

*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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-01 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-2010-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEAmex-2010-01 and should be submitted on or before February 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61308; File No. SR-NYSEAmex-2009-98]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Adopting New Rule 107B—NYSE Amex Equities To Establish a New Class of NYSE Amex Equities Market Participants Referred to as “Supplemental Liquidity Providers” or “SLPs”**

January 7, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 30, 2009, 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 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 adopt new Rule 107B—NYSE Amex Equities (“Supplemental Liquidity Providers”) to establish, as a pilot program, a new class of NYSE Amex Equities market participants referred to as “Supplemental Liquidity Providers” or “SLPs”. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

1. Purpose

The purpose of the proposed rule change is to adopt new Rule 107B—NYSE Amex Equities (“Supplemental Liquidity Providers”) to establish, as a pilot program, a new class of NYSE Amex Equities market participants referred to as “Supplemental Liquidity Providers” or “SLPs”.

Background

Proposed Rule 107B—NYSE Amex Equities is based on NYSE Rule 107B. The New York Stock Exchange LLC (“NYSE”) adopted NYSE Rule 107B governing SLPs as a six-month pilot program commencing in November 2008, which was subsequently extended to March 30, 2010.<sup>4</sup>

Proposed Rule 107B—NYSE Amex Equities tracks NYSE Rule 107B in its entirety, subject to such changes as are necessary to apply the Rule to the Exchange.<sup>5</sup> In addition, the Exchange proposes to adopt Rule 107B—NYSE Amex Equities as a pilot program commencing on the date the Rule is filed with the Commission and continuing until March 30, 2010, the date NYSE's SLP pilot program expires. The Exchange will extend the duration of its SLP pilot program as needed to track the NYSE's SLP pilot program and will file for permanent approval at the same time as the NYSE.

Proposed Rule 107B—NYSE Amex Equities

With this rule filing, the Exchange is proposing a pilot program to establish a new class of market participants: Supplemental Liquidity Providers (“SLP”). SLPs will supplement the liquidity provided by Designated Market

<sup>4</sup> See Securities Exchange Act Release Nos. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108) (adopting SLP pilot program); 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR-NYSE-2009-46) (extending SLP pilot program until October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR-NYSE-2009-100) (extending SLP pilot program until November 30, 2009) and SR-NYSE-2009-119 (extending SLP pilot program until March 30, 2010).

<sup>5</sup> Notably, the Exchange proposes to change the descriptions of the “SLP Liaison Committee” and the “SLP Panel” contained in parts (d)(1) and (j)(2) of the Rule, as well as the procedures for withdrawal in part (e), to match the proper corporate relationship between the various constituents described therein. The Exchange's SLP program would also include both listed and “traded” securities, *i.e.*, securities admitted to trading on the Exchange pursuant to a grant of unlisted trading privileges (“UTP”) (see part (g)(1) of the Rule).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

Makers ("DMMs"). SLPs may only enter orders electronically from off the Floor of the Exchange and may only enter such orders directly into Exchange systems and facilities designated for this purpose. All SLP orders must only be for the proprietary account of the SLP member organization. Thus, an SLP will not handle orders from public customers or otherwise act on an agency basis. They will have a 5% average quoting requirement per assigned security. Additionally, if an SLP posts displayed or non-displayed liquidity in its assigned securities that results in an execution, the Exchange will pay the SLP a financial rebate.

By establishing this new class of market participant, the Exchange is seeking to provide incentives for quoting and to add competition to the existing group of liquidity providers. By requiring SLPs to quote at the NBB or the NBO a percentage of the regular trading day in their assigned securities, and by paying a rebate when the SLP's interest results in an execution, the Exchange is rewarding aggressive liquidity providers in the market. The Exchange believes that this rebate program will encourage the additional utilization of, and interaction with, the Exchange's marketplace and provide customers with the premier venue for price discovery, liquidity, competitive quotes and price improvement.

#### Responsibilities of the Supplemental Liquidity Provider

##### SLP's 5% Average Quoting Requirement

An SLP is required to maintain a bid or an offer at the NBB or NBO (*e.g.*, the "inside") averaging at least 5% of the trading day for each assigned security in round lots in order to maintain its status as an SLP. If an SLP fails to meet the quoting requirement for three consecutive months, the Exchange may revoke the SLP status pursuant to Section (i)(1)(C)(iii) of the proposed Rule.

##### SLP's 3% Average or More Quoting Requirement for Rebate Purposes

If an SLP posts liquidity in its assigned securities that results in an execution, the Exchange will pay the SLP a financial rebate of \$0.0020 per share priced at or above \$1.00, and \$0.0005 per share priced below \$1.00, provided the SLP meets its monthly quoting requirement for rebates averaging at least 3% at the NBB or the NBO in its assigned securities in round lots (*see* Section (i) ("Non-Regulatory Penalties") and Section (f) ("Calculation of Quoting Requirements") of the proposed Rule). Meeting the 3% average

quoting requirement for rebates does not satisfy the 5% average quoting requirement which SLPs must meet in order to remain in the SLP program. The rebate calculation is described in more detail below.

A member organization that acts as an SLP is not permitted to act as a DMM on the Floor of the Exchange in the same security. Thus, a member organization that acts as a DMM on the Floor may not also act as an SLP in those securities registered to the DMM unit.

Like all other member organizations of the Exchange, an SLP must abide by Exchange and SEC rules and regulations and must deal in a manner consistent with just and equitable principles of trade. SLPs are subject to regulatory oversight by the Exchange and FINRA.

#### Assigned Securities

During the proposed SLP pilot program, the SLP Liaison Committee, as defined in Section (d)(1) of the proposed Rule, will initially assign a cross section of Exchange-listed and/or traded securities to each SLP. The SLP Liaison Committee will determine which securities will be assigned to an SLP and the number of securities assigned to each SLP. The Exchange's SLP program will include both listed and traded securities, as it is in the process of submitting a separate filing to permit it to trade Nasdaq-listed securities on a UTP basis. *See, e.g.*, NYSE Amex Trader Notice, dated September 8, 2009.

The Exchange believes that the SLP pilot program will provide the Exchange with a unique opportunity to monitor the success of the SLP incentives by starting with a cross section of securities. By doing so, the Exchange will be better equipped to address actual and potential administrative and operational problems without unnecessary risk to the Exchange and to its customers. The SLP pilot program will also provide the Exchange with the opportunity to identify and address any such problems and make beneficial changes to the SLP program.

In addition to its usefulness to the Exchange, the SLP pilot program will provide the SLPs with essential practical experience with the new program and enable the SLPs to become proficient in the SLP role before expanding the assigned securities to include all Exchange-listed or traded securities.

The SLP Liaison Committee, in its discretion, will assign one or more SLPs to each security depending upon the trading activity of the security. The SLP Liaison Committee will likely assign a

greater number of SLPs to more actively traded securities.

#### Qualifications of the Supplemental Liquidity Provider

A member organization of the Exchange must have the following qualifications in order to obtain SLP status:

(1) Adequate technology to support electronic trading through the related systems and facilities of the Exchange and report qualifying trading activity to Exchange systems utilizing unique and separate mnemonics specifically dedicated to SLP trading activity;

(2) Adequate trading infrastructure to support SLP trading activity, which includes support staff to maintain operational efficiencies in the SLP program and adequate administrative staff to manage the member organization's SLP program;

(3) Quoting performance that demonstrates an ability to meet the 5% quoting requirement in each assigned security;

(4) A disciplinary history that is consistent with just and equitable business practices; and

(5) The business unit of the member organization acting as an SLP must have in place adequate information barriers between the SLP unit and the member organization's customer, research and investment banking business.

*Adequate Technology for Trading and Reporting:* Because the SLP will only be permitted to trade electronically from off the Floor of the Exchange, a member organization's off-Floor technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as an SLP. If a member organization is unable to support the relevant electronic trading and reporting systems of the Exchange for SLP trading activity, it will not qualify as an SLP.

*Adequate Trading Infrastructure:* Upon applying for status as an SLP, a member organization must have adequate trading infrastructure, which includes support staff to maintain operational efficiencies in the SLP program and adequate administrative staff to manage the member organization's SLP program.

*Quoting Performance:* Upon applying for SLP status, a member organization's ability to meet the 5% quoting requirement may be demonstrated by past and/or current trading activity. If an applicant has not demonstrated an ability to meet the 5% quoting requirement to the satisfaction of the SLP Liaison Committee, the applicant may not qualify as an SLP.

**Disciplinary History:** Upon applying for SLP status, a member organization's disciplinary history must reflect conduct that is consistent with just and equitable business practices.

**Information Barriers:** The business unit of the SLP that submits orders on behalf of the member organization must have in place adequate information barriers between the SLP unit and the member organization's customer, research and investment banking business.

#### SLP Application Process

To become an SLP, a member organization must submit an SLP application form with all supporting documentation to the SLP Liaison Committee. The SLP Liaison Committee will determine whether an applicant is qualified to become an SLP based on the qualifications described in Section (c) of the proposed Rule ("Qualifications of a Supplemental Liquidity Provider"). The qualifications focus on the adequacy of the applicant's trading and reporting technology and trading infrastructure. The applicant's disciplinary history will be considered as well.

After submission of the SLP application form and supporting documentation, the SLP Liaison Committee will notify the applicant member organization of its decision. If an applicant is approved by the SLP Liaison Committee to receive SLP status, the applicant must establish connectivity with relevant Exchange systems and facilities.

The processing of all applications may be suspended when the SLP Liaison Committee has determined that there is a sufficient number of SLPs assigned to each eligible security in the SLP program (*see* Section (g)(2) of the proposed Rule).

If an applicant is disapproved or "disqualified," pursuant to Section (i)(2) of the proposed Rule, by the SLP Liaison Committee, such applicant may request an appeal of such disapproval or disqualification by the SLP Panel as provided in Section (j) ("Appeal of Non-Regulatory Penalties") of this Rule, and/or reapply for SLP status three (3) months after the month in which the applicant received disapproval or disqualification notice from the Exchange (*see* Section (d)(6) of the proposed Rule).

#### Voluntary Withdrawal of SLP Status

An SLP may withdraw from the status of an SLP at any time by giving notice to the SLP Liaison Committee, the Market Surveillance Division of NYSE Regulation, Inc. and NYSE Euronext employees of the Operations Division

(*see* Section (e) ("Voluntary Withdrawal of Supplemental Liquidity Provider Status" of the proposed Rule). However, withdrawal of SLP status will not become effective until the withdrawing SLP's assigned securities are reassigned to other SLPs. After the notice of withdrawal is received by the SLP Liaison Committee, the Market Surveillance Division and the Operations Division, the SLP Liaison Committee will reassign said securities as soon as practicable but no later than 30 days of the date said notice is received by the SLP Liaison Committee, the Market Surveillance Division and the Operations Division. In the event the reassignment of securities takes longer than the 30-day period, the withdrawing SLP will have no obligations under this Rule 107B-NYSE Amex Equities and will not be held responsible for any matters concerning its previously assigned SLP securities upon termination of this 30-day period.

#### Quoting Requirements of the Supplemental Liquidity Provider

In order to maintain SLP status, an SLP is required to maintain a bid or an offer at the NBB or NBO on the Exchange averaging at least 5% of the trading day in round lots for each assigned security.<sup>6</sup> While the SLP may provide displayed and non-displayed liquidity (*e.g.*, reserve and dark orders), the 5% average quoting requirement can only be satisfied when an SLP posts displayed liquidity in its assigned securities in round lots at the NBB or the NBO. Thus, non-displayed liquidity will not be counted as credit towards the 5% quoting requirement. Additionally, tick sensitive orders (*i.e.*, "Sell Plus," "Buy Minus" (*see* Rule 13) and "Buy Minus Zero Plus") will not be counted as credit towards the 5% quoting requirement.

In order for an SLP to be entitled to a rebate, an SLP must post liquidity on the Exchange that executes against incoming orders and meet the monthly minimum quoting requirement averaging at least 3% at the NBB or the NBO in round lots in its assigned securities (*see* Section (b) ("Financial Rebates for Executed Transactions") in the proposed Rule). If the SLP does not meet a minimum monthly quoting requirement averaging at least 3%, an SLP will not be entitled to a rebate on executed volume in that given month in that particular affected security (*see* Section (i) ("non-Regulatory Penalties") of the proposed Rule).

The SLP is not subject to any minimum or maximum quoting size

<sup>6</sup> *See* Exhibit 5, Section (a) of the proposed Rule.

requirement apart from the requirement that an order be for at least one round lot (*see* Section (f)(2) of the proposed Rule).

An SLP must use its SLP mnemonic when trading as an SLP in its assigned securities in order to obtain credit for their SLP trading activity (*see* Section (f)(2) of the proposed Rule). Quoting and rebate credit will be measured only by using the SLP's unique mnemonics specifically designated for SLP trading activity.

#### Calculation of the Quoting Requirements

The SLP's quoting requirements will not be in effect in the first month the SLP operates as an SLP. The Exchange will provide the SLP with a one-month grace period to allow preparation time for the SLP. Therefore, this quoting requirement will not take effect until the second month of an SLP's operation as an SLP.

Beginning with the second month an SLP is operating as an SLP, an SLP must satisfy the 5% quoting requirement for each assigned security.<sup>7</sup> The SLP Liaison Committee will determine whether an SLP has met its quoting requirement for the trading days<sup>8</sup> in a calendar month by calculating the following:

- (1) The "Daily NBB Quoting Percentage" by determining the percentage of time an SLP has at least one round lot of displayed interest in an Exchange bid at the NBB during each trading day for a calendar month;
- (2) The "Daily NBO Quoting Percentage" by determining the percentage of time an SLP has at least one round lot of displayed interest in an Exchange offer at the NBO during each trading day for a calendar month;
- (3) The "Average Daily NBBO Quoting Percentage" for each trading day by summing the "Daily NBB Quoting Percentage" and the "Daily NBO Quoting Percentage" in each assigned security then dividing such sum by two; and
- (4) The "Monthly Average NBBO Quoting Percentage" for each assigned security by summing the security's "Average Daily NBBO Quoting

<sup>7</sup> NYSE Euronext's Strategic Analysis Department will be responsible for generating SLP performance data and providing such data to the SLP Liaison Committee in order to determine which SLPs are meeting their quoting requirements and are eligible for financial rebates.

<sup>8</sup> For purposes of Section (f)(1) of the proposed rule text (Exhibit 5), "trading day" shall mean any day on which the Exchange is scheduled to be open for business. Days on which the Exchange closes prior to 4 p.m. (Eastern Time) for any reason, which may include any regulatory halt or trading halt, shall be considered a trading day.

Percentages” for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month.

**Example of Quoting Requirement Calculation**

Below is an example of a quoting requirement calculation. For purposes of this example, it is assumed that SLP No. 1 has two assigned securities, A and

B, and that there were 5 trading days in the selected calendar month.

The “Average Daily NBBO Quoting Percentage” for SLP No. 1 is calculated for each security by summing the daily NBB and NBO of each security for that day and dividing that number by two:

Trading days	NBB	NBO	Calculation of “Average Daily NBBO Quoting Percentage” for SLP No. 1	“Average Daily NBBO Quoting Percentage”
<b>Security A</b>				
T1 .....	4%	6%	4% + 6% = 10% divided by 2 = 5% .....	5%
T2 .....	3%	5%	3% + 5% = 8% divided by 2 = 4% .....	4%
T3 .....	4%	4%	4% + 4% = 8% divided by 2 = 4% .....	4%
T4 .....	6%	8%	6% + 8% = 14% divided by 2 = 7% .....	7%
T5 .....	5%	5%	5% + 5% = 10% divided by 2 = 5% .....	5%
<b>Security B</b>				
T1 .....	5%	7%	5% + 7% = 12% divided by 2 = 6% .....	6%
T2 .....	4%	6%	4% + 6% = 10% divided by 2 = 5% .....	5%
T3 .....	6%	8%	6% + 8% = 14% divided by 2 = 7% .....	7%
T4 .....	7%	9%	7% + 9% = 16% divided by 2 = 8% .....	8%
T5 .....	9%	9%	9% + 9% = 18% divided by 2 = 9% .....	9%

The “Monthly Average NBBO Quoting Percentage” for each security is then calculated by summing the security’s

“Average Daily NBBO Quoting Percentages” for all five trading days of the calendar month and then dividing

the resulting total by the number of trading days in the calendar month (in this instance 5).

“Average Daily NBBO Quoting Percentage”					Calculation of “Monthly Average NBBO Quoting Percentage” for SLP No. 1	“Monthly Average NBBO Quoting Percentage”
T1	T2	T3	T4	T5		
<b>Security A</b>						
5%	4%	4%	7%	5%	5% + 4% + 4% + 7% + 5% = 25% divided by 5 = 5% .....	5%
<b>Security B</b>						
6%	5%	7%	8%	9%	6% + 5% + 7% + 8% + 9% = 35% divided by 5 = 7% .....	7%

**Financial Rebates for Executed Transactions**

When an SLP posts liquidity, displayed or non-displayed, on the Exchange in its SLP assigned securities and such liquidity is executed against an incoming order, the SLP will receive a financial rebate for that executed transaction provided the SLP has met it rebate quoting requirement averaging at least 3% at the NBB or the NBO in each assigned security pursuant to Section (i)(1)(A) and (B) (“Non-Regulatory Penalties”). An SLP will only receive a rebate when it has met the monthly 3% or better quoting requirement in its assigned securities and the SLP’s posted displayed or non-displayed liquidity results in an execution.

**SLP Rebate Calculation**

The SLP rebate will be \$0.0020 per share priced at or above \$1.00, and

\$0.0005 per share priced below \$1.00, for executions when the SLP provides liquidity.<sup>9</sup> The rebate will be paid for displayed and non-displayed orders provided that the SLP meets the quoting requirement averaging 3% or more at the NBB or NBO in its assigned securities for a given month. If an SLP does not meet the average quoting requirement described above, such SLP will not be entitled to a rebate. As discussed previously, if an SLP does not meet its quoting requirement averaging 5% at the NBB or the NBO for each assigned security for 3 consecutive months, such SLP may be disqualified from SLP status. The Exchange will

<sup>9</sup>The Exchange will file a separate fee filing with the SEC pursuant to the provisions of Section 19b-4 that will outline the SLP rebate program described above. The calculation and amount of the SLP rebate will be published in the NYSE Amex Equities Price List, available on the Exchange’s Web site.

track the volume and quoting requirement of SLPs by their designated SLP mnemonics.

Except for the rebate, all other SLP fees are the same as existing customer fees on the Exchange (see the NYSE Amex Equities Price List on the Exchange Web site).

**SLP Parity With Other Market Participants Pursuant to Rule 72—NYSE Amex Equities**

Exchange systems are responsible for share allocation and create interest files for each market participant. Individual Floor brokers and the DMM registered in a security each constitute single participants. All off-Floor orders entered in Exchange systems at the Exchange BBO together constitute a single participant (“Book Participant”) for the purpose of share allocation. SLP orders will be in the “Book Participant”

category pursuant to Rule 72—NYSE Amex Equities.

#### Market Data and Trading Information Available to the SLP

The universe of trading information and market data available to the SLP will include market data published by the Exchange and all other automated trading centers (as defined in Rule 600 of Regulation NMS), trading information published on the Consolidated Tape and on the NYSE Amex OpenBook<sup>®</sup>.<sup>10</sup> Thus, the SLP will have the same published trading information and market data that all other Exchange customers have available to them.

#### Non-Regulatory Penalties

If an SLP fails to meet the 5% quoting requirement for any assigned security, the SLP may be subject to non-regulatory penalties imposed by the SLP Liaison Committee (*see* Section (i) of the proposed Rule). Such non-regulatory penalties include: (1) Denial of the financial rebate; (2) removal of one or more assigned securities from the SLP; and (3) disqualification. These non-regulatory penalties and the conditions under which such penalties are imposed may be appealed by an SLP as provided in Section (j) (“Appeal of a Non-Regulatory Penalty”) of the proposed Rule and described in more detail below.

#### Penalties for Quoting Less Than 5% in a Given Calendar Month

In a given calendar month, if an SLP maintains a quote at the NBB or NBO averaging 3% of the trading day, but less than the average of 5% of the trading day in any assigned security, the SLP will receive a financial rebate for that calendar month for executed transactions in that particular security as described in Section (b) (“Rebates for Executed Transactions”) of the proposed Rule. Failure to meet the 5% quoting requirement for each assigned security in that month will be counted towards the three-month disqualification period provided in paragraph (i)(C) of the proposed Rule.

In a given calendar month, if an SLP maintains a quote at the NBB or the NBO averaging less than 3% of the regular trading day in an assigned security, the SLP will not receive the financial rebate for that month for

<sup>10</sup> The NYSE Amex OpenBook<sup>®</sup> is provided by the Exchange to vendors and customers in two modes. The first displays the depth of the market refreshed every five seconds. The second displays the depth of the market in real time. NYSE Amex OpenBook<sup>®</sup> discloses limit order interest at the price at the best bid and offer and at prices below the best bid and above the best offer.

transactions executed in that particular assigned security. The failure to meet the 5% quoting requirement for any assigned security in that month will also be counted towards the three-month disqualification period.

If an SLP fails to meet the 5% quoting requirement for three consecutive calendar months in any assigned security, the SLP Liaison Committee may, in its discretion, take the following non-regulatory action:

- (1) Revoke the assignment of the affected security(ies);
- (2) Revoke the assignment of an additional, unaffected security from an SLP; or
- (3) Disqualify a member organization’s status as an SLP.

#### Disqualification Determinations

In the second calendar month that an SLP fails to meet the 5% quoting requirement, the SLP Liaison Committee will notify the SLP in writing that the SLP may be disqualified if it fails to meet the quoting requirement the third consecutive month.<sup>11</sup> If the SLP fails to meet the 5% quoting requirement for a third consecutive month, the SLP may be disqualified from SLP status.

When disqualification determinations are made, the SLP Liaison Committee will provide a disqualification notice to the member organization informing the member organization of its disqualification as an SLP.

If a member organization is disqualified from its status as an SLP pursuant to Section (i)(1)(C)(iii) of the proposed Rule, the member organization may appeal the disqualification pursuant to Section (j) (“Appeal of a Non-Regulatory Penalties”) of the proposed Rule, or re-apply for SLP status in accordance with Section (d)(6) (“Re-application for SLP Status”) of the proposed Rule. However, the re-application process may not begin until three calendar months after the month in which the member organization received its disqualification notice.

#### Appeal of Non-Regulatory Penalties

An SLP may request an appeal of the decision to impose a non-regulatory penalty as provided in Section (j) of the proposed Rule. Upon receiving a request for an appeal, a panel of NYSE Euronext employees referred to as the “SLP Panel” will review the decision to impose non-regulatory penalties. The SLP Panel shall consist of the Exchange’s Chief Regulatory Officer (“CRO”), or a

<sup>11</sup> The SLP Liaison Committee will be responsible for issuing the letter to an SLP that fails to meet its quoting requirement for three consecutive months. It will also be responsible for advising an SLP of its eligibility or ineligibility to become an SLP.

designee of the CRO, and two (2) officers of the Exchange designated by the NYSE Euronext Head of the U.S. Markets Division.

The SLP Panel will review the facts of the subject non-regulatory penalty and render a decision as to the correctness of the decision to impose the penalty. The SLP Panel may overturn or modify an action taken by the SLP Liaison Committee, and all determinations by the SLP Panel will constitute final action by the Exchange on the disputed matter.

#### Regulatory Oversight of SLPs

Member organizations that act as SLPs will be subject to regulatory oversight by the Exchange and FINRA.

#### Proposed amendments to Rule 2A—NYSE Amex Equities

In conjunction with the adoption of Rule 107B—NYSE Amex Equities, the Exchange also proposes to amend Rule 2A(c)—NYSE Amex Equities to accommodate the Exchange’s authority to approve or disapprove the designation of a member or member organization as an SLP.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with, and furthers the objectives of, Section 6(b)(5) of the Act,<sup>12</sup> in that it is 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 change also supports the principles of Section 11A(a)(1)<sup>13</sup> of the Act in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed Rule is consistent with these principles in that it seeks to establish a new class of market participant that will provide additional liquidity to the market and add competition to the existing group of liquidity providers. The Exchange believes that by requiring an SLP to quote at the NBB or the NBO a percentage of the regular trading day in their assigned securities, and by paying an SLP a rebate when its posted interest results in an execution, the Exchange is rewarding aggressive liquidity providers in the market, and

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78k-1(a)(1).

by doing so, the Exchange will encourage the additional utilization of, and interaction with, the NYSE Amex Equities market and provide customers with the premier venue for price discovery, liquidity, competitive quotes and price improvement.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2009-98 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-2009-98. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>17</sup> 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEAmex-2009-98 and should be submitted on or before February 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

### **2010 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment and Announcement of Public Hearing**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for written submissions from the public and announcement of public hearing.

**SUMMARY:** Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242) requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (The provisions of Section 182 are commonly referred to as the "Special 301" provisions of the Trade Act.). The USTR is required to determine which, if any, of these countries should be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301-305 of the Trade Act.

In addition, USTR has created a "Priority Watch List" and "Watch List" to assist the Administration in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs an interagency team that reviews information from many sources, and that consults with and makes recommendations to the USTR on issues arising under Special 301. Written submissions from interested persons are a key source of information for the Special 301 review process. In 2010, USTR through the Special 301

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the 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. The Exchange has satisfied this requirement.

<sup>17</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>18</sup> 17 CFR 200.30-3(a)(12).