

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 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 available publicly. All submissions should refer to File Number SR-NYSEAmex-2009-17 and should be submitted on or before June 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59956; File No. SR-NYSEAmex-2009-15]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 935NY—Order Exposure Requirements To Reduce the Exposure Periods From Three Seconds to One Second

May 21, 2009.

#### I. Introduction

On April 21, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange"), 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 proposed rule change to reduce certain order exposure periods from three seconds to one second. The proposed rule change was published for comment in the **Federal**

**Register** on May 5, 2009.<sup>3</sup> The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 to the proposal on May 20, 2009.<sup>4</sup> This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposal

The purpose of the proposed rule change is to reduce the exposure time during which Amex Users may not execute as principal against orders they represent as agent from three seconds to one second. Under the current Rule 935NY, Order Exposure Requirements, Users may not execute as principal orders they represent as agent unless agency orders are first exposed on the Exchange for at least three seconds, or the User has been bidding or offering on the Exchange for at least three seconds prior to receiving an agency order that is executable against such bid or offer. During this three-second exposure period, other market participants may enter orders to trade against the exposed order. Under this proposal, the exposure periods contained in Rule 935NY would be reduced to one second.

#### III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, 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 Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,<sup>7</sup> which requires that the rules of an exchange not impose any burden on

competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic nature of the NYSE Amex System, reducing the exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that NYSE Amex members could receive, process, and communicate a response back to the Exchange within one second, the Exchange stated that it conducted a survey of Amex Trading Permit Holders ("ATP Holders") to find out whether their systems were capable of receiving, processing, and responding to orders in a meaningful way within one second. NYSE Amex stated that of the six member firms that responded to the Exchange's survey, four indicated that the turnaround time was less than one second, one declined to comment regarding its turnaround time, and one stated that it was not exactly sure of its turnaround time.<sup>8</sup> NYSE Amex also stated that none of the responding ATP Holders anticipated any problems related to order processing if the Exchange reduced the exposure periods to one second, and none of the responding ATP Holders were opposed to the reduced exposure periods.<sup>9</sup> Based on NYSE Amex's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for NYSE Amex to reduce the exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that the Exchange has provided reasonable support for its belief that the Exchange's market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the

<sup>3</sup> See Securities Exchange Act Release No. 59825 (April 27, 2009), 74 FR 20771 ("Notice").

<sup>4</sup> Amendment No. 1 was a technical amendment to correct an inadvertent error in language in the Purpose Section of 19b-4.

<sup>5</sup> In approving this proposed rule change, 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. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(8).

<sup>8</sup> See Notice.

<sup>9</sup> *Id.* NYSE Amex stated that one respondent, when asked about the proposed one second exposure periods, indicated that it "might be hard to respond that rapidly" but then went on to state that they felt NYSE Amex should make the change in order to match other option exchanges' rules. *Id.*

<sup>23</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.

Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, NASDAQ OMX PHLX, Inc., and NYSE Arca, Inc.<sup>10</sup> Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>11</sup> to approve the proposed rule change on an accelerated basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSEAmex-2009-15), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59965; File No. SR-NYSE-2009-25]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Changing Certain NYSE Rules and Rule Interpretations To Harmonize Them With Changes to Corresponding Rules Filed by the Financial Industry Regulatory Authority, Inc.

May 21, 2009.

#### I. Introduction

On March 9, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 proposed rule change to make changes to certain NYSE rules and rule interpretations, to be effective retroactively to December 15, 2008, to

harmonize them with changes to corresponding rules that were filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission or were effective upon filing with the Commission.<sup>3</sup> On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change, which was withdrawn.<sup>4</sup> On March 30, 2009, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>5</sup> The proposed rule change was published in the **Federal Register** on April 6, 2009.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

On July 30, 2007, the National Association of Securities Dealers, Inc. ("NASD") and NYSE Regulation, Inc., the regulatory subsidiary of the New York Stock Exchange ("NYSE"), consolidated their member firm regulation operations into FINRA. In connection with this consolidation, FINRA is in the process of establishing a consolidated FINRA rulebook (the "Consolidated FINRA Rulebook")<sup>7</sup> that will harmonize NASD rules and NYSE rules relating to member firm regulation.<sup>8</sup> All of these rules will be

<sup>3</sup> See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR-FINRA-2008-033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR-FINRA-2008-021, -022, -026, -028, -029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR-FINRA-2008-027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR-FINRA-2008-030); and Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR-FINRA-2008-057).

<sup>4</sup> On March 30, 2009, the Exchange withdrew Amendment No. 1.

<sup>5</sup> Amendment No. 2 to SR-NYSE-2009-25 replaced the original filing in its entirety. References to Amendment No. 1 in Amendment No. 2 should be read as Amendment No. 2. See telephone conversation between Clare F. Saperstein, Managing Director, NYSE Regulation, Inc., and Nancy J. Burke-Sanow, Assistant Director, Division of Trading and Markets, Commission, March 30, 2009.

<sup>6</sup> See Securities Exchange Act Release No. 59655 (March 30, 2009), 74 FR 15563 ("Notice").

<sup>7</sup> The current FINRA rulebook consists of three sets of rules: (1) NASD Rules, (2) rules and rule interpretations incorporated from the NYSE ("FINRA Incorporated NYSE Rules") (together, referred to as the "Transitional Rulebook"), and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members.

<sup>8</sup> Pursuant to Rule 17d-2 under the Act, NYSE, NYSE and NASD entered into an agreement ("Rule 17d-2 Agreement") to reduce regulatory duplication for Dual Members by allocating to

identified as "FINRA Rules" when the rule consolidation process is completed.

To reduce regulatory duplication, the Exchange proposes to harmonize several NYSE rules with certain FINRA rule changes by deleting NYSE rules and rule interpretations and replacing them with rules that are identical to, or substantially identical to, the FINRA Rules that were approved by, or were effective upon filing with, the Commission, subject to technical amendments to conform them to the Exchange. The Exchange also proposes to adopt the same rule numbers used in the Consolidated FINRA Rulebook to allow members and others to more readily identify those NYSE rules that have been harmonized with FINRA Rules. The Notice provides a more detailed description of the FINRA rule changes and the Exchange's proposed conforming rule changes.<sup>9</sup>

#### III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the Exchange's rules be 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 is deleting certain rules and rule interpretations pertaining to: (1) Compensation or gratuities to

FINRA regulatory responsibility for specified NYSE rules (the "Common Rules"). See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules include the FINRA Incorporated NYSE Rules. See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct) (SR-NASD-2007-054). Paragraph 2(b) of the Rule 17d-2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

<sup>9</sup> See Notice, *supra* note 6.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>10</sup> See Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008) (SR-CBOE-2008-16); 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94); 59081 (December 11, 2008), 73 FR 76432 (December 16, 2008) (SR-Phlx-2008-79); and 59194 (January 5, 2009), 74 FR 976 (January 9, 2009).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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.