

Period beginning:	Projected peak 5 second MPS		Projected peak total daily transactions	
	UTP Quote	UTP Trade	UTP Quote	UTP Trade

Approved By: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62970; File No. SR-FINRA-2010-037]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving the Proposed Rule Change To Amend FINRA Rule 5190 (Notification Requirements for Offering Participants)

September 22, 2010.

#### I. Introduction

On July 27, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), 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> a proposal to amend FINRA Rule 5190 (Notification Requirements for Offering Participants) relating to the notice requirements applicable to distributions of "actively traded" securities, as defined under Regulation M. This proposal was published for comment in the **Federal Register** on August 13, 2010.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves this proposed rule change.

#### II. Description of the Proposed Rule Change

FINRA Rule 5190 imposes certain notice requirements on FINRA members participating in distributions of listed and unlisted securities and is designed to ensure that FINRA receives pertinent distribution-related information from its members in a timely fashion to facilitate its Regulation M surveillance program. Rule 5190(d) sets forth the notice requirements applicable to distributions

of securities that are considered "actively traded" and thus are not subject to a restricted period under Rule 101 of Regulation M.<sup>4</sup> In connection with such distributions, pursuant to Rule 5190(d)(1), FINRA members are required to provide written notice to FINRA of the member's determination that no restricted period applies and the basis for such determination. FINRA members must provide such notice at least one business day prior to the pricing of the distribution, unless later notification is necessary under specific circumstances. Rule 5190(d)(2) requires that, upon pricing a distribution of an "actively traded" security, FINRA members provide written notice to FINRA along with pricing-related information such as the offering price, the last sale before the distribution, and the pricing basis. Notice of pricing must be provided no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.

FINRA proposed to amend Rule 5190(d) to require that notice under subparagraphs (1) and (2) be provided at the same time, specifically no later than the close of business the next business day following the pricing of the distribution. While the timing of notice under subparagraph (1) would change, the information required would not change. Thus, pursuant to the proposed rule change, FINRA members will be required to provide a single notice after pricing of the distribution and will be required to provide all of the same information that they provide today.

FINRA has determined that it will be sufficient for members to provide notice of their determination that no restricted period applies following the pricing of the distribution. FINRA clarified that the proposed rule change will not impact FINRA's Regulation M surveillance program.

<sup>4</sup> The exception for "actively traded" securities in Rule 101 of Regulation M applies to securities with an ADTV value, as defined in Rule 100 of Regulation M, of at least \$1 million and are issued by an issuer whose common equity securities have a public float value of at least \$150 million, provided, however, that such securities are not issued by the distribution participant or an affiliate of the distribution participant. 17 CFR 242.101(c)(1).

In its filing, FINRA stated that a significant number of distributions of "actively traded" securities evolve quickly after the market close and are priced overnight before the next trading session. Thus, FINRA believes that its members frequently do not have sufficient advance knowledge of their participation in the distribution to provide notice to FINRA at least one business day prior to pricing and in such instances are unable to comply with the express terms of Rule 5190(d)(1). FINRA then must make a determination whether later notification was necessary under the circumstances, in accordance with the rule. FINRA has stated that the proposed rule change will clarify members' notice obligations in the context of such distributions.

FINRA represented that the proposed rule change will be effective on the date of Commission approval.

#### III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.<sup>5</sup> In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will streamline FINRA member obligations and continue FINRA's surveillance program regarding Regulation M to protect investors.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-FINRA-2010-037) be, and hereby is, approved.

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>3</sup> Securities Exchange Act Release No. 62664 (Aug. 9, 2010), 75 FR 49542 (Aug. 13, 2010) (SR-FINRA-2010-037).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62971; File No. SR-NYSEAmex-2010-95]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Requirement for Floor Official Approval for Certain Halts of Nasdaq Securities Traded via UTP

September 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 16, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 515—NYSE Amex Equities. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, the Commission's Web site (<http://www.sec.gov>), and <http://www.nyse.com>.

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

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

of the most significant parts of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to amend Rule 515—NYSE Amex Equities.

##### a. Background

On July 9, 2010, the Exchange received approval from the Commission to begin trading, as a pilot program, securities listed on the Nasdaq Stock Market pursuant to unlisted trading privileges ("Nasdaq Securities"). The Nasdaq Securities program commenced on July 13, 2010.<sup>3</sup>

##### b. Proposed Amendments to Rule 515—NYSE Amex Equities

The Exchange proposes to amend Rule 515—NYSE Amex Equities dealing with trading halts. In its filing adopting the Nasdaq Securities program, the Exchange included a provision in Rule 515(a)(1)—NYSE Amex Equities that DMM Units did not need to obtain Floor Official approval in order to halt trading in a Nasdaq Security pursuant to Rule 123D—NYSE Amex Equities. Upon further review of the operation of this provision and the Nasdaq Securities program, the Exchange believes it should revise this provision to clarify that the DMM does not need to obtain Floor Official approval if a Nasdaq Security is halted, suspended, or paused pursuant to section (a)(2)–(4) of the Rule. Accordingly, if a Nasdaq Security is halted, suspended or paused from trading by the UTP Listing Market for regulatory purposes in accordance with its rules and/or the UTP Plan, or if the authority to trade the Nasdaq Security on the Exchange is revoked, Floor Official approval to halt trading on the Exchange is not required. However, if

<sup>3</sup> See Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (order approving SR-NYSEAmex-2010-31 and the adoption of the NYSE Amex Equities Rule 500 Series). The pilot program is scheduled to run until September 30, 2010, the expiration date of the New York Stock Exchange LLC's ("NYSE") and the Exchange's New Market Model ("NMM") pilot program, on which the Nasdaq Securities program relies. See Securities Exchange Act Release Nos. 61274 (March 17, 2010), 75 FR 14221 (March 24, 2010)(SR-NYSE-2010-25) and 61275 (March 17, 2010), 75 FR 14223 (March 24, 2010)(SR-NYSEAmex-2010-28) (extending operation of the NMM pilot program on NYSE and NYSE Amex until the earlier of the Commission's approval to make the program permanent or September 30, 2010). For more information on the NMM pilot program, see Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008)(SR-NYSE-2008-46).

the Exchange halts trading of a Nasdaq Security pursuant to Rule 123D—NYSE Amex Equities for non-regulatory purposes, such as an imbalance halt or an equipment changeover halt, the DMM must obtain prior Floor Official approval as provided for in that rule. The proposed provision would be consistent with the manner by which Rule 123D—NYSE Amex Equities operates for listed securities when a non-regulatory halt is invoked on the Exchange.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change supports the objectives of the Act by harmonizing the procedures for implementing non-regulatory trading halts under Rule 123D—NYSE Amex Equities for both its listed securities and 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> Because the

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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