

409 3rd Street, SW., Suite 6050,  
Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Maryland, dated 02/19/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Anne Arundel,  
Charles, Talbot, and the  
Independent City of Baltimore.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance  
Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster  
Assistance.*

[FR Doc. 2010-8848 Filed 4-16-10; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12102 and #12103]

### West Virginia Disaster Number WV-00017

**AGENCY:** U.S. Small Business  
Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA-1893-DR), dated 03/29/2010.

*Incident:* Severe Storms, Flooding,  
Mudslides and Landslides.

*Incident Period:* 03/12/2010 through  
04/09/2010.

*Effective Date:* 04/09/2010.

*Physical Loan Application Deadline  
Date:* 05/28/2010.

*Economic Injury (EIDL) Loan  
Application Deadline Date:* 12/29/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of West Virginia, dated 03/29/2010, is hereby amended to establish the incident period for this disaster as beginning 03/12/2010 and continuing through 04/09/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance  
Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster  
Assistance.*

[FR Doc. 2010-8845 Filed 4-16-10; 8:45 am]

**BILLING CODE 8025-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61890; File No. SR-  
NYSEAmex-2010-31]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, To Adopt, as a Pilot Program, a New NYSE Amex Equities Rule Series for the Trading of Securities Listed on the Nasdaq Stock Market Pursuant to a Grant of Unlisted Trading Privileges, and Amending Existing NYSE Amex Equities Rules as Needed To Accommodate the Trading of Nasdaq-Listed Securities on the Exchange

April 12, 2010.

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 March 26, 2010, NYSE Amex LLC ("Exchange" or "NYSE Amex") 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 Exchange. Subsequently, on April 6, 2010, NYSE Amex filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) adopt, as a pilot program, a new NYSE Amex Equities Rule Series (Rules 500-525) for the trading of securities listed on the Nasdaq Stock Market ("Nasdaq") pursuant to a grant of unlisted trading privileges and (ii) amend existing NYSE Amex Equities Rules as needed to accommodate the trading of Nasdaq-listed securities on the Exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

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

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to (i) adopt, as a pilot program, a new NYSE Amex Equities Rule Series (Rules 500-525) for the trading of Nasdaq-listed securities pursuant to a grant of unlisted trading privileges and (ii) amend existing NYSE Amex Equities Rules as needed to accommodate the trading of Nasdaq-listed securities on the Exchange.

###### Overview

As described in greater detail below, the Exchange proposes to adopt, as a pilot program, a new NYSE Amex Equities Rule Series to specifically govern the trading of any security listed on the Nasdaq that (i) is designated as an "eligible security" under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended ("UTP Plan"),<sup>3</sup> and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Act,<sup>4</sup> (collectively, "Nasdaq Securities").<sup>5</sup> The Exchange

<sup>3</sup> See Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (notice of filing and immediate effectiveness of Amendment No. 20 to the UTP Plan). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 2091 (April 27, 2007) (S7-24-89). In March 2009, the Exchange changed its name to NYSE Amex LLC. See Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24). See also proposed Rule 501—NYSE Amex Equities.

<sup>4</sup> 15 U.S.C. 78l.

<sup>5</sup> As proposed, Nasdaq Securities shall be included within the definition of "security" as that term is defined in Rule 3—NYSE Amex Equities

also proposes to amend existing NYSE Amex Equities Rules as needed to accommodate the trading of Nasdaq Securities on the Exchange. The Exchange proposes that this pilot program commence on the date the proposed Rules are approved by the Commission<sup>6</sup> and that it continue until the earlier of the Commission's approval to make such pilot program permanent or September 30, 2010.<sup>7</sup>

In summary, the Exchange proposes to trade Nasdaq Securities on the same systems and facilities it uses to trade its listed securities in accordance with the same trading rules, subject to several key differences:

- There will not be an opening or closing auction for Nasdaq Securities traded on the Exchange. Trading in Nasdaq Securities will open on a quote at 9:30 a.m. and will close at 4 p.m., or immediately thereafter under certain circumstances, using the last sale on the Exchange as the Closing Price (defined below).

- "Good 'til Canceled" ("GTC") Orders and "Stop" Orders for Nasdaq Securities will be modified to provide that any GTC or Stop Orders that are unexecuted at the close of trading will be treated as Day Orders and canceled. In addition, the Exchange will not accept limit or market "At the Close" ("MOC/LOC"), "At the Opening" ("OPG"), "Closing Offset" ("CO") or "Good 'til Cross" ("GTX") Orders for the trading of Nasdaq Securities. All other order types will be accepted.

- Each Nasdaq Security will be assigned one Designated Market Maker ("DMM") Unit, though the allocation process will be streamlined to follow the approach used by the Exchange for Supplemental Liquidity Providers ("SLPs") (*see* Rule 107B—NYSE Amex Equities).<sup>8</sup>

and as used in the NYSE Amex Equities Rules. In accordance with this definition, Nasdaq Securities shall be admitted to dealings on the Exchange on an "issued", "when issued", or "when distributed" basis. *See* proposed Rule 501—NYSE Amex Equities.

<sup>6</sup> This sentence was revised per the e-mail from Jason Harmon, Consultant, NYSE Regulation, Inc., to Christopher Chow, Special Counsel, Commission ("April 9 e-mail"), dated April 9, 2010.

<sup>7</sup> *See* proposed Rule 500—NYSE Amex Equities. This is the same date that New York Stock Exchange LLC's ("NYSE") New Market Model pilot program expires. Because several elements of the Exchange's proposal to trade Nasdaq Securities rely on the NYSE's New Market Model ("NMM"), the Exchange proposes to extend the duration of this pilot program as needed to track the NYSE's NMM pilot program and would file for permanent approval at the same time or after the NYSE files for permanent approval of the NMM.

<sup>8</sup> The Exchange recently adopted Rule 107B—NYSE Amex Equities (Supplemental Liquidity Provider) to establish a new class of NYSE Amex Equities market participants. *See* Securities

- For those Nasdaq Securities in which they are registered, DMM Units will be responsible for the affirmative obligation of maintaining a fair and orderly market in accordance with Exchange rules, subject to an enhanced quoting requirement and a phased-in implementation of Depth Guidelines to enable the Exchange to collect trading data adequate to calculate such guidelines.

- Nasdaq Securities will trade using different Liquidity Replenishment Point ("LRP") parameters.

- Trading in Nasdaq Securities will be subject to rules that are substantially similar to FINRA's "Manning Rule", rather than Rule 92—NYSE Amex Equities.

- The Exchange's audit trail rules, including Rules 123— and 132B—NYSE Amex Equities, will apply to the trading of Nasdaq Securities on the Exchange, except that, those members and member organizations that are also FINRA members and subject to FINRA's Rule 7400 Series ("Order Audit Trail System" or "OATS") will be exempt from Rules 123— and 132B—NYSE Amex Equities.

NYSE Amex will trade Nasdaq-listed equities and any other Nasdaq-listed security that trades like an equity security (e.g., rights, warrants), and will also trade the Invesco PowerShares QQQ™ Exchange Traded Fund.<sup>9</sup>

The Exchange intends to commence implementation of the trading of Nasdaq Securities using a phased-in approach and to expand the program to eventually include all Nasdaq Securities.

#### Proposed NYSE Amex Equities Rule 500 Series<sup>10</sup>

The Exchange proposes to adopt a new series of NYSE Amex Equities Rules (Rules 500 to 525) to specifically govern the trading of Nasdaq Securities on the Exchange.

#### 1. Proposed Rule 500—NYSE Amex Equities (Applicability)

The Exchange will trade Nasdaq Securities as it currently trades its listed

securities, subject to some distinctions. Thus, the Exchange proposes to adopt Rule 500—NYSE Amex Equities to provide that the trading of Nasdaq Securities on the Exchange shall be governed by the Rule 500 Series and all other NYSE Amex Equities Rules, except to the extent they conflict with the Rule 500 Series, in which case the Rule 500 series will control. In addition, proposed Rule 500 provides that the Exchange's Disciplinary Rules 475, 476, 476A and 477 will also apply to the trading of Nasdaq Securities on the Exchange.

#### 2. Proposed Rule 501—NYSE Amex Equities (Definitions)

Although Nasdaq Securities will trade primarily in accord with existing NYSE Amex Equities Rules, the Exchange proposes to adopt Rule 501—NYSE Amex Equities to define key terms for the trading of Nasdaq Securities on the Exchange. All other terms will have the meanings assigned to them in other NYSE Amex Equities Rules. The definitions are discussed in greater detail in this filing where relevant.

#### 3. Proposed Rule 502—NYSE Amex Equities (Hours of Business)

Pursuant to proposed Rule 502—NYSE Amex Equities, the Exchange proposes to trade Nasdaq Securities during regular trading hours in accordance with Rule 51—NYSE Amex Equities. Regular trading hours are usually from 9:30 a.m. to 4 p.m., or during such other hours as may be specified by Exchange rules or as otherwise determined by the Board of Directors of the Exchange. The Exchange also proposes to permit Nasdaq Securities to trade in the Exchange's "Off-Hours Trading Facility" under Rules 900—907—NYSE Amex Equities.<sup>11</sup> As described more fully below, however, due to modifications to the opening and closing for Nasdaq Securities, members and member organizations will not be permitted to make any bid, offer or transaction for Nasdaq Securities on Exchange systems, or route an order for a Nasdaq Security to another market center from Exchange systems, before 9:30 a.m. or after the

Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR—NYSEAmex—2009—98).

<sup>9</sup> Although the Exchange may in the future seek to trade other Nasdaq Securities that are exchange traded funds or similar products as part of its pilot program, the Exchange's initial proposal is to limit the term "Exchange Traded Fund" to mean only the Invesco PowerShares QQQ™. *See* proposed Rule 501—NYSE Amex Equities. For the purposes of trading Nasdaq Securities all references to an "Exchange Traded Fund" or "ETF" in the NYSE Amex Equities Rules shall refer to the definition contained in proposed Rule 501—NYSE Amex Equities.

<sup>10</sup> As proposed, the NYSE Amex Equities Rule 500 Series is consecutively numbered from 500 to 525. However, some rules are expressly reserved and are not referenced in the filing herein.

<sup>11</sup> Currently, in accordance with NYSE Rule 1500, members and member organizations of NYSE (which includes substantially all NYSE Amex Equities members and member organizations) are also permitted to enter orders for Nasdaq-listed securities on a UTP basis into the NYSE MatchPoint facility ("NYSE MatchPoint"), which has an After-Hours matching session at 4:45 p.m. However, NYSE MatchPoint is not a system or facility of the Exchange, and thus the proposed NYSE Amex Equities Rule 500 Series, and Rule 502—NYSE Amex Equities in particular, would not apply to trading of Nasdaq-listed securities conducted on NYSE MatchPoint.

close of the Off-Hours Trading session (e.g. Crossing Session II).

#### 4. Proposed Rule 504—NYSE Amex Equities (Nasdaq Security Assignment)

As described in this filing, the Exchange proposes to trade Nasdaq Securities within the existing DMM and SLP framework used to trade its listed securities. The Exchange will create a “Nasdaq Securities Liaison Committee”, consisting of NYSE Euronext employees of the Operations and U.S. Markets Divisions (a representative of NYSE Regulation Inc. (“NYSER”) would act as an ad hoc member of the Committee as needed), that will be responsible for reviewing and admitting Nasdaq Securities for trading on the Exchange. At the time Nasdaq Securities are admitted to dealings on the Exchange, the Nasdaq Securities Liaison Committee will assign each such security to a registered and qualified DMM Unit and registered and qualified SLPs in accordance with procedures substantially similar to the Exchange’s current SLP procedures in Rule 107B—NYSE Amex Equities. *See* proposed Rule 501—NYSE Amex Equities. The Nasdaq Securities Liaison Committee may also, in its discretion, reassign one or more Nasdaq Securities to a different DMM Unit or to a different SLP or SLPs.

##### a. Assignment to DMM Units

Existing NYSE Amex Equities DMM Units will be automatically eligible for the assignment of Nasdaq Securities, so long as they qualify in accordance with Rules 98— and 103B(II)—NYSE Amex Equities, and proposed Rule 504(b)—NYSE Amex Equities.<sup>12</sup> For the purposes of trading Nasdaq Securities, the Exchange proposes to amend the quoting requirements under Rule 103B(II)—NYSE Amex Equities such that a DMM Unit shall be required to maintain a quote at the National Best Bid or Offer in each assigned Nasdaq Security an average of at least 10% of the time, or more, during the regular business hours of the Exchange for each calendar month. This quoting requirement is also part of a DMM Unit’s affirmative obligations under proposed Rule 509—NYSE Amex Equities.

The Exchange’s Nasdaq Securities Liaison Committee will assign Nasdaq Securities to DMM Units for trading on the Exchange. No more than one DMM Unit will be assigned to any Nasdaq Security and a member organization

will not be permitted to be registered as both the DMM Unit and an SLP for the same Nasdaq Security.

##### b. Assignment of the Invesco PowerShares QQQ™

The Exchange intends to trade the Invesco PowerShares QQQ™ Exchange Traded Fund (the “QQQs”) and has proposed a set of special requirements governing the assignment of the QQQs and its component securities.<sup>13</sup>

Under proposed Rule 504—NYSE Amex Equities, a DMM Unit may be registered in both the QQQs as well as a component security or securities of the QQQs provided that, at the time of assignment, (i) no single component in which the DMM Unit is registered exceeds 10% of the index or portfolio underlying the QQQs, and (ii) all components in which the DMM Unit is registered do not in the aggregate exceed 20% of the index or portfolio underlying the QQQs. Subsequently, if during any given month a single component security or group of securities in which the DMM Unit is registered exceeds these concentration measures on an average basis, the Nasdaq Liaison Committee will reassign either the QQQs or the component security or securities to another DMM Unit as needed to achieve compliance with the concentration measures.

The Exchange will calculate and monitor the components and percentage of the QQQs on a monthly basis in accordance with the proposed concentration measures and report these calculations to the Nasdaq Liaison Committee. In addition, under proposed Rule 504—NYSE Amex Equities the DMM Unit registered in the QQQs will have an independent obligation to calculate, monitor and report to the Exchange on a monthly basis the component security or securities in which it is registered, the average percentage of the underlying index or portfolio of each individual component during the month, and the total average aggregate percentage of the underlying index or portfolio of all components during the month. If these levels are exceeded the DMM Unit will be required to report this to the Exchange as soon as possible.

The Exchange recognizes that integrated market-making and side-by-side trading in related securities have sometimes raised concerns about manipulation or improper coordination of trading between the related securities. As explained more fully below, the

Exchange believes, however, that the structures proposed for assigning and trading the QQQs and a subset of its component securities within a single DMM Unit will reduce or substantially eliminate those concerns, and are therefore consistent with the requirements of the Act and Commission policy.

The Commission has extensively addressed the issue of integrated market making and side-by-side trading in the context of trading index ETFs and related options. In that guidance, the Commission has repeatedly stated that one of the touchstones is whether an ETF is “broad-based” and therefore poses a low risk of being susceptible to manipulation.<sup>14</sup> In making this assessment, the Commission has weighed whether the underlying component securities are sufficiently liquid and well-capitalized such that they are not individually susceptible to manipulation, together with whether the composition of the ETF as a whole is such that it is not unduly concentrated in a single security or a small number of securities. When an ETF meets both criteria, and therefore can be considered “broad-based”, the Commission has explicitly permitted integrated market making and side-by-side trading in both the ETF and related options, with no requirement for information barriers or physical or organizational separation. *See, e.g.*, CBOE Rule 54.7(d).

The Exchange believes that the logic inherent in permitting integrated market making in broad-based ETFs and related options should also apply to permit integrated market making in a broad-based ETF such as the QQQs and a limited number of its component securities. The Exchange notes at the outset that there do not appear to be rules on other exchanges expressly

<sup>14</sup> *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002) (SR—Amex—2002–21) (order approving integrated market making of broad index-based ETFs and related options). *See also* Securities Exchange Act Release Nos. 56633 (October 9, 2007), 72 FR 58696 (October 16, 2007) (SR—ISE—2007–60) (order approving generic listing standards for ETFs based on both U.S. and international indices, noting they are “sufficiently broad-based in scope to minimize potential manipulation.”); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR—NYSEArca—2006–86) (same); 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR—Amex—2006–78) (same); 57365 (February 21, 2008), 73 FR 10839 (February 28, 2008) (SR—CBOE—2007–109) (order approving generic listing standards for ETFs based on international indices, noting they are “sufficiently broad-based in scope to minimize potential manipulation.”); 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR—Phlx—2007–20) (same); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR—NYSE—2006–101) (same); and 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR—Nasdaq—2006–50) (same). The QQQs meet these criteria.

<sup>12</sup> The Exchange proposes to amend Rule 98(b)(2) (definition of “DMM unit”) and (b)(15) (definition of “Related products”)—NYSE Amex Equities to accommodate the trading of Nasdaq Securities on the Exchange.

<sup>13</sup> *See* proposed Rule 501(b)—NYSE Amex Equities, which defines “Exchange Traded Fund” as “the Invesco PowerShares QQQ™.”

addressing the latter type of integrated market making, nor has the Exchange identified guidance from the Commission specifically addressing the subject. Nevertheless, the Exchange believes that the extant Commission guidance on integrated market-making and side-by-side trading in broad-based ETFs and related options is highly relevant and informative to the current proposal, and is consistent with the Exchange's proposal.

Among other things, the Exchange's current proposal is limited to a single broad-based ETF, the QQQs, which meets the composition and concentration measures previously approved by the Commission (*see* footnote 14 herein) to be classified as a broad-based ETF, with minimal, if any, potential to be manipulated.

Because the potential for manipulation of the QQQs is so minimal, the risk presented by limited integrated market making is also extremely low. In this regard, the Exchange notes that the QQQs is one of the most actively traded securities in the world. It is based on a group of highly liquid securities (the top 100 Nasdaq-listed securities, ex-financial stocks); with the exception of Apple, no component represents more than 10% of the index; the ETF is itself very liquid (with 3-month average volume in excess of 90 million shares per day); and it is actively traded in multiple markets around the world.

Given all of this, the Exchange believes that it would be inherently ineffective to attempt to either manipulate the price of a component or front-run pending nonpublic trading activity in a component in order to effect an advantageous trade in the QQQs. First, because of the inherent leverage of the QQQs compared to its components, such a manipulation of a component would require a disproportionately large amount of capital in order to be able to both impact the price of the QQQs and simultaneously override potential concurrent and counter-cyclical price movements in the other 99 components. The amount of capital required to successfully accomplish such a manipulation would seemingly be larger than the potential profit potential. Similarly, the potential for successful front-running would require that the impact of the pending component trading activity not be neutralized by price changes in the other components. For the same reasons, it would be difficult to effectively front-run information about a component security by trading in the QQQs. However, as noted above, in order to mitigate against

the theoretical possibility of successful manipulation or front-running, the Exchange would only permit the QQQs DMM to also be the DMM in a limited number of component stocks. *See* proposed Rule 504—NYSE Amex Equities.

The existence of a manual market on the Trading Floor does not materially alter this fundamental risk calculus. First, there will be few, if any, circumstances in which a DMM in a Nasdaq Security will be in possession of material nonpublic order information (*i.e.*, a pending block transaction) that could be used improperly. These situations are typically limited to circumstances when the market is slow because of a pending manual trade and/or when a Floor broker communicates that he or she is seeking to execute a block sized order. In listed securities today, a substantial percentage of manual trades occur in connection with the opening and closing auction or when a liquidity replenishment point ("LRP") has been reached. However, there will not be an opening or closing auction in Nasdaq Securities and the LRPs will be substantially widened. Thus the number of manual trades is anticipated to be negligible. And, even when a manual transaction in a component security does occur intraday (*e.g.*, in response to an LRP or publication of a gap quote), it is highly unlikely that a DMM Unit could profitably use this information to effect an advantageous trade in the QQQs for the reasons described above.

Second, the Exchange will not be the listing market in Nasdaq Securities and is expected to have limited market share given the fragmentation of trading in Nasdaq-listed securities in the U.S. equities markets. Thus any trading that occurs on the Exchange will generally equalize to trading on other markets, with limited, if any, ability for the DMM to materially impact the price of a component. In view of the depth and liquidity of the Nasdaq-100 component securities, the Exchange does not believe that a block transaction in a component security of the QQQs would necessarily impact the price of the component security on a consolidated basis for a meaningful period of time. More importantly, the Exchange does not believe that a block transaction on the Exchange in a component security would predictably impact the price of the QQQs for enough time, if at all, to alter the risk-reward calculus and incentivize front-running the component block transaction by trading in the QQQs. Given the high-speed pace of electronic trading generally, the breadth of markets where the QQQs is

traded, and the average daily trade volume, the Exchange believes it to be highly unlikely that an individual standing on the Trading Floor could enter a timely trade in response to knowledge of a pending block trade in one of the component securities. For the same reasons, it would also be inherently unprofitable for a DMM to attempt to manipulate a component in order to effect an advantageous trade in the QQQs.

In view of these concerns, however, even if unlikely, as described above the Exchange proposes to adopt concentration requirements for trading the QQQs to limit the level of nonpublic information regarding the component securities available to the assigned QQQs DMM Unit. Together with the market structure considerations outlined above which mitigate against possible manipulation and front-running, the Exchange believes that this additional restriction will provide a "belt-and-suspenders" level of protection.

The Exchange also believes that any potential concerns over "wash sales" or inadvertent internal proprietary crosses by the DMM Unit are sufficiently addressed. First, Exchange DMM algorithmic trading systems (commonly known as the "SAPI") prevent DMM Unit trading interest from executing against its own quotes or other trading interest on the Exchange (*i.e.* an "internal cross") and virtually all DMM Unit trading interest is entered via the SAPI. While a DMM Unit could, theoretically, enter a proprietary order in one of its assigned securities other than through the SAPI, which would not be subject to the systemic internal cross block, that possibility is remote since the DMM Unit would incur higher fees for such an order and less advantageous parity treatment in connection with any execution of such order. Even so, DMM Units are required to have policies and procedures in place reasonably designed to prevent violations of Exchange rules and the federal securities laws, including NYSE Amex Disciplinary Rule 476(a)(8), which prohibits "giving an order for the purchase or sale of securities the execution of which would involve no change of beneficial ownership or executing such an order with knowledge of its character", as well as violations of the "wash sale" prohibition of Section 9 of the Act. These policies and procedures, including those governing a firm's risk management trading policies

and systems, are subject to review and approval by the Exchange.<sup>15</sup>

In addition, because any firm assigned as the DMM Unit for the QQQs will have, as part of its broader risk management capability, a unique ability to view and assess its trading activity across any and all markets in which it trades the QQQs and any components in which it is registered on the Exchange,<sup>16</sup> in accordance with Rule 342—NYSE Amex Equities the Exchange will require the QQQs DMM to implement adequate policies and procedures to detect and deter the inappropriate access to information about pending block trades in a component security, potential front-running and/or manipulation based on such information, intentional wash sales, or any other violations of Section 9 of the Act. The DMM's policies and procedures would also be required to provide that the DMM firm will conduct surveillance to identify patterns of trading that are indicative of possible front-running of block trades, manipulation and/or intentional wash sales, and to take appropriate steps to investigate and report such trading to the Exchange. As with all DMM Units, the firm will be subject to periodic and, if warranted, special examinations by FINRA.

As a result, the Exchange believes that the requirements governing the assignment of Nasdaq Securities in proposed Rule 504—NYSE Amex Equities are sufficient to address any market concerns. The Exchange also agrees to review proposed Rule 504—NYSE Amex Equities and the provisions governing the allocation of the QQQs and its component securities in the event that the Exchange's share of the market for the Nasdaq Securities it trades exceeds 10% of the consolidated Tape C aggregate average daily trading volume for these securities.

#### c. Integration of NYSE Amex Listed Securities and Nasdaq Securities at Posts on the Trading Floor

The Exchange anticipates that some DMM Units currently registered on the NYSE will seek to register as DMM Units on the Exchange in order to trade Nasdaq Securities. Under Exchange Rules, all current NYSE members and member organizations are deemed

members and member organizations of the Exchange and DMM Units are automatically granted an NYSE Amex Equities trading license. *See* Rules 2.10— and 2.20—NYSE Amex Equities. Those NYSE DMM Units that wish to trade Nasdaq Securities and that are not already registered as DMM Units on the Exchange will need to register as such with the Exchange to ensure proper tracking and systems configuration. Similarly, individual DMMs will need to register with the Exchange to confirm that they meet all applicable registration requirements and to ensure proper tracking and systems set-up, including ID Track requirements. In addition, NYSE DMM Units seeking to register as a DMM Unit on the Exchange will also need to advise FINRA in order to enable FINRA to assess whether such registration triggers different and/or additional financial and operational requirements, including but not limited to those pertaining to net capital.

As described more fully in the section proposing to amend Rule 103B—NYSE Amex Equities, *infra*, a DMM Unit that is registered to trade both NYSE and Exchange-listed securities, as well as Nasdaq Securities, could trade all these securities at the same post. However, such member organizations will be required to commit sufficient staff for the trading of NYSE-listed securities separate from that for the trading of Exchange-listed securities and/or Nasdaq Securities at the same post on the Trading Floor: individual DMMs and support staff will not be permitted to trade both NYSE-listed and NYSE Amex-listed securities and/or Nasdaq Securities at the same time. Intraday moves of individual DMMs and support staff between panels will be permitted, although DMMs and staffers will not be permitted to be simultaneously logged-into both an NYSE panel and an Exchange panel.

Finally, in conjunction with Rule 103B(IX), proposed Rule 504(d)—NYSE Amex Equities will require that Nasdaq Securities be allocated for trading only at panels exclusively designated for trading listed and/or Nasdaq Securities on the Exchange (*see infra*).

#### d. Assignment to SLPs

NYSE Amex Equities members and member organizations may apply to be SLPs in Nasdaq Securities and will be eligible for the assignment of Nasdaq Securities once they register and qualify as SLPs in accordance with Rule 107B—NYSE Amex Equities. As with NYSE registered DMMs and DMM Units, NYSE registered SLPs are automatically deemed member organizations of NYSE Amex Equities under Rule 2.10—NYSE

Amex Equities. NYSE registered SLPs that wish to trade Nasdaq Securities as SLPs will need to register with and be approved by the Exchange as SLPs in accordance with all applicable NYSE Amex Equities Rules.

The Nasdaq Securities Liaison Committee will assign one or more SLPs to Nasdaq Securities for trading on the Exchange. A member organization cannot be both the DMM Unit and an SLP for the same Nasdaq Security. Because SLPs do not have a presence on the Trading Floor and do not have access to the information there, however, the Exchange does not propose the same limitations on the assignment of ETFs and component securities to SLPs as it does for DMM Units.

Finally, in the event an SLP withdraws from its status as an SLP, Nasdaq Securities will be reassigned to a different SLP(s) in accordance with Rule 107B—NYSE Amex Equities.

#### 5. Proposed Rule 506—NYSE Amex Equities (Units of Trading; Bids and Offers; Dissemination of Quotations; Priority)

Nasdaq Securities will be traded almost exactly as the Exchange's listed securities. Proposed Rule 506—NYSE Amex Equities prescribes the basic unit of trading for Nasdaq Securities, and addresses some requirements for bids and offers, the dissemination of quotations, and priority and parity of executions of Nasdaq Securities.

The Exchange will accept and process bids and offers in Nasdaq Securities according to the same rules for its listed securities. In accordance with Rules 55— and 56—NYSE Amex Equities, the unit of trading in Nasdaq Securities is 100 shares, rights or warrants, or such lesser number as may be determined by the UTP Listing Market or the Exchange. Odd-lot bids or offers will be processed and executed by means of the Exchange's odd-lot order system pursuant to Rule 124—NYSE Amex Equities. The round-lot and odd-lot portions of partial round-lot orders will be processed and executed in accordance with Rule 124—NYSE Amex Equities.

Bids and offers in Nasdaq Securities admitted to dealings on the Exchange on an "issued" basis shall be made "regular way" in accordance with Rules 64—, 65— and 66—NYSE Amex Equities and, for Nasdaq Securities admitted on a "when-issued" or "when-distributed" basis, bids and offers shall only be made "when-issued" or "when-distributed" in accordance with Rule 63—NYSE Amex Equities.

<sup>15</sup> The member firm currently anticipated to be assigned as the DMM Unit in the QQQs has represented to the Exchange that the firm's risk management system will reasonably prevent the firm from effecting any internal proprietary crosses in its assigned securities.

<sup>16</sup> Such firm's risk management policies and procedures will have to meet the requirements of Rule 98—NYSE Amex Equities.

As enforced by Exchange systems, bids and offers in Nasdaq Securities shall comply with Rule 19—NYSE Amex Equities concerning locking or crossing protected quotations in Regulation NMS stocks and the Exchange shall disseminate quotes in accordance with Rule 60—NYSE Amex Equities. Also, the minimum price variations prescribed in Rule 62—NYSE Amex Equities shall apply to all bids and offers in Nasdaq Securities.

Orders for Nasdaq Securities shall be executed in price and time priority and parity in accordance with all applicable NYSE Amex Equities Rules, including Rule 72—NYSE Amex Equities.

The Exchange will display on the Trading Floor quotes and executions for Nasdaq Securities on both the Exchange as well as from other market centers in accordance with the UTP Plan (“Tape C”). Such display will include the appropriate identifier indicating the SRO or exchange reporting the execution to the Tape. Corporate action data for Nasdaq Securities will be incorporated by the Exchange on a daily basis after the close of regular trading and any adjustments to share price will be made at that time.

#### 6. Proposed Rule 508—NYSE Amex Equities (Openings and Closings)

Pursuant to proposed Rule 508—NYSE Amex Equities, the Exchange proposes to conduct openings and closings for Nasdaq Securities differently than for listed securities. As described more fully below, the Exchange will not conduct an opening or closing auction in Nasdaq Securities and will instead open trading on a quote at 9:30 a.m. and close on the last sale price on the Exchange at 4 p.m.

##### a. Openings

Under proposed Rule 508(a), trading in Nasdaq Securities will not open based on an opening auction but will instead open at 9:30 a.m. or as soon thereafter as possible, or at such other time as may be specified by the Exchange, based on a quote published by the DMM Unit assigned to each particular security. Orders for Nasdaq Securities shall not be accepted by the Exchange and will be systemically blocked before trading opens on any business day.

The DMM Unit will be responsible for opening trading in its assigned Nasdaq Securities by publishing an opening quote at 9:30 a.m. or as soon thereafter as possible. Because Nasdaq Securities will open on a quote, DMM Units will not be permitted or required to provide pre-opening or opening indications as prescribed by Rules 15— and 123D—

NYSE Amex Equities. In addition, because the Exchange will not conduct an opening auction for Nasdaq Securities, DMM Units will not be permitted or required to hold or represent orders for Nasdaq Securities pursuant to Rule 115A.20—NYSE Amex Equities.

##### b. Closings

Under Rule 508(b), trading in Nasdaq Securities will not close based on a closing auction but will instead close at the end of the regular trading session at 4 p.m., or at such other time as may be specified by the Exchange. Except for “aggregate-price orders”,<sup>17</sup> or “closing-price orders” entered to offset an error, entered in the “Off-Hours Trading Facility” in accordance with proposed Rule 511—NYSE Amex Equities, orders for Nasdaq Securities will not be accepted by the Exchange after the regular trading session on any business day.<sup>18</sup>

The “Closing Price” will be set at the price of the last sale in a Nasdaq Security on the Exchange at or prior to the close of regular trading at 4 p.m. (see Rules 502— and 508—NYSE Amex Equities).<sup>19</sup> Orders for Nasdaq Securities that are unexecuted at the close of trading at 4 p.m. shall be cancelled.

If, at or just prior to the close of trading at 4 p.m., the market for a particular Nasdaq Security is manual or “slow” (for example, because a gap quote has been published or a Liquidity Replenishment Point has been reached), there will be a single trade at or immediately after the close that will set the Closing Price. In such circumstances, the DMM will pair off liquidity to the extent available and then execute the final trade. All residual marketable interest for that security received prior to the close of trading shall first be executed at the Closing Price and then all unexecuted interest for the security shall be cancelled.

When the market for a Nasdaq Security is slow at the close of trading, the DMM Unit must execute the final trade in the security in a manner consistent with a fair and orderly market, with reference to the trading characteristics of the stock at issue, including its price, average daily trading volume (“ADTV”), average volatility, the prior sale of the security on the

<sup>17</sup> The Exchange is proposing to amend the definition of “aggregate-price order” under Rule 900—NYSE Amex Equities in order to accommodate trading Nasdaq Securities in the Off-Hours Trading Facility.

<sup>18</sup> These terms are defined under Rule 900—NYSE Amex Equities.

<sup>19</sup> See also proposed Rule 501—NYSE Amex Equities.

Exchange and the closing price on the UTP Listing Market. To ensure this, Floor Governor approval is required to close a Nasdaq Security that is “slow.”

In the event of an extreme order imbalance at or near the close of the regular trading session that could result in Closing Price dislocation, the procedures of Rule 123C(9)—NYSE Amex Equities, which permit the Exchange to temporarily suspend the hours of operation for the solicitation and entry of orders into Exchange systems, shall apply. However, because the Exchange will not conduct a closing auction in Nasdaq Securities, no other procedures of Rule 123C—NYSE Amex Equities shall apply to trading in Nasdaq Securities.

The proposed modifications to the opening and closing of the trading of Nasdaq Securities require corresponding modifications to the “GTC” and “Stop” order types. Specifically, GTC Orders and unelected Stop Orders for Nasdaq Securities that are not fully executed at the close of the regular trading session shall be treated as Day Orders and shall be cancelled; they will not remain on the Exchange’s systems overnight. In addition, because the Exchange will not conduct either an opening or closing auction in Nasdaq Securities, the Exchange will not accept MOC/LOC, OPG, CO or GTX Orders for Nasdaq Securities. All other order types noted in Rule 13—NYSE Amex Equities will be permitted for the trading of Nasdaq Securities.<sup>20</sup>

#### 7. Proposed NYSE Amex Equities Rule 509 (Dealings of DMM Units and SLPs)

As noted above, the Exchange proposes to trade Nasdaq Securities using the same DMM/SLP framework as currently used for its listed securities.

##### a. DMM Units

DMM Units registered to trade Nasdaq Securities on the Exchange will be required to fulfill their responsibilities and duties for those securities in accordance with all applicable NYSE Amex Equities Rules and requirements (“DMM rules”),<sup>21</sup> subject to two modifications.

Under Rule 104—NYSE Amex Equities, for those Exchange-listed securities in which they are registered, DMM Units are required to use their capital to meet the obligation of maintaining a fair and orderly market to the extent reasonably practicable. This requirement, in turn, may be broken down into certain components, which

<sup>20</sup> See proposed Rule 501—NYSE Amex Equities.

<sup>21</sup> The term “DMM rules” is defined under Rule 98—NYSE Amex Equities.

include quoting at the National Best Bid or National Best Offer for a certain percentage of time, supplying liquidity as needed, managing and/or facilitating manual or other transactions at specified times, minimizing and stabilizing disparity in supply and demand as needed, and maintaining price continuity and depth within specified guidelines. None of these individual requirements is dispositive and they must all be viewed together when evaluating the broader obligation to maintain a fair and orderly market.<sup>22</sup>

In return for those obligations and restrictions, DMM Units are entitled to trade on parity with Floor brokers and off-Floor orders in their registered securities, are the sole market maker on the Exchange in those securities, and receive financial incentives for providing liquidity and executing odd-lot orders. DMM Units also have the ability to set a Capital Commitment Schedule ("CCS"), which allows them to indicate to Exchange systems where they are willing to add additional liquidity to the market; if these pre-determined parameters are met, the system automatically includes the additional CCS interest.<sup>23</sup>

For Nasdaq Securities, DMM Units will, insofar as reasonably practicable, continue to be responsible for engaging in a course of dealings for their own account and assisting in the maintenance of a fair and orderly market for those securities in which they are registered in accordance with Rule 104—NYSE Amex Equities. There are two modifications, however.

First, in lieu of the tiered quoting requirement (5% and 10%) currently in place for listed securities under Rule 104(a)(1)(A)—NYSE Amex Equities, proposed Rule 509(a)(1) requires a DMM Unit to maintain a quote at the National Best Bid or Offer ("inside") in each assigned Nasdaq Security an average of at least 10% of the time, or more, during the regular business hours of the Exchange for each calendar month. As for listed securities, time at the inside will be calculated as the average of the percentage of time the DMM Unit has a bid or offer at the inside, and credit will be given for executions for the liquidity provided by the DMM Unit. Reserve or other hidden orders entered by the

DMM Unit will not be included in the inside quote calculations. Because this quoting requirement will be applied on a stock-by-stock basis, rather than aggregated across all securities that the DMM Unit trades, the Exchange believes it is a more stringent standard than is currently in place for listed securities.

Second, pursuant to Rules 104(f)(ii)—and (iii)—NYSE Amex Equities, DMM Units will continue to be responsible for maintaining price continuity with reasonable depth for their registered Nasdaq Securities in accordance with Depth Guidelines published by the Exchange. However, in order to give the Exchange time to phase-in appropriate Depth Guidelines, these provisions will not be operative until 18 weeks after the approval of the proposed rule changes by the Commission.<sup>24</sup>

As is the case with listed securities, DMM Units will also be responsible for facilitating openings, reopenings and closings for each of the Nasdaq Securities in which they are registered in accordance with applicable NYSE Amex Equities Rules, including the procedures of proposed Rules 508— and 515—NYSE Amex Equities. DMM Units will also be responsible for facilitating trading when the market is "slow" (such as during a gap quote or an LRP)<sup>25</sup> and helping to close Nasdaq Securities that are subject to an imbalance. Other obligations would continue to apply, including providing contra side liquidity as needed for the execution of odd-lot orders for Nasdaq Securities received on the Exchange, meeting stabilization and re-entry requirements, and complying with the net capital requirements under Rules 103.20—, 4110— and 4120—NYSE Amex Equities, as well as the Act.

Because DMMs would retain obligations that other market participants, both on the Exchange and in other markets, do not have, DMM Units would retain the benefits of parity and liquidity incentives, as well as the ability to use CCS, when trading Nasdaq

Securities.<sup>26</sup> In addition, DMMs would continue to be the sole market maker on the Exchange in their registered Nasdaq Securities.

The Exchange believes the enhanced quoting requirement and phased-in Depth Guidelines are appropriate in connection with trading Nasdaq Securities on the Exchange, particularly because the market dynamics for trading Nasdaq Securities will be different from those for the Exchange's listed securities. Although the Exchange will not be the primary market for Nasdaq Securities and its market share is expected to be small, at least initially, the Exchange believes that its DMM/SLP market model will, for some market participants, provide an attractive and competitive alternative for the trading of Nasdaq Securities that does not currently exist.

In addition, other provisions of the NYSE Amex Equities Rules related to DMM responsibilities and obligations would be modified, including the following:

- DMMs will not be required to obtain Floor Official approval prior to engaging as a dealer in transactions for Nasdaq Securities that fall under Rule 79A.20—NYSE Amex Equities.
- Notwithstanding the prescriptions of Rule 36.30—NYSE Amex Equities governing communications to and from the DMM Unit post on the Trading Floor, an individual DMM registered in an ETF may use a telephone connection or order entry terminal at the DMM Unit's post to enter a proprietary order in the ETF in another market center, in a component security of such ETF, or in an options or futures contract related to such ETF, and may use the post telephone to obtain public market information with respect to such ETF, options, futures, or component securities. If the order in the component security of the ETF is to be executed on the Exchange, the order must be entered and executed in compliance with Rule 112—NYSE Amex Equities and SEA Rule 11a2-2(T), and must be entered only for the purpose of creating a bona fide hedge for a position in the ETF. The Exchange is proposing to add this provision in order to permit DMM Units registered in an ETF to execute more efficiently hedging transactions for the security.<sup>27</sup>

<sup>26</sup> The Exchange will submit a separate fee filing detailing the rebate structure for trading Nasdaq Securities at a later date.

<sup>27</sup> This provision is modeled on a provision in NYSE Rule 36.30, approved by the Commission. See Securities Exchange Act Release No. 44616 (July 30, 2001), 66 FR 40761 (August 3, 2001) (SR-NYSE-2001-08) (order approving amendments to NYSE Rule 36.30).

<sup>22</sup> See Rules 72— and 104—NYSE Amex Equities. For a more detailed discussion of DMM obligations, see Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

<sup>23</sup> See Rules 72—, 104(d)— and 1000—NYSE Amex Equities concerning parity and CCS. For information on the rebate structure, see the Exchange's price list, available on the Exchange Web site at <http://www.nyse.com>.

<sup>24</sup> A phased-in approach is necessary so that appropriate Depth Guidelines may be calculated based on actual trading data of Nasdaq Securities on the Exchange. Accordingly, following implementation and roll-out of the pilot program, the Exchange proposes to collect 60 trading days of trade data and would then implement Depth Guidelines for trading Nasdaq Securities on NYSE Amex within 30 calendar days of the collection of the trade data. The eighteen week phase-in period contemplates a two-week period to roll-out the pilot program.

<sup>25</sup> For clarification, a DMM Unit facilitates trading in slow markets by either conducting an auction or trading out of the slow market in order to resume a "fast" (i.e. quote protected) market. It does not mean, however, that a DMM Unit must participate on the contra-side of the market when it is slow.

## b. SLPs

SLPs registered in one or more Nasdaq Securities must fulfill their responsibilities and duties for those securities in accordance with all applicable NYSE Amex Equities Rules and requirements, including, but not limited to, the requirements of Rule 107B—NYSE Amex Equities, and the SLP quoting requirements for Nasdaq Securities shall be the same as for securities listed on the Exchange.

## 8. Proposed NYSE Amex Equities Rule 510 (Derivative Securities Products)

The Exchange also proposes some specific additional provisions that will apply to the trading of Exchange Traded Funds that are “new derivative securities products,” as defined in Rule 19b-4(e) under the Act and traded pursuant to Rule 19b-4(e) thereunder.<sup>28</sup>

For each such ETF, the Exchange will file a Form 19b-4(e) with the Commission. In addition, the Exchange will distribute an information circular prior to the commencement of trading in each such product that generally includes the same information as contained in the information circular provided by the UTP Listing Market for the product, including: (a) The special risks of trading the new product; (b) the Exchange Rules that will apply to the new product, including Rule 405—NYSE Amex Equities; (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the risks of trading outside of the regular trading session for the product due to the lack of calculation or dissemination of the value of the underlying assets or index, the intra-day indicative value or a similar value.

Members and member organizations that trade these ETFs will be subject to the prospectus delivery requirements of the Securities Act of 1933, unless the product is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 or the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. As a result, members and member organizations will be required to provide all

purchasers of such an ETF with a written description of the terms and characteristics of the product at the time confirmation of the first transaction in the product is delivered to the purchaser. In addition, members and member organizations will be required to include a written description with any sales material relating to the product that they provide to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to the ETF as an investment vehicle must include a statement that such materials are available.

Members or member organizations carrying omnibus accounts for non-members will be required to inform non-members that execution of an order to purchase an ETF for the omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this Rule. Upon request of a customer, a member or member organization shall also provide a prospectus for the particular product.

In order to accommodate the trading of ETFs that qualify under this Rule, the Exchange is also proposing additional requirements for trading halts. If a temporary interruption occurs in the calculation or wide dissemination of the intraday indicative value, the value of the underlying index, portfolio or instrument, or similar value of a product and the UTP Listing Market halts trading in the product, the Exchange, upon notification by the UTP Listing Market of such halt due to such temporary interruption, shall also immediately halt trading in that product.

If the interruption in the calculation or wide dissemination of the intraday indicative value, the value of the underlying index, portfolio or instrument, or similar value continues as of the commencement of trading on the Exchange on the next business day, the Exchange shall not commence trading of the product on that day. If the interruption in the calculation or wide dissemination of the intraday indicative value, the value of the underlying index, portfolio or instrument, or similar value continues, the Exchange may resume trading in the product only if calculation and wide dissemination of the intraday indicative value, the value of the underlying index, portfolio or instrument, or similar value resumes or trading in the product resumes on the UTP Listing Market.

For an ETF where a net asset value or disclosed portfolio is disseminated, the Exchange will immediately halt trading in such product upon notification by the UTP Listing Market that the net asset value or disclosed portfolio is not being disseminated to all market participants at the same time. The Exchange may resume trading in the product only when dissemination of the net asset value or disclosed portfolio to all market participants at the same time resumes or trading in the product resumes on the UTP Listing Market.

For an ETF that is listed on Nasdaq, such as the QQQs, Nasdaq rules require and/or permit it to halt trading in such securities when net asset value or other information is not being properly disseminated as required (see Nasdaq Rule 4120(a)(9)–(10)).<sup>29</sup> Pursuant to the UTP Plan, Nasdaq is required to use the national market system communication media (“Hoot-n-Holler”) to notify other participants of such a halt and upon such notification the Exchange would halt trading in the QQQs in accordance with the proposed rules.

Finally, due to the nature of ETFs such as the QQQs, the Exchange proposes to restrict the allocation of that security and its components. See proposed Rule 504—NYSE Amex Equities. In addition, the Exchange will enter into a comprehensive surveillance sharing agreement with markets trading components of the index or portfolio on which the product is based to the same extent as the UTP Listing Market’s rules require the UTP Listing Market to enter into a comprehensive surveillance sharing agreement with such markets.

## 9. Proposed NYSE Amex Equities Rule 511 (Off-Hours Trading)

Nasdaq Securities will be accepted by the Exchange’s Off-Hours Trading Facility as part of an aggregate-price (“basket”) order, or as a closing-price order entered to offset a transaction made in error, as those terms are defined under Rule 900—NYSE Amex Equities.<sup>30</sup>

## 10. Proposed NYSE Amex Equities Rule 512 (Liquidity Replenishment Points)

Given the different trading characteristics of Nasdaq Securities, the Exchange proposes to amend the values used to calculate Liquidity Replenishment Points (LRPs) for these securities in accordance with Rule 1000—NYSE Amex Equities.

<sup>29</sup> See April 9 e-mail.

<sup>30</sup> The Exchange is proposing to amend the definition of “aggregate-price order” under Rule 900—NYSE Amex Equities in order to accommodate trading Nasdaq Securities in the Off-Hours Trading Facility. See Exhibit 5.

<sup>28</sup> These provisions are based on similar rules adopted by other exchanges and/or approved by the Commission for the generic trading of derivative securities products based on unlisted trading privileges. See, e.g., Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008) (SR-NSX-2008-05) (order approving NSX Rule 15.9) and Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR-Nasdaq-2009-018) (notice of filing and immediate effectiveness for Nasdaq Rule 5740).

The Exchange expects that Nasdaq Securities will be much more thinly traded on the Exchange, with lower volume and less liquidity than its listed securities, and that prices for Nasdaq Securities will be more volatile. As a result, in order to avoid triggering too many “slow” trading situations, the Exchange proposes wider LRP parameters for trading Nasdaq Securities than for its listed securities. Specifically, the Exchange proposes that, for each Nasdaq Security (except for ETFs), the value used to calculate the LRP ranges shall be ten percent (10%) of the Closing Price of the relevant security from the prior regular trading session on the Exchange, rounded to the nearest penny. These values will be recalculated by the Exchange on a daily basis. For the first day of trading of each Nasdaq Security, the LRP will be calculated using the Nasdaq closing price from the prior trading session.

Upon the phase-in period, the Exchange intends to evaluate these parameters to determine if they need to be adjusted in light of trading activity for Nasdaq Securities on the Exchange.

#### 11. Proposed NYSE Amex Equities Rules 513 (Trading Ahead of Customer Limit Orders) and 514 (Trading Ahead of Customer Market Orders)

As described more fully below, proposed Rules 513— and 514—NYSE Amex Equities prescribe limitations on proprietary trading by members and member organizations holding unexecuted customer orders in Nasdaq Securities. In summary, a member firm handling an unexecuted customer order in a Nasdaq Security will not be permitted to execute a proprietary trade for that security at a price that would satisfy the customer’s order without executing the customer’s order at that price.

In order to harmonize the obligations for members and member organizations trading Nasdaq Securities on the Exchange with their existing obligations for trading those securities off-Exchange, proposed Rules 513— and 514—NYSE Amex Equities are substantially similar to FINRA’s “Manning Rule” (NASD Interpretive Material 2110–2 and NASD Rule 2111). Subject to some technical amendments to apply the Rules to the Exchange, proposed Rule 513—NYSE Amex Equities is based on NASD IM–2110–2 and proposed Rule 514—NYSE Amex Equities is based on NASD Rule 2111. Correspondingly, proposed Rules 513— and 514—NYSE Amex Equities exempt Exchange members and member organizations from Rule 92—NYSE

Amex Equities for the purposes of trading Nasdaq Securities.

There are several reasons for adopting a Manning-like set of rules rather than applying Rule 92—NYSE Amex Equities. To begin with, all Exchange member organizations that have public customers are also FINRA members and are therefore subject to FINRA’s Manning Rule when trading off-Exchange. In addition, because the Manning Rule and Rule 92—NYSE Amex Equities differ in certain key aspects, the Exchange believes that requiring member organizations to comply with two sets of potentially conflicting standards when trading Nasdaq Securities would be confusing and would require programming changes by member organizations.<sup>31</sup>

Rule 92—NYSE Amex Equities prohibits, subject to some exceptions, members and member organizations from entering proprietary orders if the person responsible for the entry of that order has knowledge of an unexecuted customer order on the same side of the market that could be executed at the same price as the proprietary order.<sup>32</sup> Rule 92 does, however, permit a member or member organization to enter a proprietary order for certain specified purposes while representing a customer order that can be executed at the same price where the customer order is not held and is for either an institutional account or is greater than 10,000 shares and \$100,000 in value (“Institutional/Large-size Order”), provided that the member or member organization has provided written disclosures and obtained documented affirmative consent from the customer. Rule 92 also permits an exception where a member or member organization enters a proprietary order to facilitate a riskless principal transaction. In addition, the prescriptions of Rule 92 do not apply to transactions made (i) by odd-lot dealers, (ii) on delivery terms different from those for the unexecuted customer order, (iii) by members or

member organizations acting as market makers on other markets, (iv) to correct bona fide errors, and (v) as intermarket sweep orders made in compliance with Regulation NMS.<sup>33</sup>

By comparison, the Manning Rule operates to prohibit a member firm from executing, rather than entering, a proprietary trade at a price equal to or better than an unexecuted customer order unless the firm immediately executes the customer order at the same price (or better) it executed its own proprietary order.<sup>34</sup> Like Rule 92—NYSE Amex Equities, the Manning Rule has an exception for Institutional/Large-size Orders, subject to disclosure to the customer. However, unlike Rule 92—NYSE Amex Equities, the Manning Rule does not require affirmative consent from the customer. In addition, the Manning Rule does not limit the specific types of transactions to which this exception applies. The Manning Rule has other exceptions that mirror those of Rule 92—NYSE Amex Equities, including for transactions made by a member as a riskless principal or involving intermarket sweep orders. The Manning Rule does not, however, permit exceptions for transactions on delivery terms different from those for the unexecuted customer order, by members or member organizations acting as market makers on other markets, or to correct bona fide errors.<sup>35</sup>

As is evident, Rule 92—NYSE Amex Equities differs from the Manning Rule, most notably in its focus on order entry rather than execution. Moreover, Rule 92—NYSE Amex Equities provides exceptions for certain types of transactions that the Manning Rule does not. Thus, any dual NYSE Amex Equities and FINRA member attempting to comply with both Rule 92—NYSE Amex Equities and the Manning Rule while trading Nasdaq Securities on the Exchange would be subject to differing standards for the same security solely because of where an order has executed.<sup>36</sup>

<sup>31</sup> Although there may be Exchange-only members that trade Nasdaq Securities, such members are not subject to the Manning Rule because they do not have public customers. Moreover, all Exchange members that are registered as Floor brokers are also required to be FINRA members and, unless proposed Rules 513— and 514—NYSE Amex Equities are approved, would be required to comply with both Rule 92—NYSE Amex Equities and the Manning Rule.

<sup>32</sup> Technically, Rule 92—NYSE Amex Equities refers to transactions involving “Exchange-listed securities”, which would not encompass Nasdaq Securities traded on the Exchange. However, the Exchange recognizes that, whether it applies Rule 92 or the Manning Rule, some form of limitation will be prescribed on proprietary trading of Nasdaq Securities by members and member organizations due to customer orders.

<sup>33</sup> See generally Rule 92—NYSE Amex Equities.

<sup>34</sup> FINRA has proposed to combine NASD Interpretive Material 2110–2 and NASD Rule 2111 into a single FINRA Rule 5320. See Securities Exchange Act Release No. 61168 (December 15, 2009), 74 FR 68084 (October 22, 2009) (SR–FINRA–2009–090). See also FINRA Regulatory Notice 09–15 (March 12, 2009).

<sup>35</sup> See NASD Interpretive Material 2110–2 and NASD Rule 2111.

<sup>36</sup> There are other differences between Rule 92—NYSE Amex Equities and the Manning Rule, including each Rule’s definition of “institutional account”, the reporting requirements for executing riskless principal transactions, and minimum price improvement standards. The Exchange notes that it, NYSE and FINRA are in the process of harmonizing their respective customer order protection rules. For

Moreover, the Exchange understands that firms generally code their order entry, routing and execution systems to comply with Rule 92—NYSE Amex Equities when trading on the Exchange and the Manning Rule when trading on NASDAQ and other markets. It would be impractical and unnecessarily burdensome to require member organizations to add Rule 92—NYSE Amex Equities parameters to their systems to account for both the Manning Rule and Rule 92—NYSE Amex Equities when trading Nasdaq Securities on the Exchange.

Requiring firms to comply with proposed Rules 513— and 514—NYSE Amex Equities rather than Rule 92—NYSE Amex Equities when trading Nasdaq Securities comports with the broader goals of regulating the market for these securities. The majority of trading in Nasdaq Securities takes place on other markets in accordance with the requirements of the Manning Rule, and FINRA and other SROs conduct surveillance based on those parameters. Requiring member firms to comply with proposed Rules 513— and 514—NYSE Amex Equities rather than Rule 92—NYSE Amex Equities ensures that, when Nasdaq Securities are traded on the Exchange, FINRA and/or other SROs can properly surveil these trades in the context of the overall market for those securities.

Although firms will be required to comply with proposed Rules 513— and 514—NYSE Amex Equities rather than Rule 92—NYSE Amex Equities, there will not be any regulatory gaps. Currently, FINRA and the Exchange have an agreement pursuant to Section 17(d) of the Act and Rule 17d-2 thereunder (the “17d-2 Agreement”) to allocate regulatory responsibility for oversight of certain Exchange Rules. The Exchange has proposed to FINRA to extend the regulatory oversight provided under the 17d-2 Agreement to include customer order protection of Nasdaq Securities and compliance with proposed Rules 513— and 514—NYSE Amex Equities, and, based on discussions with FINRA representatives, it is anticipated that FINRA will approve.

Notwithstanding the proposed exemption from Rule 92—NYSE Amex Equities, the Exchange will still require members and member organizations to comply with all other applicable NYSE Amex Equities Rules, any and all applicable rules or regulations of the

UTP Listing Market or FINRA and the federal securities laws and the rules thereunder, related to proprietary trading while holding unexecuted customer orders in the same security.<sup>37</sup>

#### 12. Proposed NYSE Amex Equities Rule 515 (Trading Halts)

Generally, as prescribed in proposed Rule 515—NYSE Amex Equities, the Exchange will follow all applicable NYSE Amex Equities Rules governing halts or suspensions, for both regulatory and/or non-regulatory purposes, of the trading of Nasdaq Securities on the Exchange, including Rules 51—, 80B—, 123D— and 510—NYSE Amex Equities.

In addition, the Exchange will halt or suspend trading in a Nasdaq Security when trading in that security has been halted or suspended by the UTP Listing Market for regulatory reasons in accordance with its rules and/or the UTP Plan.<sup>38</sup> The Exchange will also halt or suspend trading in a Nasdaq Security when the authority under which the security trades on the Exchange or the UTP Listing Market has been revoked. This can occur when the Nasdaq Security at issue is no longer designated as an “eligible security” pursuant to the UTP Plan or is no longer listed with the UTP Listing Market. Also, if the Exchange has removed a Nasdaq Security from dealings trading will be halted or suspended.<sup>39</sup>

In the event that trading of a Nasdaq Security or Nasdaq Securities is halted or suspended pursuant to proposed Rule 515—NYSE Amex Equities, trading of the affected security or securities on the Exchange will resume in accordance with the procedures of applicable NYSE Amex Equities Rules, including Rule 508—NYSE Amex Equities, the rules of the UTP Listing Market and/or the UTP Plan. Any orders for a Nasdaq Security that are unexecuted at the time trading is halted on the Exchange shall be cancelled and the Exchange shall not

accept any new orders for the affected security for the duration of the halt.

#### 13. Proposed Rules 516— and 518—NYSE Amex Equities (Reporting and Recordkeeping; Clearance and Settlement)

As described more fully below, under proposed Rule 516—NYSE Amex Equities: (1) Members and member organizations trading Nasdaq Securities on the Exchange are subject to Rules 123— and 132B—NYSE Amex Equities; (2) if a member or member organization is also a FINRA member subject to FINRA’s Rule 7400 Series, such a firm is exempt from Rules 123— and 132B—NYSE Amex Equities; and (3) regardless of whether or not a FINRA member, a Floor broker that receives an order in a Nasdaq Security from another member via Exchange systems will be subject to Rules 123— and 132B—NYSE Amex Equities and exempt from FINRA’s Rule 7400 Series.

Rules 123— and 132B—NYSE Amex Equities, *inter alia*, make up the Exchange’s transaction audit trail system.<sup>40</sup> Specifically, Rule 132B—NYSE Amex Equities prescribes order tracking requirements for transactions conducted on the Exchange. In relevant part, members and member organizations are required to record and maintain certain details of an order in an electronic order tracking system (“OTS”). In addition, Rules 123(e)— and (f)—NYSE Amex Equities require members and member organizations that act as Floor brokers to record certain details of orders received on the Floor and executed on the Exchange in the Exchange’s Front-End System Capture (“FESC”). Because the Exchange’s members and member organizations must already comply with these requirements for the purposes of trading listed securities, trading Nasdaq Securities on the Exchange does not present any difficulties under these particular Rules.

However, the Exchange’s OTS and FESC requirements are not the only audit trail requirements for trading Nasdaq Securities on the Exchange. Currently, most of the Exchange’s members and member organizations are also FINRA members and FINRA requires all trades in Nasdaq-listed securities by its members, regardless of the market, to be reported to its Order Audit Trail System (“OATS”), FINRA Rule Series 7400. Although FINRA’s

<sup>37</sup> All Exchange members or member organizations that send customer orders to the Exchange and have a public business are currently, or will be required to also be, FINRA members (*see* Rule 2(b)—NYSE Amex Equities), and thus would need to comply with the Manning Rule when trading Nasdaq Securities off-Exchange.

<sup>38</sup> Under proposed Rule 501—NYSE Amex Equities, the Exchange defines the term “UTP Listing Market” to have the same meaning as the term “Listing Market”, as defined under the “UTP Plan” (also defined therein).

<sup>39</sup> The provisions of Rule 123D(4)—NYSE Amex Equities, which prescribe a special trading halt of “Structured Products” that were listed on the Exchange at the time the trading of equities securities migrated from the Exchange’s legacy systems and facilities at 86 Trinity Place to 11 Wall Street, shall not apply to the trading of Nasdaq Securities.

<sup>40</sup> In addition, Rule 132A—NYSE Amex Equities requires members and member organizations to synchronize their business clocks for recording and Rule 132C—NYSE Amex Equities requires members and member organizations to transmit audit trail records to the Exchange upon request.

a full discussion comparing the two Rules and the proposed harmonization, *see* NYSE and NYSE Amex Equities Information Memo 09-13 (March 12, 2009) and FINRA Regulatory Notice 09-15 (March 12, 2009).

OATS contains substantially the same order information as the Exchange's OTS and FESC, FINRA's OATS data is in a different format from the data recorded by OTS and FESC and the systems are not directly compatible. As a result, for those dual NYSE Amex/FINRA members and member organizations that intend to enter and/or execute orders in Nasdaq Securities on both the Exchange and other markets, compliance with both the Exchange's and FINRA's audit trail requirements for the purposes of trading Nasdaq Securities on the Exchange is not readily feasible.

Due to this conflict, proposed Rule 516—NYSE Amex Equities includes an exemption from the requirements of Rules 123— and 132B—NYSE Amex Equities for any members or member organizations that are also FINRA members and subject to the requirements of FINRA's OATS (FINRA Rule 7400). In addition, because NYSE Amex has not previously traded Nasdaq-listed securities on the Exchange, some members and member organizations, particularly Floor brokers that have previously only conducted transactions in Exchange-listed securities, do not have OATS-compliant systems and procedures. With the introduction of trading Nasdaq Securities on NYSE Amex, certain members and member organizations (and/or the Exchange) could incur significant expense and/or delay if forced to convert to OATS-compliant systems.

To address this issue, the Exchange has sought, and expects to receive formal confirmation of, interpretive guidance from FINRA that its Rule 7440(c)(6) exempts from FINRA's OATS requirements those Floor brokers who, regardless of their FINRA membership, receive an order in a Nasdaq Security that is first routed to the Exchange through Exchange systems (*i.e.* the Common Customer Gateway, or "CCG").<sup>41</sup> Most orders received by a Floor broker are received through CCG, where the orders are automatically captured in the systems that feed the Exchange's audit trail and then processed in accordance with their instructions. However, in the case of orders in Nasdaq Securities that are received by a Floor broker by means other than an Exchange system (*e.g.*, orders received over the telephone), the Floor broker would need to comply with FINRA's OATS requirements. In

addition, any Floor broker member firm approved to route orders away from the Exchange pursuant to Rule 70.40—NYSE Amex Equities, and orders in Nasdaq Securities handled by such firms, would be subject to FINRA's OATS requirements.

Under proposed Rule 516—NYSE Amex Equities the Exchange with [sic] have access to a complete audit trail and there will be no gap in regulatory oversight. For dual NYSE Amex/FINRA members, FINRA's OATS rules will apply to an order in a Nasdaq Security up to when it is routed to the Exchange. At that point, if the order is transmitted to a Floor broker via an Exchange system, the Exchange's OTS and FESC requirements will capture its subsequent handling and execution on the Exchange. And, all Exchange-only, non-FINRA members or member organizations will be subject to the Exchange's OTS and FESC requirements throughout the handling of an order for a Nasdaq Security. To ensure proper oversight of trading Nasdaq Securities, the Exchange and FINRA can provide each other with copies of relevant audit trail records and/or data pursuant to the Intermarket Surveillance Group ("ISG"). Similarly, NYSE Amex will disseminate reports of executions of Nasdaq Securities on the Exchange in accordance with applicable NYSE Amex Equities Rules and the UTP Plan.

Finally, under proposed Rule 518—NYSE Amex Equities, members and member organizations that conduct transactions involving Nasdaq Securities on the Exchange will be required to comply with all applicable NYSE Amex Equities Rules related to clearance and settlement of such transactions.

Including Rules 123— and 132B—NYSE Amex Equities, Rules 342— and 351—NYSE Amex Equities, which require members and member organizations to provide any trading information requested by the Exchange, also need to be amended. In particular, the Exchange proposes to add language to each of these rules specifying that they apply to both securities listed on the Exchange and securities "traded" on the Exchange, which includes Nasdaq Securities. *See, e.g.*, Rule 123—NYSE Amex Equities, Exhibit 5.

#### 14. Proposed Rule 522—NYSE Amex Equities (Limitation of Liability)

Because the Exchange will be relying on data feeds from the UTP Listing Market for the trading of Nasdaq Securities, the Exchange proposes to include a specific provision limiting liability for any loss, damage, claim or expense arising from any inaccuracy,

error, delay or omission of any data or information regarding Nasdaq Securities, including, but not limited to, the collection, calculation, compilation, reporting or dissemination of any Nasdaq Security Information, as defined in Rule 522—NYSE Amex Equities, except as provided in Rules 17— and 18—NYSE Amex Equities. In addition, the Exchange also expressly disclaims making any express or implied warranties with respect to any Nasdaq Security, any Nasdaq Security Information, or the underlying index, portfolio or instrument that is the basis for determining the component securities of an ETF. *See* Exhibit 5.

#### *Proposed Amendments to Current NYSE Amex Equities Rules*

The Exchange proposes to amend certain existing NYSE Amex Equities rules to accommodate the trading of Nasdaq Securities on the Exchange.

##### 1. Rule 2A—NYSE Amex Equities (Jurisdiction)

Rule 2A(b)—NYSE Amex Equities currently provides that the Exchange has jurisdiction to approve listings applications for securities admitted to dealings on the Exchange and may also suspend or remove such securities from trading. The Exchange proposes to amend this Rule to include the approval of the trading of Nasdaq Securities admitted to dealings on the Exchange.

##### 2. Rule 103B—NYSE Amex Equities (Security Allocation and Reallocation)

Rule 103B—NYSE Amex Equities prescribes the criteria and procedures for the allocation and/or reallocation of NYSE Amex-listed equities securities to registered and qualified DMM Units. In particular, part IX of the Rule currently provides that NYSE Amex-listed equities securities must be allocated to posts on the Exchange Trading Floor that are exclusively designated for the trading of NYSE Amex securities.

NYSE Amex-listed equities securities currently trade on Posts 1 and 2 on the Trading Floor. However, there are not enough panels on those posts to accommodate the trading of additional hundreds of Nasdaq Securities. In order to accommodate the trading of Nasdaq Securities, the Exchange needs to be able to trade NYSE Amex-listed and Nasdaq Securities on additional posts.

The Exchange therefore proposes to amend Rule 103B—NYSE Amex Equities to permit NYSE Amex-listed securities and securities admitted to dealings on the Exchange on a UTP basis to trade on posts throughout the Trading Floor. To prevent any confusion that could arise among members trading

<sup>41</sup> When acting in the capacity of a market maker for a Nasdaq Security, a DMM Unit is exempt from FINRA's OATS requirements. *See* FINRA Rule 7410(j).

both NYSE-listed and NYSE Amex-listed or traded securities, which trade under different rules, proposed Rule 103B(IX) would provide that NYSE Amex-listed and/or traded (*i.e.* Nasdaq Securities) securities shall only be assigned to panels designated for the trading of such securities.

A DMM Unit that is registered to trade both NYSE and NYSE Amex-listed securities, as well as Nasdaq Securities, could trade these securities at the same post. However, DMM Unit staff would not be permitted to simultaneously trade both NYSE and NYSE Amex/Nasdaq securities, and the DMM Unit would need to commit staff to trade NYSE listed securities separate from staff committed to trade NYSE Amex listed or traded securities at any given time during the trading day. Intraday staff moves between panels would be permitted, however.

#### *Proposed Amendments to Non-NYSE Amex Equities Rule 476A*

Finally, the Exchange proposes to amend Non-NYSE Amex Equities Rule 476A Part 1A to include certain of the proposed NYSE Amex Equities Rule 500 Series in the Exchange's Minor Rule Violation Plan. Included are:

- 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(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.

- Rules 513— and 514—NYSE Amex Equities prohibitions on proprietary trading ahead of customer orders.
- 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.

Violations of these Rules will be subject to the fine schedule in Rule 476A. For individuals, first offenses may be charged \$500.00, second offenses may be charged \$1,000.00, and subsequent offenses may be charged \$2,500.00. For member firms, first offenses may be charged \$1,000.00, second offenses may be charged \$2,500.00, and subsequent offenses may be charged \$5,000.00.

#### 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 Act,<sup>42</sup> in that they are designed 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 support the principles of Section 11A(a)(1)<sup>43</sup> of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets. The proposed rule changes also support the principles of Section 12(f) of the Act, which govern the trading of securities pursuant to a grant of unlisted trading privileges consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

The Exchange believes that the proposed rule changes are consistent with these principles. By providing for the trading of Nasdaq Securities on the Exchange on a UTP basis, the Exchange believes its proposal will lead to the addition of liquidity to the broader market for these securities and to increased competition among the existing group of liquidity providers. The Exchange also believes that, by so doing, the proposed rule changes will encourage the additional utilization of,

and interaction with, the NYSE Amex Equities market, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for Nasdaq Securities.

#### *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 35 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 such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-31 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2010-31. This file number should be included on the

<sup>42</sup> 15 U.S.C. 78f(b)(5).

<sup>43</sup> 15 U.S.C. 78k-1(a)(1).

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 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 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-2010-31 and should be submitted on or before May 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

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

[FR Doc. 2010-8859 Filed 4-16-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61894; File No. SR-NYSEArca-2010-24]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, Amending Its Fee Schedule

April 13, 2010.

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 April 1, 2010, NYSE Arca, Inc. ("NYSE Arca" or "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. On April 9, 2010, NYSE Arca filed Amendment No. 1 to this filing. NYSE Arca has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 its Schedule of Fees and Charges for Exchange Services (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 1, 2010. The amended section of the Schedule is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange is proposing changes to certain fees to improve competitiveness and encourage participation and liquidity by Customer, Firms, Broker Dealers, and Market Makers.

#### Lead Market Maker Rights Fee

Presently, the Exchange charges Lead Market Makers ("LMMs") a monthly rights fee for each appointed issue. Effective April 1, 2010, the Exchange will reduce the rights fee by 50% in each tier as shown below.

Average national daily customer contracts per issue	Monthly base rate
0 to 2,000 .....	[\$150] \$75
2,001 to 5,000 .....	[\$400] \$200
5,001 to 15,000 .....	[\$750] \$375
15,001 to 100,000 .....	[\$1,500] \$750
Over 100,000 .....	[\$3,000] \$1,500

#### Transaction Fee Changes

The Exchange proposes to restructure certain trade related charges for non-electronic trades. These trades are executed in the Firm range (clearance account "F") and are currently billed either the Firm Facilitation rate or the Broker Dealer & Firm rate. Under the current rate schedule trades by a firm that facilitate a customer, or Firm Facilitation trades, are subject to a \$0.00 rate per contract. Firm transactions not facilitating a customer are subject to a \$0.25 Broker/Dealer & Firm Manual rate. Under the revised rate schedule all manual trades clearing in the Firm range will be subject to a rate of \$0.18 per contract and further capped at \$2,000 per issue per day, per trading participant. Firm Proprietary electronic trades will continue to be charged \$0.50 per contract in non-Penny Pilot issues, \$0.45 per contract for taking liquidity in Penny Pilot issues, and receive a credit of \$0.25 per contract for posting liquidity in Penny Pilot issues, consistent with the current rates, but now a separate line in the Schedule.

The Exchange also proposes to introduce a Premium Tier for electronic transactions in certain Penny Pilot Issues. Electronic executions in options underlying SPY, C, BAC, QQQQ, AAPL, IWM, XLF, GLD, EEM, GE, UNG, FAZ, DIA, GDX, and USO will qualify for the Premium Tier, and will receive an additional \$.05 per contract credit above the stated Post Liquidity credit. This is consistent with similar billing treatment of select symbols currently in place at Nasdaq OMX PHLX.<sup>5</sup>

NYSE Arca also proposes to introduce Tiered Pricing for certain high monthly volume levels in non-Premium Tier Penny Pilot issues. This new tiered pricing structure will replace the current Market Maker Post Liquidity Incentive Credit that provided Market Makers with an additional \$0.01 credit

<sup>44</sup> 17 CFR 200.30-3(a)(12) and 200.30-3(a)(44).

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

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

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

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

<sup>5</sup> See Nasdaq OMX PHLX Fee Schedule dated March 26, 2010.