

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61291; File No. SR-NYSEAmex-2009-95)

January 5, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC to Establish Registered Representative Fees

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 December 28, 2009, NYSE Amex LLC (“NYSE Amex” 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. 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 end its waiver of registered representative fees for member organizations that acquired their memberships solely by operation of NYSE Amex Equities Rule 2 in connection with the acquisition of the American Stock Exchange by the New York Stock Exchange (“NYSE”). The waiver will end on December 31, 2009 and all member organizations will be subject to registered representative fees commencing January 1, 2010. 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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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

In connection with the acquisition of the American Stock Exchange (renamed NYSE Amex after the acquisition) by NYSE Euronext, all equities trading conducted on or through the American Stock Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, was moved on December 1, 2008, to the NYSE trading facilities and systems located at 11 Wall Street, New York, New York (the "NYSE Amex Trading Systems"), which are operated by the NYSE on behalf of NYSE Amex (the "Equities Relocation"). At the time of the Equities Relocation, by operation of NYSE Amex Equities Rule 2, all NYSE member organizations automatically became NYSE Amex member organizations. By acquiring NYSE Amex membership, the NYSE member organizations that were not previously NYSE Amex members would become subject to the NYSE Amex registration fees for all of their employees who serve as registered representatives. As these NYSE member organizations that had no NYSE Amex business prior to the Equities Relocation became NYSE Amex members without any action on their own part, NYSE Amex waived the application of its registered representative fees to those firms for the month of December.

At the time of its original adoption of the waiver, NYSE Amex stated that it expected to submit a filing to adopt a revised registered representative fee commencing January 1, 2009.³

³ See Exchange Act Release 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR-NYSEALTR-2008-09).

The waiver was extended through June 30, 2009,⁴ and was subsequently extended again through September 30, 2009,⁵ at which time it expired. The expiration of the waiver on September 30, 2009, resulted from an oversight on the part of Exchange staff as the Exchange had not yet reached a conclusion as to a more permanent approach to registered representative fees at that time. Consequently, the Exchange intends to submit a filing in which it seeks to re-establish the waiver with retroactive effect from October 1, 2009, ending on December 31, 2009.

NYSE Amex proposes to end the waiver on December 31, 2009, and will require all NYSE Amex member organizations to pay registered representative fees as of January 1, 2010, regardless of whether they were members of NYSE Amex prior to the Equities Relocation.⁶ It has been NYSE Amex's experience that member organizations that have benefitted from the waiver have traded comparable volumes of NYSE Amex equities since the Equities Relocation to those traded by member organizations that are currently subject to the registered representative fees. Consequently, NYSE Amex believes it is equitable to charge the same registered representative fees to all member organizations regardless of how they acquired their membership. The Exchange also notes that, while NYSE Amex benefits to a large degree from the NYSE's regulatory program and all NYSE Amex members pay regulatory fees to the NYSE, the revenues generated from NYSE regulatory fees are significantly less than is needed to fund the NYSE and NYSE Amex equities regulatory program. As such, the Exchange believes it is appropriate to charge registered representative fees to those member organizations that have

⁴ See Exchange Act Release 59170 (December 29, 2008), 74 FR 486 (January 6, 2009) (SR-NYSEALTR-2008-19).

⁵ See Exchange Act Release 60176 (June 26, 2009), 74 FR 32021 (July 6, 2009) (SR-NYSAmex-2009-30).

⁶ See e-mail from John Carey, Chief Counsel US Equities, NYSE Euronext, Inc. to Leah Mesfin, Special Counsel, Division of Trading and Markets, Commission, on January 4, 2010, clarifying that the waiver ended on December 31, 2009.

benefitted from the waiver, as a contribution to the costs of regulating their NYSE Amex equities trading activities.

The rule change will become operative as of January 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and Section 6(b)(4) of the Act,⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as all member organizations will pay the same fees and the fees charged to member organizations that previously benefitted from the waiver will be sufficient to fund only a portion of the costs of NYSE Amex's regulation of those member organizations' NYSE Amex equities trading activities.

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 is effective upon filing pursuant to Section 19(b)(3)(A)⁹ of the

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A).

Act and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

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. Please include File Number SR-NYSEAmex-2009-95 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-2009-95. 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

¹⁰ 17 CFR 240.19b-4(f)(2).

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 10:00 a.m. and 3:00 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2009-95 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).