

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62263; File No. SR-NYSEAmex-2010-49)

June 10, 2010

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rescind Rule 60A - NYSE Amex Equities

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 May 20, 2010, 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 rescind Rule 60A - NYSE Amex Equities (“Vendor Liability Disclaimer”). The text of the proposed rule change is available on NYSE Amex’s Web site at [www.nyse.com](http://www.nyse.com), on the Commission’s Web site at [www.sec.gov](http://www.sec.gov), at the principal office of NYSE Amex, 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 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.

---

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

<sup>2</sup> 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to rescind Rule 60A - NYSE Amex Equities (“Vendor Liability Disclaimer”).

Background

Effective October 1, 2008, NYSE Euronext acquired The Amex Membership Corporation (“AMC”) pursuant to an Agreement and Plan of Merger dated January 17, 2008 (the “Acquisition”). Pursuant to the Acquisition the Exchange’s predecessor, the American Stock Exchange LLC (“Amex”), a subsidiary of AMC, became a subsidiary of NYSE Euronext.<sup>3</sup> In connection with the Acquisition, on December 1, 2008, the Exchange relocated all equities trading to systems and facilities located at 11 Wall Street, New York, New York (the “NYSE Amex Equities Trading Systems”), which are operated by the Exchange’s corporate affiliate, the New York Stock Exchange LLC (“NYSE”), on behalf of the Exchange.<sup>4</sup> Correspondingly, the Exchange 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 Equities Trading Systems.<sup>5</sup>

---

<sup>3</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 Acquisition).

<sup>4</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (approving the equities trading relocation and the adoption of the NYSE Amex Equities rules).

<sup>5</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).

### Rule 60A – NYSE Amex Equities

Shortly after the Acquisition, the Exchange adopted the provisions of legacy Amex Rule 60 as Rule 60A – NYSE Amex Equities (“Vendor Liability Disclaimer”) to address third-party vendor liability.<sup>6</sup> Rule 60A – NYSE Amex Equities provides that, in connection with member or member organization use of any electronic system, service or facility provided by the Exchange to members for the conduct of their business on the Exchange, the Exchange may expressly provide in the contract with the vendor(s) providing all or part of such electronic system, service or facility to the Exchange, that the vendor will not be liable for any damages sustained by a member or member organization arising out of the use of the vendor’s system. In addition, the Rule provides that members and member organizations must indemnify both the Exchange and the vendor for any and all damages as a result of any claim or proceeding that arises out of or relates to the member’s or member organization's use of such vendor’s system.

At the time the NYSE Amex Equities Rules were adopted, Rules 17- and 18- NYSE Amex Equities did not address third-party vendor liability.

### Current Rules 17- and 18- NYSE Amex Equities

In March 2009, concurrent with the NYSE, the Exchange amended Rules 17- and 18- NYSE Amex Equities to address third-party vendor liability in the context of the NYSE and NYSE Amex Compensation Review Panels.<sup>7</sup>

Pursuant to these amendments, Rule 17(b) – NYSE Amex Equities currently provides that, except as provided in Rule 18 – NYSE Amex Equities, the Exchange is not liable for any

---

<sup>6</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63).

<sup>7</sup> See Securities and Exchange Act Release Nos. 59482 (March 2, 2009, 74 FR 10114 (March 9, 2009))(SR-NYSEALTR-2009-13)(amending Rules 17- and 18- NYSE Amex Equities) and 59486 (March 2, 2009), 74 FR 10104 (March 9, 2009)(SR-NYSE-2009-16)(amending NYSE Rules 17 and 18).

damages sustained by a member, principal executive or member organization arising out of its use or enjoyment of any third-party electronic system, service or facility (“third-party vendor”) provided by the Exchange for the conduct of business on the Exchange.

Rule 18 – NYSE Amex Equities permits a member or member organization to file a claim with the Exchange for losses arising out of a “system failure”, which includes “any malfunction of any third-party electronic system, service, or facility . . . provided by the Exchange that results in an incorrect execution of an order or no execution of a marketable order that was received in Exchange systems.” In addition, Rule 18 – NYSE Amex Equities specifies that each month a “Compensation Review Panel” consisting of three Floor Governors and three Exchange employees reviews claims submitted pursuant to the Rule and determines their eligibility for payment and whether the claims are subject to reduction. The Exchange then submits all eligible claims to the NYSE for reimbursement under the terms of NYSE Rule 18.<sup>8</sup> If the aggregate claims submitted by the Exchange cannot be fully satisfied because they exceed the funds available for payment, the available funds are allocated among all eligible claims based on the proportion that each claim bears to the total amount eligible to receive payment. Where claims arising out of a third-party vendor system failure cannot be fully satisfied, the aggrieved member or member organization may file a claim directly against the third-party vendor for the unpaid loss.

#### Proposed Rule Changes

---

<sup>8</sup> Because the Exchange and the NYSE share a common trading platform, NYSE Rule 18 provides a mechanism for the Exchange to seek reimbursement from NYSE for the amounts that the Exchange undertakes to pay out to NYSE Amex Equities members and member organizations under Rule 18 – NYSE Amex Equities. Each claim by an Exchange member or member organization under these Rules is considered separately. See NYSE Rule 18. See email from Jason Harman, NYSE Regulation, Inc., to Ira L. Brandriss, Special Counsel, Commission, dated June 8, 2010.

The Exchange proposes to rescind Rule 60A - NYSE Amex Equities as it is duplicative of Rule 17 - NYSE Amex Equities. Rules 17- and 18- NYSE Amex Equities comprehensively address third-party vendor liability, and maintaining Rule 60A - NYSE Amex Equities in the NYSE Amex Equities rulebook is potentially confusing to members and member organizations since, unlike the other Rules, it does not specify the process for submission of claims for losses arising out of the use of third-party vendor systems provided by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6 of the Act,<sup>9</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that they are 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 believes that the proposed rule changes support the objectives of the Act by rescinding a duplicative rule and fully conforming NYSE and NYSE Amex Equities rules regarding vendor liability.

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.

---

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposal raises no novel issues and seeks to rescind a duplicative rule that was left in the NYSE Amex Equities rulebook after the Acquisition. Therefore, the Commission designates the proposal operative upon filing.<sup>13</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.

---

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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-2010-49 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-2010-49. 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 Web site viewing and printing 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 available publicly. All submissions should refer to File Number SR-NYSEAmex-2010-49 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.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>14</sup> 17 CFR 200.30-3(a)(12).