

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSECC-2009-04 and should be submitted on or before September 14, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60511; File No. SR-NYSEAMEX-2009-51]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Amex LLC Adopting Rule 406—NYSE Amex Equities as New Rule 3250—NYSE Amex Equities To Conform to a Proposed Rule Change Submitted in a Companion Filing by the New York Stock Exchange LLC

August 17, 2009.

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 July 28, 2009, 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 substantially prepared by the self-regulatory organization. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 adopt Rule 406—NYSE Amex Equities (Designation of Accounts) as new Rule 3250—NYSE Amex Equities to conform to a proposed rule change submitted in a companion filing by the New York Stock Exchange

LLC (“NYSE”).<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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to adopt Rule 406 NYSE Amex Equities (Designation of Accounts) as new Rule 3250 NYSE Amex Equities to conform to a proposed rule change submitted in a companion filing by 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 U.S. LLC, and continues to operate as a national securities exchange registered under Section 6 of the Act.<sup>8</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>9</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>10</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 Amendment to NYSE Amex Equities Rules

As noted above, the Exchange proposes to adopt Rule 406—NYSE Amex Equities as new Rule 3250—NYSE Amex Equities to conform to a proposed rule change submitted in a companion filing by the NYSE. As discussed in more detail below, the NYSE is filing the proposed rule change to harmonize the NYSE Rules with a change to corresponding Incorporated NYSE Rules filed by FINRA and approved by the Commission.<sup>11</sup> Unless specifically noted, the Exchange is proposing to adopt the NYSE's proposed rule change in the form that it has been approved for filing by the Commission, subject to such technical changes as are necessary to apply the NYSE's proposed rule change to the Exchange. The Exchange further proposes that the operative date of the rule change be the same as the operative date of the NYSE's proposed rule change on which this filing is based.

Specifically, FINRA adopted FINRA Incorporated NYSE Rule 406

<sup>9</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

<sup>10</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> See Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009) (order approving FINRA 2009-017).

<sup>15</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.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See SR-NYSE-2009-75, formally submitted on July 28, 2009.

<sup>6</sup> The Commission notes that this proposed rule change would also conform NYSE Amex Rules with a rule change recently filed by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and approved by the Commission. See Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009) (order approving FINRA 2009-017).

<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) (approving the Merger).

<sup>8</sup> 15 U.S.C. 78f.

(Designation of Accounts) as consolidated FINRA Rule 3250, subject to some minor technical changes. FINRA Rule 3250 provides that no member shall carry an account on its books in the name of a person other than that of the customer. However, an account may be designated by a number or symbol, provided the member organization has a written statement of ownership signed by the customer.<sup>12</sup>

FINRA adopted FINRA Incorporated NYSE Rule 406 (Designation of Accounts) as consolidated FINRA Rule 3250 because it believes the Rule is an important enforcement tool used to address, *inter alia*, sales practice abuses, including commingling of funds, failure to disclose ownership interests in accounts and unauthorized trading, and should be applied to all FINRA members. In addition, the Rule provides customers and their accounts with a level of anonymity that may be useful while still permitting identification to the member organization carrying the account as well as regulators. Upon adoption of Rule 3250, FINRA made minor technical changes to apply the Rule to all FINRA members, replacing the terms "member organization" or "organization" with the term "member."<sup>13</sup>

To harmonize the NYSE Rules with the approved FINRA Rules, NYSE correspondingly proposes to adopt NYSE Rule 406 as new Rule 3250, which is substantially similar to the new FINRA rule. As proposed, NYSE Rule 3250 adopts the same language as FINRA Rule 3250, except for retaining or adding, as needed, the term "member organization" and making corresponding technical changes. As with the consolidated FINRA Rule, under proposed NYSE Rule 3250 Exchange member organizations will be required to carry customer accounts in the name of the customer, except that an account may be designated by a number or symbol, as long as the member maintains documentation identifying the customer.<sup>14</sup>

The Exchange proposes to correspondingly adopt Rule 406—NYSE Amex Equities as new Rule 3250—NYSE Amex Equities in the form proposed by the NYSE.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>16</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.

### *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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will ensure the elimination of any potential regulatory gap among the Exchange's, the NYSE's

and FINRA's rules. Therefore, the Commission designates the proposal operative upon filing.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, 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.

## 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-2009-51 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEAMEX-2009-51. 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 the filing will also be available

<sup>12</sup> *Id.* As noted by FINRA, member organizations are subject to additional requirements regarding customer accounts under the Act. *See, e.g.*, 17 CFR 240.17a-3(a)(9) (requiring records indicating the name and address of the beneficial owner of cash and margin customer accounts).

<sup>13</sup> *See* Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009).

<sup>14</sup> *See* SR-NYSE-2009-75, formally submitted on July 28, 2009.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</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 at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

for inspection and copying at the principal office of the Exchange and on its Web site at <http://www.nyse.com>. 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-2009-51 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60510; File No. SR-FICC-2009-08]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Change To Modify the Rules of the Government Securities Division Regarding the Calculation of Clearing Fund Deposits Relating to Inter-Dealer Broker Positions

August 17, 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 August 10, 2009, the Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and is granting accelerated approval of the proposal through August 20, 2010.

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

The proposed rule change seeks to modify the rules of FICC’s Government Securities Division (“GSD”) regarding the calculation of clearing fund deposits relating to inter-dealer broker positions.

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

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

The GSD maintains a clearing fund comprised of member deposits of cash and eligible securities to provide liquidity and to enable FICC to satisfy any losses that might otherwise be incurred as a result of a member’s default and the subsequent close-out of its positions. GSD uses a Value-at-Risk (“VaR”) methodology to calculate clearing fund requirements.<sup>4</sup> The clearing fund methodology used by GSD analyzes risk by reference to three factors: (i) End-of-day VaR charge to assess market volatility for observed open positions at the end-of-day after giving effect to offsetting positions within the portfolio; (ii) margin requirement differential (“MRD”) to address intraday risk; and (iii) coverage component (“CC”) to adjust the calculation if necessary to reach a given confidence level. The margin calculation is predicated upon an assumption that the open positions of a defaulting member would be liquidated at the end of a three-day period.

Inter-dealer brokers (“IDBs”) function as intermediaries trading with multiple counterparties and with respect to government securities trades, provide anonymity and liquidity for trading partners. IDBs operate on small spreads, handle large transactions, and perform a critical function in the government securities market in the absence of a centralized trading exchange.

IDBs submit affirmed trades from their systems to GSD, each trade already matched to the counterparty that will ultimately deliver or receive the securities. Although IDBs generally do not maintain positions, they may have

positions versus GSD when their counterparties are not GSD members. Because these trades are matched by the IDB to a counterparty prior to submission to the GSD, the risk to FICC in the case of an IDB’s default is different from that presented when a dealer member submits a trade that may not have been already matched to a counterparty.

The clearing fund requirement applicable to IDBs has increased significantly because of recent market volatility to the point where FICC believes it is disproportionate to the risk that IDB activity presents to GSD. Given the importance of IDB transactions in the government securities marketplace, unsustainable margin requirements on GSD IDB activity may be harmful and may introduce systemic risk in the event members are motivated to avoid imposition of disproportionate changes by netting outside of GSD or by delaying trade submission until later in the day.<sup>5</sup>

To alleviate this situation, FICC is proposing to use a one-day liquidation assumption when calculating margin applicable to IDB activity.<sup>6</sup> The assumption of a three-day liquidation period will continue to apply to non-IDB activity. Since IDB trades are matched prior to submission, FICC believes that the one-day liquidation period is a reasonable assumption. FICC will continue to monitor the IDB activity of its members and will periodically reassess whether the one-day liquidation period provides adequate coverage. In this regard, FICC will provide the Commission with data to allow the Commission to track the magnitudes and behaviors of the VaR for a one-day liquidation horizon and for a three-day liquidation horizon, and with such other information that the Commission may request. FICC further notes its ability to impose special charges in response to market circumstances or other risk factors with respect to a particular member.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder because the proposed change will modify the calculation of clearing fund deposits of IDB positions so that the clearing fund contribution is

<sup>5</sup> Accordingly, GSD invoked its emergency power to adjust CC to IDB transactions in November 2008 and conducted a review of the current margin methodology as applied to IDB activity. As a result, CC currently is not calculated with respect to inter-dealer broker repo transactions, and GSD has recently adjusted the CC charge with respect to certain cash IDB transactions on a temporary basis.

<sup>6</sup> Margin calculated for all other activity is based on a three-day liquidation horizon.

<sup>7</sup> U.S.C. 78q-1.

<sup>3</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>4</sup> VaR is defined as the maximum amount of money that may be lost on a given portfolio over a given period of time within a given level of confidence.

<sup>20</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.