

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60511; File No. SR-NYSEAMEX-2009-51)

August 17, 2009

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹, and Rule 19b-4 thereunder,² 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

(“NYSE”).⁵ The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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.⁶

Background

As described more fully in a related rule filing⁷, NYSE Euronext acquired The Amex Membership Corporation (“AMC”) pursuant to an Agreement and Plan of Merger,

⁵ See SR-NYSE-2009-75, formally submitted on July 28, 2009.

⁶ 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).

⁷ 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).

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, and continues to operate as a national securities exchange registered under Section 6 of the Act.⁸ 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.⁹

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.¹⁰ 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

⁸ 15 U.S.C. 78f.

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

¹⁰ 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).

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.¹¹ 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 (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.¹²

¹¹ See Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009) (order approving FINRA 2009-017).

¹² 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

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.”¹³

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.¹⁴

beneficial owner of cash and margin customer accounts).

¹³ See Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009).

¹⁴ See SR-NYSE-2009-75, formally submitted on July 28, 2009.

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,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

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.¹⁹

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:

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 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.

¹⁹ 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).

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. 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 for inspection and copying at the principal office of the Exchange and on its Web site at 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 [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).