



**RULE
ADOPTION
NOTICE**

**RAN-10-15
April 21, 2010**

TO: All ATP Holders
FROM: Options Regulation Department
**SUBJECT: New Rule 905NY-Liability of Exchange
(File No. SR-NYSEAmex-2010-24)**

On March 5, 2010, NYSE Amex LLC filed with the Securities and Exchange Commission SR-NYSEAmex-2010-24, proposed new Rule 905NY regarding the Exchange's liability for system outages.

This proposal was effective and operative on the date of filing, March 5, 2010. Questions regarding this bulletin may be directed to Peter Armstrong at 415-393-4232.

The following is the text of the rule change (deletions are in brackets, additions are underlined):

Text of the Proposed Rule Change:¹

Rules of NYSE Amex LLC

Trading of Option Contracts

Section 900NY. Rules Principally Applicable to Trading of Option Contracts

Rule 905NY

Liability of Exchange

(a) Except as otherwise expressly provided in these rules, neither the Exchange nor its Directors, officers, committee members, employees or agents shall be liable to the ATP

¹ New text is underscored and deleted text is in brackets.

Holders of the Exchange or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority. The limitation of liability set forth in this paragraph shall not apply to violations of federal securities laws.

Without limiting the generality of the foregoing and subject to the same exception, the Exchange shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, or any reports of transactions in or quotations for securities traded on the Exchange.

The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports index values or related data, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, any other provisions of the Bylaws and Rules.

(b) Whenever custody of an unexecuted order is transmitted by an ATP Holder to or through the Exchange's order routing systems, electronic book or automatic executions systems or to any other automated facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order, provided that the Exchange has acknowledged receipt of such order, the Exchange's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph, (b), and no assets of the Exchange shall be applied or shall be subject to such liability in excess of the following limits:

- (1) As to any one or more claims made by a single ATP Holder growing out of the use or employment of the facilities afforded by the Exchange on a single trading day, the Exchange shall not be liable in excess of the larger of \$100,000, or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;
- (2) As to the aggregate of all claims made by all ATP Holders growing out of the use or employment of the facilities afforded by the Exchange on a single trading day, the Exchange shall not be liable in excess of the larger of \$250,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;
- (3) As to the aggregate of all claims made by all ATP Holders growing out of the use or enjoyment of the facilities afforded by the Exchange during a single calendar

month, the Exchange shall not be liable in excess of the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

(c) If all of the claims arising out of the use or enjoyment of the facilities afforded by the Exchange cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for in paragraph (b) above, then such maximum amount shall be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, written notice of which has been given to the Exchange no later than the opening of trading on the next business day following the day on which the use or enjoyment of Exchange facilities giving rise to the claim occurred, based on the proportion that each such claim bears to the sum of all such claims.
