

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission is waiving the 30-day operative period.<sup>13</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow FINRA to cross-reference the appropriate NYSE rule and thereby reduce confusion regarding the applicable NYSE rule definition. The Commission, therefore, designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-066 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time, as designated by the Commission. FINRA has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2011-066. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2011-066 and should be submitted on or before December 8, 2011.

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

**Elizabeth M. Murphy,**  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65735; File No. SR-NYSEAmex-2011-86]

#### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers

November 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 Equities Rule 104 to codify certain traditional Trading Floor<sup>3</sup> functions that may be performed by Designated Market Makers ("DMMs"),<sup>4</sup> to make Exchange systems available to DMMs that would provide DMMs with certain market information, to amend the Exchange's rules governing the ability of DMMs to provide market information to Floor brokers, and to make conforming amendments to other rules. 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.

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

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

<sup>3</sup> NYSE Amex Equities Rule 6A defines the term "Trading Floor" to mean, in relevant part, "the restricted-access physical areas designated by the Exchange for the trading of securities."

<sup>4</sup> NYSE Amex Equities Rule 2(i) defines the term "DMM" to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE Amex Equities Rule 2(j) defines the term "DMM unit" as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE Amex Equities Rule 98.

*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 NYSE Amex Equities Rule 104 to codify certain traditional Trading Floor functions that may be performed by DMMs. These functions were previously described in the Floor Official Manual for the New York Stock Exchange LLC ("NYSE"). NYSE Amex conformed its equity trading rules and practices to those of the NYSE when it became a subsidiary of NYSE Euronext on October 1, 2008.<sup>5</sup> In addition, the Exchange proposes to amend its rules to make Exchange systems available to DMMs that would provide DMMs with certain market information about securities in which the DMM is registered. The Exchange also proposes to amend its rules governing the ability of DMMs to provide market information to Floor brokers. Finally, the Exchange proposes to make clarifying and conforming amendments to other rules.<sup>6</sup>

Background

On October 24, 2008, the Commission approved, as a pilot program, certain of the rules that govern the current operation of the NYSE.<sup>7</sup> These rules are all elements of the NYSE's "New Market Model."<sup>8</sup> The New Market Model pilot rules include NYSE Rule 104, which sets forth certain affirmative obligations of DMMs, the category of market participant that replaced specialists. DMMs have obligations with respect to the quality of the markets in securities to which they are assigned that are similar to certain obligations formerly held by specialists. NYSE Amex adopted amendments to implement the New Market Model, including amendments to NYSE Amex Equities Rule 104, on November 26, 2008.<sup>9</sup>

In addition to their trading functions, DMMs provide support on the Trading

Floor to assist in the efficient operation of the Exchange market and maintain fair and orderly markets. These Trading Floor functions were performed by specialists before the New Market Model was adopted, and the functions were described in the Exchange's *Floor Official Manual*.<sup>10</sup> Under the New Market Model, there continues to be a need for DMMs to be permitted to perform these Trading Floor functions. As such, the Exchange proposes to codify these Trading Floor functions into NYSE Amex Equities Rule 104 by adding a new subparagraph (j)(i).<sup>11</sup>

DMM Trading Floor Functions

There are four categories of Trading Floor functions that DMMs may perform: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel; (2) bringing Floor brokers together to facilitate trading; (3) assisting Floor brokers with respect to their orders; and (4) researching the status of orders or questioned trades.

First, a DMM may maintain order among Floor brokers manually trading at the DMM's assigned panel. For example, where there is significant agency interest in a security, the DMM may help Floor Officials maintain order by managing trading crowd activity and facilitating the execution of one or more Floor broker's orders trading at the post. Second, a DMM may bring Floor brokers together to facilitate trading, which may include the DMM acting as

a buyer or seller. This function is consistent with the floor-based nature of the Exchange's hybrid market. For example, if a DMM is aware that a Floor broker representing buying interest inquired about selling interest in one of his or her assigned securities and later a Floor broker representing selling interest makes an inquiry about buying interest, the assigned DMM may inform the Floor broker representing the buying interest of the other Floor broker's selling interest. In addition, the DMM itself may provide contra-side interest to a Floor broker representing interest at the post.

Third, DMMs may assist Floor brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker. For example, if a Floor broker's handheld device is not operational, the DMM may assist the Floor broker by entering or canceling broker interest on the Floor broker's behalf.<sup>12</sup>

Fourth, DMMs may research the status of orders or questioned trades. DMMs may do so on their own initiative or at the request of the Exchange or a Floor broker when a Floor broker's hand-held device is not operational, when there is activity indicating that a potentially erroneous order was entered or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.

DMM Access to Exchange Systems

The Exchange proposes to amend NYSE Amex Equities Rule 104 to add new subparagraph (j)(ii), which would state that the Exchange may make systems available to a DMM at the post that display the following types of information about securities in which the DMM is registered: (A) Aggregated information about buying and selling interest;<sup>13</sup> (B) disaggregated information about the price and size of any individual order or Floor broker agency interest file, also known as "e-Quotes,"

<sup>5</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex 2008-62) (approving the merger).

<sup>6</sup> NYSE has submitted substantially the same proposed rule change to the Commission. See SR-NYSE-2011-56.

<sup>7</sup> See Securities Exchange Act Release No. 48845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) ("New Market Model Approval Order").

<sup>8</sup> The New Market Model pilot is currently scheduled to expire on January 31, 2012. See Securities Exchange Act Release No. 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR-NYSE-2011-43).

<sup>9</sup> See Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10).

<sup>10</sup> See 2004 *Floor Official Manual, Market Surveillance June 2004 Edition*, Chapter Two, Section I.A. at 7 ("specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities"), Section I.B.3. at 10-11 ("[i]n opening and reopening trading in a listed security, a specialist should \* \* \* [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate" and "[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary"), Section I.B.4. at 11 ("In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows \* \* \* [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner."), and Section I.B.5. at 12 (A specialist should "[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors."). Relevant excerpts of the 2004 *Floor Official Manual* are attached as Exhibit 3 of this filing.

<sup>11</sup> The Exchange proposes to redesignate the rule text currently set forth in section (j) as section (k) of NYSE Amex Equities Rule 104.

<sup>12</sup> The Exchange maintains records of whether a Floor broker's order is entered or cancelled by Exchange systems under such circumstances.

<sup>13</sup> Exchange systems make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-Floor participants; (b) all Minimum Display Reserve Orders, including the reserve portion; (c) all displayable Floor broker agency interest files ("e-Quotes"); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the Floor broker elects to exclude that reserve quantity from availability to the DMM.

except that Exchange systems would not make available to DMMs information about any order or e-Quote, or portion thereof, that a market participant has elected not to display to a DMM; and (C) post-trade information. For the latter two categories, the DMM would have access to entering and clearing firm information and, as applicable, the badge number of the Floor broker representing the order. The systems would not contain any information about the ultimate customer (*i.e.*, the name of the member or member organization's customer) in a transaction. Aggregated information about buying and selling interest and post-trade information are currently available to DMMs.

Under the proposed rule change, Exchange systems would make available to DMMs disaggregated information about the following interest in securities in which the DMM is registered: (a) The price and size of all displayable interest submitted by off-Floor participants; and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.<sup>14</sup> The Exchange believes that it is appropriate to provide DMMs with this disaggregated order information because the information will assist DMMs in carrying out their Trading Floor functions as described above. For example, access to the disaggregated order information will increase DMMs' ability to assist Floor brokers with respect to their orders and researching the status of orders or questioned trades. In addition, providing DMMs with access to the disaggregated order information will contribute to the DMMs' ability to carry out their responsibility for managing the auction market process at the Exchange, which includes the function of bringing buyers and sellers together to facilitate trading. In addition, the proposed rule change would have no impact on the Exchange's priority and parity rules; DMM manual transactions would continue to be required to yield to intra-day public customer orders pursuant to NYSE Amex Equities Rule 72(c)(xi). The Exchange further notes that the manner by which the DMM would access disaggregated order information is limited. For example, a DMM can access the disaggregated order information only while located at the post on the Trading Floor. In addition, DMMs' ability to access the disaggregated order

information is largely manual, in that the DMM must query the specific information about a particular security, which limits the number of securities about which disaggregated order information can be accessed at any given time. Exchange systems would not provide any information to the algorithmic trading systems of any DMM unit,<sup>15</sup> and would not support any electronic dissemination of the disaggregated order information to other market participants. The Exchange notes that market participants who do not want the DMM to have access to disaggregated order information have the option to electronically enter dark interest that is not visible to the DMM in disaggregated form. The Exchange also notes that the proposed rule change would specifically prohibit DMMs from using any trading information available to them in Exchange systems, including disaggregated order information, in a manner that would violate the Exchange rules or federal securities laws or regulations.<sup>16</sup>

In addition, the Exchange notes that any non-public market information that a DMM receives through Exchange systems would be subject to specific restrictions as "non-public order information" <sup>17</sup> under NYSE Amex Equities Rule 98. For example, NYSE Amex Equities Rule 98(c)(2)(A) would require DMMs to maintain the confidentiality of any such non-public market information and would prohibit the DMM member organization's departments, divisions, or aggregation units that are not part of the DMM unit, including investment banking, research, and customer-facing departments, from having access to that information. In

<sup>15</sup> The order information in these systems would be available for a DMM to view manually at the post and as such is different from the advance order-by-order information that DMM trading algorithms previously received before implementation of the New Market Model pilot (sometimes referred to as "the look"). Under the proposed rule change, as is the case today, DMM trading algorithms would have the same information with respect to orders entered on the Exchange, Floor broker agency interest files or reserve interest as is disseminated to the public by the Exchange. See NYSE Amex Equities Rule 104(b)(iii).

<sup>16</sup> See Proposed NYSE Amex Equities Rule 104(j)(ii).

<sup>17</sup> NYSE Amex Equities Rule 98(b)(7) defines the term "non-public order" to mean "any order, whether expressed electronically or verbally, or any information regarding a reasonably imminent non-public transaction or series of transactions entered or intended for entry or execution on the Exchange and which is not publicly available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook® or otherwise not publicly available. Non-public orders include order information at the opening, re-openings, the close, when the security is trading in slow mode, and order information in the NYSE Display Book® that is not available via NYSE OpenBook®."

addition, NYSE Amex Equities Rule 98 sets forth restrictions on access to non-public order information by the off-Floor locations of a DMM unit, including restrictions on the ability of a DMM located on the Trading Floor from communicating directly with off-Floor individuals or systems responsible for making off-Floor trading decisions.<sup>18</sup>

The Exchange believes that the proposed rule change would contribute substantially to the fair and orderly operation of the Exchange Trading Floor, and that the benefits of that contribution would significantly outweigh any incremental benefit to the DMMs by virtue of having access to disaggregated order information. DMM assistance at the post through the performance of the Trading Floor functions is an invaluable resource to minimize any disruption to the market, particularly if the Exchange is experiencing a systems issue; the Exchange systems that provide disaggregated order information play a pivotal role in that assistance, for example by allowing DMMs to enter or cancel orders on behalf of Floor brokers. Allowing DMMs to have access to those Exchange systems to perform the Trading Floor functions is more efficient than diverting Exchange resources to attend to individual Floor broker issues, particularly when the DMMs are ready and able to perform the same functions. In contrast, the proposed rule change would provide DMMs with a disaggregated format of information that they already have access to on an aggregated basis. Any potential value to having order information on a disaggregated basis is mitigated by the fact that DMMs only have information about orders at the Exchange, which represent just a portion of the overall volume of trading in Exchange-listed stocks across the market. The information is likely to be stale upon receipt to the DMMs, thereby diminishing any likelihood that the information would be useful to DMMs in connection with their electronic or algorithmic trading. For example, the DMMs would have to use a manual process to access the information, the DMMs' access to disaggregated information at any given time would be limited to a single stock, and the information would not be dynamically updated to the DMM, in real time or

<sup>18</sup> See NYSE Amex Equities Rules 98(d)(2)(B)(i)-(iii), (f)(1)(A)(i)-(ii), and (f)(3)(C)(ii). In addition, NYSE Amex Equities Rule 98(c)(2)(A)(ii) provides that a DMM may make available to a Floor broker associated with an approved person or member organization any information that the DMM would be permitted to provide under Exchange rules to an unaffiliated Floor broker.

<sup>14</sup> The Exchange previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchange stopped making such information available to DMMs on January 19, 2011. See Information Memo 11-03.

otherwise. In addition, as described above, all intra-day manual trades entered by the DMM yield to public orders pursuant to NYSE Amex Equities Rule 72 and DMMs are restricted from sharing order information pursuant to NYSE Amex Equities Rule 98, both of which limit any potential for the DMMs to use the disaggregated order information in connection with their manual trading.

#### Conforming Amendments

To reflect the information that would be available to DMMs through Exchange systems, the Exchange proposes amendments to NYSE Amex Equities Rules 70(e), (f) and (i) and 70.25(a)(vii) to specify which information is available to a DMM through Exchange systems. The Exchange also proposes changes to NYSE Amex Equities Rule 70 to specify what information about e-Quotes is available to the DMM.

In addition, the Exchange proposes to delete NYSE Amex Equities Rule 104(a)(6), which currently provides that DMMs, trading assistants and anyone acting on their behalf are prohibited from using the Display Book<sup>®</sup> system to access information about Floor broker agency interest excluded from the aggregated agency interest and Minimum Display Reserve Order information other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect such transaction.

#### Ability of DMMs To Provide Market Information on the Trading Floor

The Exchange proposes to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and visitors on the Trading Floor. Specifically, NYSE Amex Equities Rule 104(j)(iii) would permit a DMM to provide the market information to which he or she has access under proposed NYSE Amex Equities Rule 104(j)(ii) to: (1) A Floor broker in response to an inquiry in the normal course of business; or (2) a visitor to the Trading Floor for the purpose of demonstrating methods of trading. This aspect of the proposal builds on and modifies current NYSE Amex Equities Rule 115, and the Exchange therefore proposes to delete that Rule, which covers the same subject.<sup>19</sup>

Currently, NYSE Amex Equities Rule 115 provides that a DMM may disclose market information for three purposes.

First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors to the Trading Floor. This aspect of current NYSE Amex Equities Rule 115 would be replicated in proposed NYSE Amex Equities Rule 104(j)(iii)(B). Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System ("ITS"). This text is obsolete as the ITS Plan has been eliminated and therefore would not be included in amended NYSE Amex Equities Rule 104.<sup>20</sup> Third, a DMM may, while acting in a market making capacity, provide information about buying or selling interest in the market, including (a) Aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule ("CCS") interest as described in NYSE Amex Equities Rule 1000(c), in response to an inquiry from a member conducting a market probe<sup>21</sup> in the normal course of business.

Proposed NYSE Amex Equities Rule 104(j)(iii) would permit DMMs to provide Floor brokers not only with the same aggregated order information that DMMs currently are permitted to provide under NYSE Amex Equities Rule 115 but also with the disaggregated and post-trade order information described above.<sup>22</sup> Broadening the scope of information that DMMs can provide Floor brokers will assist DMMs with carrying out their historical function of bringing Floor brokers together to facilitate trading. In addition, the Exchange notes that NYSE Amex Equities Rule 115 allowed Exchange specialists to provide disaggregated order information to Floor brokers prior to adoption of the Hybrid Market.<sup>23</sup>

<sup>20</sup> See Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007) (Intermarket Trading System; Notice of Filing and Immediate Effectiveness of the Twenty Fourth Amendment to the ITS Plan Relating to the Elimination of the ITS Plan).

<sup>21</sup> Generally, a market probe refers to when a Floor broker is seeking to ascertain the depth of the market in a security to determine at what price point a security may trade. However, it is a term of art whose meaning is not codified.

<sup>22</sup> Because DMMs on the Trading Floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

<sup>23</sup> See NYSE Regulation Information Memo 05-5 (stating that, under NYSE Rule 115, specialists may disclose the identity of the members or member organizations representing any orders entrusted to

Moreover, as noted above, both Floor brokers and off-Floor participants have the ability to enter partially or completely "dark" orders that are not visible to the DMM, and DMMs therefore would be unable to disseminate information about such "dark" orders or the dark portion of the orders in response to an inquiry from a Floor broker. When providing information, the individual DMM is responsible for fairly and impartially providing accurate and timely information to all inquiring Floor brokers about buying and selling interest in his or her assigned security.

Proposed NYSE Amex Equities Rule 104(j)(iii) also would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided "in response to an inquiry from a member conducting a market probe in the normal course of business," as currently provided in NYSE Amex Equities Rule 115. The Exchange believes that the term "market probe" no longer accurately reflects the manner in which DMMs and Floor brokers interact on the Trading Floor. Rather, the Exchange believes that the Floor broker's normal course of business, as an agent for customers, includes both seeking market probes into the depth of the market as well as seeking out willing contra-side buyers and sellers in a particular security. In addition, the rule would specify that a Floor broker may not submit an inquiry to the DMM by electronic means and that the DMM may not use electronic means to transmit market information to a Floor broker in response to an inquiry. Under the proposed rule change, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and they would only be able to access such market information through a direct interaction with a DMM at the post.

The Exchange believes that providing Floor brokers with access to the disaggregated order information would serve a valuable function by increasing the ability of Floor brokers to source liquidity and provide price discovery for block transactions. In particular, the ability of Floor brokers to receive the disaggregated order information should,

the specialist). The NYSE amended Rule 115 in connection with the Hybrid Market because at that time, there was no way for Floor brokers to enter fully dark electronic interest. Now that NYSE and Exchange systems can accept fully dark electronic interest from both Floor brokers and off-Floor participants, the Hybrid Market change to NYSE Rule 115 has been obviated.

<sup>19</sup> NYSE Amex Equities Rule 115 will be redesignated as "Reserved." The Exchange further proposes to make conforming amendments to NYSE Amex Equities Rules 13 and 104(a)(6).

in turn, enhance their ability to facilitate transactions for their customers by identifying market participants with trading interest that could trade with the Floor brokers' customers. Floor brokers have historically served this role on behalf of their customers, which include institutional clients and block-trading desks, and they continue to perform this agency function today. The Exchange notes that Floor brokers continue to be subject to their existing obligations with respect to Floor trading and access to information. In particular, Floor brokers remain subject to the restrictions in Section 11(a) of the Securities Exchange Act of 1934 (the "Act") and the rule thereunder, which effectively prohibit Floor brokers from effecting transactions for their own account, the account of an associated person, or an account with respect to which the member, member organization, or an associated person thereof exercises investment discretion.<sup>24</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>25</sup> in general, and Section 6(b)(5) of the Act,<sup>26</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change clarifies that DMMs may perform certain defined Trading Floor functions, which were previously performed by specialists, in furtherance of the efficient, fair, and orderly operation of the Exchange. In addition, increasing the amount of information, including disaggregated order information, that a DMM is permitted to view and provide to Floor brokers would further the ability of DMMs to carry out the defined Trading Floor functions and, as a result, is designed to remove impediments to and perfect the mechanism of a free and open market through the efficient operation of the Exchange, in particular by facilitating the bringing of buyers and sellers together. Although a vast majority of the transactions executed on the Exchange are automated, Floor brokers continue to play an important role for customers in those transactions

that require the expertise of a professional trading floor agent, including engaging in price discovery and sourcing liquidity for block transactions. While the disaggregated order information that would be available to DMMs and Floor brokers under the proposed rule change is important to them in carrying out their unique roles in a floor trading environment, the Exchange believes this information would not be material to market participants executing automated orders. In addition, the means of access by DMMs and Floor brokers to the disaggregated order information is largely manual. Accordingly, the Exchange believes that access to disaggregated order information as set forth in this proposed rule change provides no unfair advantage to DMMs or Floor brokers. In addition, as noted above, DMMs would be specifically prohibited from using the market information available through Exchange systems for any purpose that would violate Exchange rules or federal securities laws or regulations.

### *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 or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

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change is consistent with the Act. Comments may be submitted by any of the following methods:

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### *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-2011-86. 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 NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. 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-2011-86 and should be submitted on or before December 8, 2011.

<sup>24</sup> See also NYSE Amex Equities Rule 90.

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Elizabeth M. Murphy,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65730; File No. SR-NYSEArca-2011-79]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Modify the Fees Relating to Qualified Contingent Cross Orders

November 10, 2011.

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 November 1, 2011, NYSE Arca, Inc. (“NYSE Arca” 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 Arca Options Fee Schedule (“Fee Schedule”) to modify the fees relating to Qualified Contingent Cross (“QCC”) orders. 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 purpose of the proposal is to modify the fees relating to QCC orders. Specifically, the Exchange intends to adopt a rebate of \$.10 per contract for executed QCC orders. The rebate will be credited to the executing Floor Broker.

The Exchange notes that the terms of a QCC order are negotiated and agreed to prior to being brought to an exchange for possible execution. In bringing a QCC order to the Exchange for execution, OTP Holders have two primary means of doing so. They can configure their systems to deliver the QCC order to the Exchange matching engines for validation and execution. Alternatively they can utilize the services of another OTP Holder acting as a Floor Broker. In turn, the Floor Broker who is in receipt of such an order can enter the order through an Exchange-provided system<sup>3</sup> to be delivered to the Exchange matching engine for validation and potential execution. In light of the fact that the Exchange does not offer a front-end for order entry, unlike some of the competing exchanges,<sup>4</sup> the Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a QCC order. The Exchange expects that the rebate offered to executing Floor Brokers will allow them to price their services at a level that will enable them to attract QCC order flow from participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver QCC orders directly to the Exchange systems. To the extent that Floor Brokers are able to attract these QCC orders, they will gain important information that will allow them to solicit the parties to the QCC orders for

participation in other trades, which will in turn benefit all other Exchange participants through the additional liquidity and price discovery that may occur as a result. The Exchange notes that at least two other exchanges offer a similar rebate.<sup>5</sup>

The proposed change will be operative on November 1, 2011.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)<sup>7</sup> of the Act, 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 the proposed \$.10 per contract rebate for Floor Brokers who enter QCC orders that execute is reasonable because it will allow Floor Brokers the opportunity to compete for QCC orders that would otherwise be entered into front-end order entry systems of competing exchanges.<sup>8</sup> The proposed rebate is comparable to that found on other exchanges<sup>9</sup> in that it is being offered to Floor Brokers as an inducement that may allow them to competitively price their services offered to all participants. To the extent that the rebate is successful in attracting additional order flow to the Exchange, all participants should benefit. As such, the Exchange believes that the rebate is appropriate and reasonable.

The Exchange believes the proposal to adopt a \$.10 per contract rebate is equitable and not unfairly discriminatory because it would uniformly apply to all QCC orders entered by a Floor Broker for validation by the system and potential execution. The rebate is not unfairly discriminatory to firms that enter QCC orders directly into the NYSE Arca System through electronic connection, because the fee for the QCC order is the same whether it is entered electronically or through a Floor Broker. In addition, under Commentary .01 to Arca Options Rule 6.90, only Floor Brokers may enter a QCC order from the Floor; therefore,

<sup>3</sup> Floor Brokers are required by NYSE Arca Options Rule 6.67 to have systematized orders prior to representing them in open outcry. Using the same Electronic Order Capture System, Floor Brokers will be able to enter QCC orders for validation by the Exchange matching engines and potential execution.

<sup>4</sup> The International Securities Exchange offers PRECISE TRADE as a means for users to enter orders and Chicago Board Options Exchange has a similar front-end order entry system called PULSE. Such systems do not require users to develop their own internal front-end order entry systems and may provide savings to users in terms of development time and costs.

<sup>5</sup> See Securities Exchange Act Release No. 65472 (October 3, 2011), 76 FR 62887 (October 11, 2011) (SR-NYSEAmex-2011-72) and NASDAQ OMX PHILX fee schedule dated September 12, 2011, page 21 (describing a Floor Broker Subsidy that can range as high as \$.09 per contract), available at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See *supra* note 4.

<sup>9</sup> See *supra* note 5.

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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