 requires, *inter alia*, DMMs registered in one or more securities traded on the Exchange to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market, insofar as reasonably practicable, by contributing liquidity when lack of price continuity and depth, or disparity between supply and demand exists or is reasonably to be anticipated.³

The Rule 476A List currently includes Rule 104(a)(1)(A), which requires DMMs to maintain a bid or an offer at the National Best Bid and National Best Offer (“inside”) at least 10% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume of less than one million shares, and at least 5% for securities in which the DMM unit is registered

³ Rule 104 currently operates on a pilot basis, set to end on July 31, 2012. The Exchange believes that the Rule 476A List should reference those rules that are currently operational, even if operating on a pilot basis.

with a consolidated average daily volume equal to or greater than one million shares.

The Rule 476A List also includes an outdated reference to Rule 104.10. When the Exchange adopted the New Market Model, it adopted current Rule 104 (on a pilot basis), which does not include a rule reference of 104.10 that is the same as the former Rule 104.10.⁴ However, the subject matter formerly covered in Rule 104.10 continues in the current Rule 104. For example, the text of former Rules 104.10(5) and (6) has been moved in substantially similar form to current Rules 104(g), (h), and (i).

More generally, although the Exchange has deleted former Rule 104.10(1) – (3), the subject matter of those rules has been carried forward in various sections of current Rule 104. For example, former Rule 104.10 specified the functions of DMMs, including the maintenance, in so far as reasonably practicable, of a fair and orderly market. This topic is now covered by Rules 104(a) and (f).

More specifically, former Rule 104.10(1) stated that the maintenance of a fair and orderly market implies the maintenance of price continuity with reasonable depth and the minimizing of the effects of temporary disparity between supply and demand. This subject matter is now covered in Rule 104(f)(ii). Former Rule 104.10(2) concerned a DMM trading for his or her own account when there is lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated. This subject matter is similarly covered in Rule 104(f)(ii). Finally, former Rule 104.10(3) provided that DMM dealings for his own account must constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to minimizing the effects of temporary disparity between supply and demand. This is similarly covered in Rule 104(f)(ii). The Exchange further believes that Rule 104(f)(iii), which provides more details about Depth Guidelines, is also related to former Rule 104.10(3). In particular, the Exchange was publishing Depth Guidelines when Rule 104.10 was in effect and the only change in the New Market Model's version of the rule is to codify this aspect of DMM obligations.

The Exchange also believes that the subject matter of former Rules 104.10(1) - (3) is now covered in current Rules 104(a)(2) - (5). Current Rules 104(a)(2) - (5) describe with specificity how a DMM can meet his or her responsibilities and duties to maintain a fair and orderly market, including facilitating openings and re-openings, the close of trading, trading when a liquidity replenishment point is reached, and trading when a "gap" quote procedure is being used. These rule provisions simply provide detail of how a DMM is to meet its fair and orderly obligation. These were functions that specialists formerly performed when they

⁴ See Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10) (adopting the NYSE New Market Model rules at the Exchange).

were subject to former Rule 104.10(1) - (3), the difference now being that these functions have been codified in the rule text.

The Exchange further proposes to add to the Rule 476A List Rules 104(b), (c), (d), and (e). The Exchange believes that, similar to Rule 104(a), (f), (g), (h), and (i), the requirements applicable to DMMs in Rules 104(b), (c), (d), and (e) relate to the functions of the DMMs. Because these are DMM obligations for which potential violations can range in severity, including these elements of Rule 104 in the Rule 476A List is consistent with the current inclusion of other aspects of Rule 104.

In addition, the Exchange believes it is appropriate to add Rule 104(a)(1)(B) to the Rule 476A List. Rule 104(a)(1)(B) governs the DMM's new pricing obligations, which were implemented by all equities markets on December 6, 2010.⁵ Accordingly, this provision was not previously included in the Minor Rule Violation Plan. The Exchange believes it is appropriate to add this element of Rule 104 to the Minor Rule Violation Plan to provide greater flexibility with respect to the type of disciplinary measures that may be invoked if there were a violation of this rule. For example, a potential situation that may warrant a summary fine rather than formal disciplinary action could be if a DMM fails to maintain a quote consistent with Rule 104(a)(1)(B), but which does not result in any harm to the market.

As noted above, summary fines provide the Exchange with flexibility to impose an appropriate level of discipline for violations that are more serious than an admonition letter, but for which the facts and circumstances do not warrant formal discipline. The Exchange believes that providing flexibility for violations related to the DMM's new pricing obligations and Rules 104(b), (c), (d), and (e) is in keeping with the spirit of the existing Rule 476A List, which already includes DMM conduct rules.

To reflect these changes, the Exchange proposes to include a single reference to "Rule 104- NYSE Amex Equities requirements for the dealings and responsibilities of DMMs" to the Rule 476A List, which would include all of the subsections of Rule 104 as described above.⁶ The Exchange further notes that these summary fines may be imposed, as applicable, on either an individual DMM, or the DMM unit, as specified in the subsections to Rule 104.

⁵ See Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR-NYSEAmex-2010-96).

⁶ The Exchange notes that it has separately proposed to delete NYSE Amex Equities Rule 104(a)(6). See Securities Exchange Act Release No. 65735 (Nov. 10, 2011) (SR-NYSEAmex-2011-86). The Exchange further notes that other elements of Rule 104, i.e., Rule 104(j) and supplementary material .05, are not related to DMM obligations, but rather reflect operational aspects of the Exchange.

Rule 123D

The Exchange also proposes to include a reference relating to delayed openings in the Rule 476A list, which is consistent with the existing NYSE MRVP. The Exchange further proposes to expand the reference to Rule 123D and include other elements of that rule as being eligible under the Exchange's Minor Rule Violation Plan.

The NYSE MRVP currently provides that "violations of Exchange policies regarding procedures to be followed in delayed opening situations" are eligible for summary fines under the Minor Rule Violation Plan. Such policies are codified in both NYSE Rule 123D and NYSE Amex Equities Rule 123D. The Exchange proposes to add the requirements of DMMs that are set forth in Rule 123D relating not only to delayed openings, but also to openings, re-openings, trading halts, and tape indications to the Rule 476A List. The Exchange believes that the additional flexibility of determining the appropriate level of discipline for DMM violations of Rule 123D conforms to the purpose of the existing Rule 476A List. In particular, the Exchange notes that adding Rule 123D in its entirety as it relates to DMM conduct is consistent both with the NYSE's proposed rules and with the inclusion of NYSE Rule 15 in the NYSE MRVP, which similarly governs DMM's conduct with respect to pre-opening indications and which, as discussed above, is being proposed to be added to the Rule 476A List.

(b) Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Securities Exchange Act of 1934, as amended,⁷ (the "Act"), in that they are designed to prevent fraudulent and manipulative acts and practices, 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. The proposed rule changes also further the objectives of Section 6(b)(6),⁸ in that they provide for appropriate discipline for violations of provisions of the Act, the rules and regulations thereunder, and Exchange rules and regulations.

The Exchange believes that the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices because they will provide the Exchange with greater regulatory flexibility to enforce the DMM requirements set forth in NYSE Amex Equities Rules 104 and 123D in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted. In addition, the proposed rule change

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(6)

removes impediments to and perfects the mechanism of a free and open market by updating the Minor Rule Violation Plan by updating rule cite references, deleting references to obsolete rules, and for DMM-related rules, both updating the rule references to reflect the current rules that govern the topics currently identified in outdated rule references in the Minor Rule Violation Plan as well as adding additional elements of the rules governing DMM conduct.

4. 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.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of the time period specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed changes to add Rules 15 – NYSE Amex Equities and 123C – NYSE Amex Equities and portions of Rule 123D – NYSE Amex Equities to the Rule 476A List are based on the existing NYSE MRVP as well as the NYSE proposed amendments to the NYSE MRVP with respect to the NYSE Rules 123C and 123D references.

9. Exhibits

Exhibit 1 - Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Amendments to Rule 476A

SECURITIES AND EXCHANGE COMMISSION
 (Release No. 34- ; File No. SR-NYSEAmex-2012-10)

[Date]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Implementing Amending NYSE Amex Rule 476A to update its “List of Equities Rule Violations and Fines Applicable Thereto

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 16, 2012, 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 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 Rule 476A to update its “List of Equities Rule Violations and Fines Applicable Thereto. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Rule 476A to update its “List of Equities Rule Violations and Fines Applicable Thereto” (“Rule 476A List”) to (i) make technical, non-substantive changes to conform the list to previously-approved changes in Exchange rules, (ii) update the rules relating to conduct by Designated Market Makers (“DMM”); and (iii) add rules relating to conduct by DMMs.

Background

Under the Exchange’s Minor Rule Violation Plan, NYSE Amex Rule 476A (“Rule 476A”), the Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, principal executive, approved person or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules (a “summary fine”). Summary fines provide a meaningful sanction for rule violations when the violation calls for stronger discipline than an admonition or cautionary letter, but the facts and circumstances of the violation do not warrant initiation of a formal disciplinary proceeding under Rule 476.

Proposed Non-Substantive Changes to Rule 476A List

The Exchange proposes the following non-substantive changes to update the Rule

476A List, as follows:

- Update the title of NYSE Amex Equities Rule 105
- Update rule references that have been renumbered or harmonized with a FINRA rule: NYSE Amex Equities Rules 72(b) to 72(d); 79A.30 to 79A.20; 103.12 to 103.11; and 346(b) to 3270
- Delete references to rules that have been deleted: NYSE Amex Equities Rules 104.12 (DMM investment account rule); 123A.30 (percentage orders); 304(h)(2) (reporting rule violation); 346(c), (e), and (f) (Limitations on member organization employment and failure to obtain Exchange approval rule violations); 421 (reporting rule violation); 440F (reporting rule violation); and 440G (reporting rule violation)⁴
- Further harmonize the list with the NYSE Minor Rule Violation Plan (“NYSE MRVP”), upon which the Rule 476A List is based, by adding a violations not currently included in the Exchange’s list: Rule 123C – NYSE Amex Equities - Failure to adhere to entry and cancellation procedures for limit-at-the-close and market-at-the-close orders; and Rule 15 – NYSE Amex Equities (Pre-Opening Indications)
- Update the description to rules that have been amended: NYSE Amex Equities Rules 411(b) (replacing the description to reflect the amended rule); and 345(a) – NYSE Amex Equities (deleting the reference to Securities Trader Supervisor)

Proposed Updates to Rule 476A List for DMM Conduct Rules

The current Rule 476A List includes rules that govern DMM conduct, *e.g.*, NYSE Amex Equities Rules 104(a)(1)(A) and 104.10. The Exchange proposes to update the Rule 476A List with current rules governing DMM conduct, and, in conformance with the existing NYSE MRVP, add NYSE Amex Equities Rule 123D (“Rule 123D”) to the Rule 476A List. The Exchange further proposes to expand the references to NYSE Amex Equities Rules 104 (“Rule 104”) and 123D to add new elements to the Rule 476A

⁴ The Exchange also proposes to fix a typographical error in the entry concerning Rule 343 – NYSE Amex Equities and replace the term “officer” with “office.”

List.

The Exchange believes that the updates proposed below will provide the Exchange with sufficient flexibility to address DMM failure to meet their obligations. The Exchange recognizes that DMMs may, for many reasons, fail to meet their affirmative obligations as prescribed under Rules 104 or duties under Rule 123D. In some circumstances, formal disciplinary measures in accordance with Rule 476 are warranted. However, in other instances, formal discipline may be unwarranted, and the Exchange believes that the addition of these Rules to Rule 476A List will provide a more flexible and appropriate tool to enforce potential failure by DMMs to adhere to the requirements set forth in those rules, while preserving the Exchange's discretion to seek formal discipline under the appropriate circumstances. The Exchange believes that the proposed updated rule references cover the same subject matter as are already addressed in the Rule 476A List, albeit in outdated references. In addition, the Exchange believes it is also appropriate to add new elements relating to Rule 104 and 123D to the Rule 476A List.

Rule 104

Rule 104 requires, *inter alia*, DMMs registered in one or more securities traded on the Exchange to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market, insofar as reasonably practicable, by contributing liquidity when lack of price continuity and depth, or disparity between supply and demand exists or is reasonably to be anticipated.⁵

⁵ Rule 104 currently operates on a pilot basis, set to end on July 31, 2012. The Exchange believes that the Rule 476A List should reference those rules that are currently operational, even if operating on a pilot basis.

The Rule 476A List currently includes Rule 104(a)(1)(A), which requires DMMs to maintain a bid or an offer at the National Best Bid and National Best Offer (“inside”) at least 10% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume of less than one million shares, and at least 5% for securities in which the DMM unit is registered with a consolidated average daily volume equal to or greater than one million shares.

The Rule 476A List also includes an outdated reference to Rule 104.10. When the Exchange adopted the New Market Model, it adopted current Rule 104 (on a pilot basis), which does not include a rule reference of 104.10 that is the same as the former Rule 104.10.⁶ However, the subject matter formerly covered in Rule 104.10 continues in the current Rule 104. For example, the text of former Rules 104.10(5) and (6) has been moved in substantially similar form to current Rules 104(g), (h), and (i).

More generally, although the Exchange has deleted former Rule 104.10(1) – (3), the subject matter of those rules has been carried forward in various sections of current Rule 104. For example, former Rule 104.10 specified the functions of DMMs, including the maintenance, in so far as reasonably practicable, of a fair and orderly market. This topic is now covered by Rules 104(a) and (f).

More specifically, former Rule 104.10(1) stated that the maintenance of a fair and orderly market implies the maintenance of price continuity with reasonable depth and the minimizing of the effects of temporary disparity between supply and demand. This subject matter is now covered in Rule 104(f)(ii). Former Rule 104.10(2) concerned a

⁶ See Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10) (adopting the NYSE New Market Model rules at the Exchange).

DMM trading for his or her own account when there is lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated. This subject matter is similarly covered in Rule 104(f)(ii). Finally, former Rule 104.10(3) provided that DMM dealings for his own account must constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to minimizing the effects of temporary disparity between supply and demand. This is similarly covered in Rule 104(f)(ii). The Exchange further believes that Rule 104(f)(iii), which provides more details about Depth Guidelines, is also related to former Rule 104.10(3). In particular, the Exchange was publishing Depth Guidelines when Rule 104.10 was in effect and the only change in the New Market Model's version of the rule is to codify this aspect of DMM obligations.

The Exchange also believes that the subject matter of former Rules 104.10(1) - (3) is now covered in current Rules 104(a)(2) - (5). Current Rules 104(a)(2) - (5) describe with specificity how a DMM can meet his or her responsibilities and duties to maintain a fair and orderly market, including facilitating openings and re-openings, the close of trading, trading when a liquidity replenishment point is reached, and trading when a "gap" quote procedure is being used. These rule provisions simply provide detail of how a DMM is to meet its fair and orderly obligation. These were functions that specialists formerly performed when they were subject to former Rule 104.10(1) - (3), the difference now being that these functions have been codified in the rule text.

The Exchange further proposes to add to the Rule 476A List Rules 104(b), (c), (d), and (e). The Exchange believes that, similar to Rule 104(a), (f), (g), (h), and (i), the requirements applicable to DMMs in Rules 104(b), (c), (d), and (e) relate to the functions

of the DMMs. Because these are DMM obligations for which potential violations can range in severity, including these elements of Rule 104 in the Rule 476A List is consistent with the current inclusion of other aspects of Rule 104.

In addition, the Exchange believes it is appropriate to add Rule 104(a)(1)(B) to the Rule 476A List. Rule 104(a)(1)(B) governs the DMM's new pricing obligations, which were implemented by all equities markets on December 6, 2010.⁷ Accordingly, this provision was not previously included in the Minor Rule Violation Plan. The Exchange believes it is appropriate to add this element of Rule 104 to the Minor Rule Violation Plan to provide greater flexibility with respect to the type of disciplinary measures that may be invoked if there were a violation of this rule. For example, a potential situation that may warrant a summary fine rather than formal disciplinary action could be if a DMM fails to maintain a quote consistent with Rule 104(a)(1)(B), but which does not result in any harm to the market.

As noted above, summary fines provide the Exchange with flexibility to impose an appropriate level of discipline for violations that are more serious than an admonition letter, but for which the facts and circumstances do not warrant formal discipline. The Exchange believes that providing flexibility for violations related to the DMM's new pricing obligations and Rules 104(b), (c), (d), and (e) is in keeping with the spirit of the existing Rule 476A List, which already includes DMM conduct rules.

To reflect these changes, the Exchange proposes to include a single reference to "Rule 104- NYSE Amex Equities requirements for the dealings and responsibilities of DMMs" to the Rule 476A List, which would include all of the subsections of Rule 104 as

⁷ See Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR-NYSEAmex-2010-96).

described above.⁸ The Exchange further notes that these summary fines may be imposed, as applicable, on either an individual DMM, or the DMM unit, as specified in the subsections to Rule 104.

Rule 123D

The Exchange also proposes to include a reference relating to delayed openings in the Rule 476A list, which is consistent with the existing NYSE MRVP. The Exchange further proposes to expand the reference to Rule 123D and include other elements of that rule as being eligible under the Exchange's Minor Rule Violation Plan.

The NYSE MRVP currently provides that "violations of Exchange policies regarding procedures to be followed in delayed opening situations" are eligible for summary fines under the Minor Rule Violation Plan. Such policies are codified in both NYSE Rule 123D and NYSE Amex Equities Rule 123D. The Exchange proposes to add the requirements of DMMs that are set forth in Rule 123D relating not only to delayed openings, but also to openings, re-openings, trading halts, and tape indications to the Rule 476A List. The Exchange believes that the additional flexibility of determining the appropriate level of discipline for DMM violations of Rule 123D conforms to the purpose of the existing Rule 476A List. In particular, the Exchange notes that adding Rule 123D in its entirety as it relates to DMM conduct is consistent both with the NYSE's proposed rules and with the inclusion of NYSE Rule 15 in the NYSE MRVP, which similarly

⁸ The Exchange notes that it has separately proposed to delete NYSE Amex Equities Rule 104(a)(6). See Securities Exchange Act Release No. 65735 (Nov. 10, 2011) (SR-NYSEAmex-2011-86). The Exchange further notes that other elements of Rule 104, i.e., Rule 104(j) and supplementary material .05, are not related to DMM obligations, but rather reflect operational aspects of the Exchange.

governs DMM's conduct with respect to pre-opening indications and which, as discussed above, is being proposed to be added to the Rule 476A List.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Securities Exchange Act of 1934, as amended,⁹ (the "Act"), in that they are designed to prevent fraudulent and manipulative acts and practices, 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. The proposed rule changes also further the objectives of Section 6(b)(6),¹⁰ in that they provide for appropriate discipline for violations of provisions of the Act, the rules and regulations thereunder, and Exchange rules and regulations.

The Exchange believes that the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices because they will provide the Exchange with greater regulatory flexibility to enforce the DMM requirements set forth in NYSE Amex Equities Rules 104 and 123D in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted. In addition, the proposed rule change removes impediments to and perfects the mechanism of a free and open market by updating the Minor Rule Violation Plan by updating rule cite references, deleting references to obsolete rules, and for DMM-related rules, both updating the rule references to reflect the current rules that govern the topics

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(6)

currently identified in outdated rule references in the Minor Rule Violation Plan as well as adding additional elements of the rules governing DMM conduct.

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

Within 45 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 self-regulatory organization 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 Number SR-NYSEAMEX-2012-10 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-2012-10. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Website at www.nyse.com. 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-2012-10 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).

Amendments underscored
Deletions [bracketed]

Rule 476A. Imposition of Fines for Minor Violation(s) of Rules

* * * * *

• • • *Supplementary Material:*

Part 1A: List of Equities Rule Violations and Fines Applicable Thereto

The violations and fines listed in Part 1A are applicable to trading activity and conduct on and after December 1, 2008.

- Rule 15 – NYSE Amex Equities (Pre-Opening Indications)
- Rule 19 - NYSE Amex Equities (Locking or Crossing Protected Quotations in NMS Stocks)
- Rule 35 - NYSE Amex Equities requirement that employees of members and member organizations be registered with, qualified by, and approved by the Exchange before being admitted to the Trading Floor.
- Failure to notify the Exchange's Security Office and surrender Exchange-issued identification cards within 24 hours of Floor members' or employees' termination or reassignment, or cancellation of such identification cards, as required by Rule 35.80 - NYSE Amex Equities
- Rule 36 - NYSE Amex Equities provisions governing member and member organization communications between the Floor and other locations, the use and/or possession of portable or wireless communication or trading devices, and the proper handling and reporting of "give ups".
- Rule 60 - NYSE Amex Equities requirements for dissemination of quotations for reported securities.
- Violation of the agency provisions of Rule 72[(b)](d) - NYSE Amex Equities
- Rule 79A.[30]20 - NYSE Amex Equities requirement to obtain Floor Official approval for trades at wide variations from last sale
- Rule 91.10 - NYSE Amex Equities requirements for a DMM to summon a representative of a firm who had entrusted an order with the DMM who has elected to take or supply for his or her account the securities named in the order to confirm the

acceptance or rejection of such transaction.

- Rule 95 - NYSE Amex Equities order identification requirements and prohibition of transactions which involve discretion on the Floor as to choice of security, total amount of security to be bought or sold or whether transaction is purchase or sale
- Reporting rule violations (Rules 104A.50 - NYSE Amex Equities, [304(h)(2) - NYSE Amex Equities,] 312(a) - NYSE Amex Equities, 312(b) - NYSE Amex Equities, 312(c) - NYSE Amex Equities, 313 - NYSE Amex Equities, 345.12 - NYSE Amex Equities, 345.17 - NYSE Amex Equities, [346(c) - NYSE Amex Equities,] 351 - NYSE Amex Equities, [421 - NYSE Amex Equities, 440F- NYSE Amex Equities, 440G- NYSE Amex Equities,] 440H- NYSE Amex Equities, 4110.01 - NYSE Amex Equities, 4521 - NYSE Amex Equities, 4530 - NYSE Amex Equities, and 4560(a) - NYSE Amex Equities)
- Rule 103.[12][11] - NYSE Amex Equities requirements to keep and provide records to the Exchange with respect to the time DMM and DMM clerks are on the Floor of the Exchange acting in those capacities.
- Rule 104[(a)(1)(A)] - NYSE Amex Equities requirements for the dealings and responsibilities of DMMs

[• Rule 104.10 - NYSE Amex Equities (Functions of DMM)]

[• Rule 104.12 - NYSE Amex Equities DMM investment account rule violations]

- Rule 105 - NYSE Amex Equities and Guidelines [(DMM Registered Security Option Transactions)] (DMMs' Interest in Pools, Options, and Single Stock Futures)
- Rule 116.30 - NYSE Amex Equities requirement for DMMs' stopping stock
- Record retention rule violations (Rules 117 - NYSE Amex Equities, 121 - NYSE Amex Equities, 123 - NYSE Amex Equities, 123A.20 - NYSE Amex Equities, 345.11 - NYSE Amex Equities, 410-NYSE Amex Equities, 432(a) - NYSE Amex Equities, 440- NYSE Amex Equities, 440I- NYSE Amex Equities and 472(c) - NYSE Amex Equities)
- Failure to Time-Record Orders Received at the DMM's Post (Rule 121 - NYSE Amex Equities) and Failure to Time-Record Orders received at a Member's Booth from off the Floor (Rule 123 - NYSE Amex Equities)
- Failure of a member or member organization to use standardized Floor stationery as required by Rule 123A.23 - NYSE Amex Equities

[• Percentage Orders (Rule 123A.30 - NYSE Amex Equities)]

- Rule 123C – NYSE Amex Equities - Failure to adhere to entry and cancellation procedures for limit-at-the-close and market-at-the-close orders
- Rule 123D – NYSE Amex Equities requirements for DMMs relating to openings, re-openings, delayed openings, trading halts, and tape indications
- Failure to utilize procedures of Rule 127 - NYSE Amex Equities to satisfy all better priced limit orders when effecting block crosses outside the quote and failure to provide public orders an execution at the cross price when required by Rule 127 - NYSE Amex Equities procedures
- Failure to submit required trade data to comparison pursuant to Rule 130 - NYSE Amex Equities within time periods determined by the Exchange.
- Failure to collect and/or submit all audit trail data specified in Rule 132 - NYSE Amex Equities
- Rule 134(c) - NYSE Amex Equities and 134(e) - NYSE Amex Equities requirement to comply with specified QT procedures and time periods
- Failure to Obtain Exchange Approval Rule Violations (Rules 312(h) - NYSE Amex Equities, 312(i) - NYSE Amex Equities, 342(c) - NYSE Amex Equities, 342.10 - NYSE Amex Equities, [346(e) - NYSE Amex Equities, 346(f) - NYSE Amex Equities,] 382(a) - NYSE Amex Equities, and 4110 - NYSE Amex Equities
- Failure of a member organization to have individuals responsible and qualified for the positions of Financial Principal, Operations Principal, Compliance Official, Branch Office Manager and Supervisory Analyst (Rules 342(b) - NYSE Amex Equities, 342(d) - NYSE Amex Equities, 342.13- NYSE Amex Equities, 311(b)(5) - NYSE Amex Equities, 344 - NYSE Amex Equities, and 3130(a) - NYSE Amex Equities)
- Rule 343- NYSE Amex Equities requirements relating to member organization office[r] sharing arrangements
- Failure of a member organization to have individuals responsible and qualified for the positions of Securities Lending Supervisor [and Securities Trader Supervisor] (Rule 345(a) - NYSE Amex Equities)
- Failure to obtain employer's prior written consent for engaging in an outside activity as required by [Rule 346(b) - NYSE Amex Equities] Rule 3270 – NYSE Amex Equities
- Guaranteeing a customer's account against loss or sharing in profits or losses as prohibited by Rules 352(b) - NYSE Amex Equities, 352(c) - NYSE Amex Equities, and 2150(b) - and (c) - NYSE Amex Equities
- Rule 387 - NYSE Amex Equities requirements for customer COD/POD transactions

- Rules 392 - NYSE Amex Equities and 5190 - NYSE Amex Equities notification requirements
- Failure to acknowledge customer complaint within 15 business days, as required by Rule 401A - NYSE Amex Equities
- Rule 407 - NYSE Amex Equities requirements for transactions of employees of the Exchange, members or member organizations
- Rule 407A - NYSE Amex Equities reporting and notification requirements for members
- Rule 408(a) - NYSE Amex Equities requirement that written authorization be obtained for discretionary power in a customer's account
- Rule 410A - NYSE Amex Equities requirements for automated submission of trading data
- Rule 410B - NYSE Amex Equities requirements to report transactions in Exchange listed securities not otherwise reported to the Consolidated Tape
- Rule 411(b) - NYSE Amex Equities requirement[s] to not combine the orders of several different customers to buy or sell odd-lots of the same stock, into a round lot order, without the prior approval of the customers interested [to bundle multiple odd-lot orders in the same stock, which aggregate to 100 shares or more, to aggregate the orders into round-lot orders]
- Failure to transfer a customer securities account in accordance with the requirements of Rule 412 - NYSE Amex Equities and the interpretations thereunder
- Failure to promptly provide or promptly update required membership profile information through the Exchange's Electronic Filing Platform ("EFP"), or failure to electronically certify that required membership profile information is complete and accurate, as required by Rule 416A - NYSE Amex Equities
- Rule 440B - NYSE Amex Equities short sale rule violations
- Rule 440C - NYSE Amex Equities failure to deliver against a short sale without diligent effort to borrow
- Failure to designate and identify to the Exchange an Anti-Money Laundering contact person or persons as required by Rules 445(4) - NYSE Amex Equities and 3310(d) - NYSE Amex Equities
- Rules 451 - NYSE Amex Equities and 452 - NYSE Amex Equities requirements relating to transmission of proxy material and authorizing the giving of proxies

- Misstatements or omission of fact on submissions filed with the Exchange (Disciplinary Rule 476(a)(10))
- Rule 460.30 - NYSE Amex Equities notification requirements
- Failure to submit books and records or to furnish information on the date or within the time period that the Exchange requires (Disciplinary Rule 476(a)(11))
- Rule 502 - NYSE Amex Equities prohibition on making a bid, offer or transaction, or routing an order, for Nasdaq Securities on or from Exchange systems before 9:30 a.m. or after the close of the Off-Hours Trading session.
- Rule 504(b)(5) - NYSE Amex Equities requirement for a DMM Unit registered in a Nasdaq Security that is an Exchange Traded Fund to report the listed concentration measures.
- Rule 504(b)(6) - NYSE Amex Equities requirement to commit staff for the trading of NYSE-listed securities separate from that for the trading of Exchange-listed securities and/or Nasdaq Securities and prohibition on trading NYSE-listed securities together with Exchange-listed securities and/or Nasdaq Securities at the same time.
- Rule 508(a)(2) - NYSE Amex Equities requirement for a DMM Unit to open trading in Nasdaq Securities at 9:30 a.m. or as soon thereafter as possible.
- Rule 508(a)(3) - NYSE Amex Equities requirement for a DMM Unit to reopen trading in Nasdaq Securities as soon as possible after a trading halt, suspension or pause has been lifted.
- Rule 508(b)(2) - NYSE Amex Equities requirements for closing a Nasdaq Security in a manual or slow market.
- Rule 509(a) - NYSE Amex Equities requirements for DMM Units.
- Rule 509(b) - NYSE Amex Equities requirements for DMM communications from the Floor.
- Rule 510(c) - NYSE Amex Equities requirements for dissemination and distribution of information for Nasdaq Securities that are derivative securities products.
- Rule 516 - NYSE Amex Equities requirements for reporting and recordkeeping of transactions in Nasdaq Securities.
- Rule 518 - NYSE Amex Equities requirements for clearance and settlement of transactions in Nasdaq Securities.