

#### D. Proposed Supplementary Material

In addition, FINRA proposed to add a "Supplementary Material" section to proposed FINRA Rule 2150 that would:

- Codify existing staff guidance clarifying that a "guarantee" extended to all holders of a particular security by an issuer as part of that security generally would not be subject to the prohibition against guarantees and that a permissible sharing arrangement remains subject to other applicable FINRA rules;

- Clarify that the rule does not preclude a member from determining on an after-the-fact basis, to reimburse a customer for transaction losses, provided however that the member shall comply with all reporting requirements that may be applicable to such payment;<sup>8</sup>

- Consistent with NYSE Rule 352(c), clarify that the rule does not preclude a member from correcting a *bona fide* error; and

- Clarify that the required written authorization(s) shall be preserved for a period of at least six years after the date the account is closed, which is consistent with the retention period under the SEA for similar records.

FINRA stated in its proposal that it intends to announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

#### III. Discussion

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 applicable to a national securities association.<sup>9</sup> In particular, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that the Association's 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. Further, the Commission believes it is appropriate to transfer these NASD Rules into the FINRA Consolidated Rulebook, with the changes specified, and to delete the noted NYSE Rules as proposed because

<sup>8</sup> Associated persons would not similarly be permitted to reimburse their customers for losses under the rule given the concern that such payments may conceal individual misconduct.

<sup>9</sup> In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

the proposal will protect investors against potential misconduct.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-FINRA-2009-014) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60698; File No. SR-NYSEAmex-2009-61]

#### Self-Regulatory Organizations; NYSE Amex, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Implementing a Fee for Complex Orders to Its Schedule of Fees and Charges for Exchange Services

September 21, 2009.

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 September 9, 2009, NYSE Amex, LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE Amex. NYSE Amex filed Amendment No. 1 to the proposal on September 18, 2009.<sup>3</sup> NYSE Amex filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposed rule change, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> Amendment No. 1 revises the proposal to: (1) Correct an example in the purpose section of the proposal of the fee applicable when one firm represents both sides of a transaction; and (2) provide additional discussion of the statutory basis for the proposal.

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

<sup>7</sup> 17 CFR 19b-4(f)(2).

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

The Exchange proposes to amend the section of 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 September 9, 2009. 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, and at the Commission's Public Reference Room.

#### 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 Exchange 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

Pursuant to a recent rule filing<sup>6</sup> the Exchange will be introducing automated complex order trading for all market participants on NYSE Amex. In conjunction with this new functionality, the Exchange proposes to introduce two new transaction fees specific to Complex Order executions.

Complex Orders that are executed against other similar Complex Orders will be subject to a transaction fee of \$0.10 per contract. For example, if a Complex Order, comprised of two legs, executes against a similar two-legged Complex Order, each market participant will be charged \$0.20 (\$0.10 per contract). To expand on this example, if the same strategy is executed a total of ten (10) times, each participant would be charged \$2.00. If a Complex Order comprised of three legs executes against a similar three-legged Complex Order then each participant would be charged \$0.30, for the transaction. To expand on this example, if the same three-legged

<sup>6</sup> See Securities and Exchange Act Release No. 60554 (August 21, 2009) 74 FR 43737 (August 27, 2009) (Order granting accelerated approval of NYSEAmex-2009-42).

Complex Order is executed a total of ten (10) times, each participant would be charged \$3.00. All electronically executed Complex Orders, regardless of whether they are entered by Market Makers, Brokers Dealers, or OTP Firms representing Public Customers, will be billed this same rate when their order is executed against another Complex Order.

The Exchange proposes a separate fee for electronically executed Complex Orders when the same member firm represents both sides of the transaction. Complex Orders, entered by a firm that trade against a similar Complex Order represented by the same firm, will be subject to a transaction fee of \$0.05 per contract side. For example, if a Complex Order comprised of two legs is entered by Firm A, and executes against a similar two-legged Complex Order also for Firm A, the firm will be charged a total of \$0.20 (four contracts at \$.05 per contract), for each time the complex order strategy is executed. To expand on this example, if the same strategy is executed a total of ten (10) times, the firm would be subject to a transaction fee of \$1.00 per Complex Order, and since the same firm is a party to both sides of the transaction, they would be charged a total of \$2.00. If a Complex Order entered by Firm A, which is comprised of three legs, executes against a similar three-legged Complex Order entered by Firm A, then the firm would be charged \$0.30, for each time the three legged Complex Order is executed. To expand on this example, if the same three-legged Complex Order is executed a total of ten (10) times, the firm would be subject to a transaction fee of \$1.50 per Complex Order, and since the firm represents both sides of the transaction, they would be charged a total of \$3.00.

There may be occasions where a Complex Order will not execute against a similar contra-side Complex Order, but instead will execute against the individual leg markets represented by quotes and/or orders in the Consolidated Book. This scenario will occur when the best price for the Complex Order strategy is actually represented by a combination of individual quotes and/or orders, resting in the Consolidated Book. In situations where Complex Orders are executed utilizing two or more individual quotes or orders from the Consolidated Book, standard transaction fees, as shown on the Schedule, will apply to all participants on the trade. Additionally, standard Marketing Charges apply to all electronic complex order executions.

The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly

to all similarly situated Users. Additionally, the proposed fees are the same as those currently charged by NYSE Arca.<sup>7</sup>

## 2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members. The Exchange believes that the proposed rates are reasonable. The proposed rate structure is part of the Exchange's efforts to attract and enhance participation on the Exchange, with respect to the implementation of electronic complex order trading. The Exchange also believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to all market participants on NYSE Amex.

### 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 foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder because it establishes a due, fee, or other charge imposed by NYSE Amex.

At any time within 60 days of the filing of such proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>10</sup>

<sup>7</sup> See Securities and Exchange Act Release No. 58473 (September 8, 2008) 73 FR 53312 (September 15, 2008) (Notice of filing and immediate effectiveness for SR-NYSEArca-2008-97).

<sup>8</sup> 5 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).

<sup>10</sup> The Commission considers the 60-day period within which the Commission may summarily abrogate the proposal pursuant to Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), to

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2009-61 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-2009-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSEAmex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEAmex-2009-61 and should be submitted on or before October 19, 2009.

commence on September 18, 2009, the date NYSE Amex filed Amendment No. 1 to the proposal.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60692; File No. SR-NYSEAmex-2009-57]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC, as Modified by Amendment No. 1, Amending Rule 36—NYSE Amex Equities To Conform With Proposed Amendments to Corresponding NYSE Rule 36 To Permit the Use of Personal Portable or Wireless Communication Devices Off the Exchange Trading Floor and Outside Other Restricted Access Areas

September 18, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 27, 2009, NYSE Amex LLC (“NYSEAmex” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 17, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, 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 36—NYSE Amex Equities (Communications Between Exchange and Members’ Offices) to conform with proposed amendments to corresponding NYSE Rule 36 submitted in a companion filing by the Exchange’s corporate affiliate, the New York Stock Exchange LLC (“NYSE”). This Amendment No. 1 supersedes the original filing in its entirety. Amendment No. 1 serves to clarify in the rule text the specific areas where employees of member organizations are

permitted to use personal portable or wireless communications devices.<sup>5</sup> The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.com>.

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

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

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

###### 1. Purpose

This Amendment No. 1 to SR-NYSEAmex-2009-57 supersedes and replaces the original filing in its entirety.

The purpose of the proposed rule changes is to amend Rule 36—NYSE Amex Equities (Communications Between Exchange and Members’ Offices) to conform with proposed amendments to corresponding NYSE Rule 36 submitted in a companion filing by the Exchange’s corporate affiliate, the NYSE.<sup>6</sup>

###### Background

As described more fully in a related rule filing<sup>7</sup>, NYSE Euronext acquired The Amex Membership Corporation (“AMC”) pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the “Merger”). In connection with the Merger, the Exchange’s predecessor, the American Stock Exchange LLC, a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE

Alternext US LLC<sup>8</sup>, and continues to operate as a national securities exchange registered under Section 6 of the Act.<sup>9</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”). The Exchange’s equity trading systems and facilities at 11 Wall Street (the “NYSE Amex Trading Systems”) are operated by the NYSE on behalf of the Exchange.<sup>10</sup>

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.<sup>11</sup> The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

##### Proposed Conforming Amendments to NYSE Amex Equities Rules

As noted above, the Exchange proposes to amend Rule 36—NYSE Amex Equities to conform with proposed amendments to corresponding NYSE Rule 36 submitted in a companion filing by the NYSE. As discussed in more detail below, the NYSE is filing the proposed rule changes to permit the use of personal portable or wireless communication devices off the NYSE Trading Floor. The Exchange is proposing to adopt the NYSE’s proposed rule changes, subject to such technical changes as are necessary to apply the changes to the Exchange.

<sup>8</sup> NYSE Alternext US LLC was subsequently renamed NYSE Amex LLC. See Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63).

<sup>11</sup> See Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63); 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106); 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03); 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10); and 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

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

<sup>4</sup> Amendment No. 1 supersedes and replaces the original filing in its entirety.

<sup>5</sup> The Commission notes that the rule text makes clear that personal portable or wireless communication devices can only be used outside of the Trading Floor and all other restricted access areas.

<sup>6</sup> See SR-NYSE-2009-84. The Commission notes that the rule text makes clear that personal portable or wireless communication devices can only be used outside of the Trading Floor and all other restricted access areas. See *supra* note 5.

<sup>7</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex-2008-62).