

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60737; File No. SR-NYSE-2009-96)

September 29, 2009

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Permitting Affiliation with NYFIX Millennium L.L.C. and NYFIX Securities Corporation

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 22, 2009, New York Stock Exchange LLC (“NYSE” 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 self-regulatory organization. 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 be affiliated with two registered broker-dealer subsidiaries of NYFIX, Inc. (“NYFIX”), NYFIX Millennium L.L.C. (“NYFIX Millennium”) and NYFIX Securities Corporation (“NYFIX Securities”), for a period not to exceed six months and subject to certain limitations and obligations relating to the relationship.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

The Exchange is making this submission in connection with the proposed acquisition of NYFIX by NYSE Technologies. On August 26, 2009, NYSE Technologies entered into an Agreement and Plan of Merger (as it may be amended from time to time, the “Merger Agreement”) with NYFIX and CBR Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of NYSE Technologies. Under the terms of the Merger Agreement, CBR Acquisition Corp. will merge with and into NYFIX, with NYFIX surviving the merger as a direct wholly owned subsidiary of NYSE Technologies (the “Merger”). Following the Merger, both the Exchange and NYFIX will be indirect wholly owned subsidiaries of NYSE Euronext and affiliates.

As a result of the Merger, NYSE Technologies will acquire, among other things, NYFIX’s Transaction Services Division. In the U.S., the Transaction Services Division is currently comprised of two U.S. registered broker-dealer subsidiaries, NYFIX Millennium, which is also an alternative trading system registered under SEC Regulation ATS, and NYFIX Securities.<sup>4</sup> Each has the Financial Industry Regulatory Authority (“FINRA”), an unaffiliated self-regulatory organization (“SRO”), as its designated examining authority. Neither broker-dealer is a member of the Exchange. The Exchange notes that there is competition in the market

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<sup>4</sup> Outside of the U.S., the NYFIX Transaction Services Division also operates the desk agency execution business of NYFIX International in the U.K. and Euro Millennium, a multi-lateral trading facility for non-displayed liquidity in pan-European listed equities housed within NYFIX International. These services are not within the scope of the Exchange’s Proposed Rule Change.

to provide introducing broker services to the Exchange and the Exchange believes that there will continue to be effective competition after the Merger.

For purposes of this proposed rule change, Routing Services shall mean any of the activities of NYFIX Millennium and NYFIX Securities which relate to routing to marketplaces that are not operated by NYFIX, orders (including NYFIX Millennium “pass through” orders) which flow through the matching facility on their way to an exchange, electronic communications network, or ATS,<sup>5</sup> and NYFIX Securities’ direct electronic market access and algorithmic trading products.

The Exchange is currently exploring various alternatives for the Transaction Services Division. Because of the manner in which the Transaction Services Division may interact with the Exchange and its affiliates, which gives rise to concerns regarding (1) the potential for conflicts of interest in instances where an exchange is affiliated with a broker-dealer conducting an order routing business that may interact with the exchange itself, and (2) the potential for informational advantages that could place such an affiliated broker-dealer at a competitive advantage vis-à-vis other non-affiliated broker-dealers, the Exchange proposes to be affiliated with NYFIX Millennium and NYFIX Securities for a period not to exceed six months and subject to the terms and conditions set out below.

a. Conditions

Accordingly, the Exchange represents as follows, in each case for so long as the Exchange is affiliated with NYFIX Millennium and NYFIX Securities, with respect to the Routing Services:

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<sup>5</sup> These orders are only executed if they find a match at or within the national best bid and offer by guaranteeing customers the best available ask price when buying securities, and the best available bid price when selling securities. If there is not a match, these orders are immediately routed to their ultimate destination.

(1) Neither NYFIX Millennium nor NYFIX Securities are members of the Exchange nor will they become members of the Exchange.

(2) NYFIX does not offer order routing services other than the Routing Services, and none of the Routing Services will be modified unless such modification is approved by the Commission.

(3) NYFIX will not engage in proprietary trading.

(4) NYFIX will not accept any new clients for its Routing Services after the Merger.

(5) There will continue to be independent functionality of, and full public access to, NYSE facilities.

(6) There will be a complete separation between NYFIX, on the one hand, and the Exchange and its affiliates, on the other (e.g., no shared office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or their facilities, including but not limited to advance knowledge of related filings by the Exchange pursuant to Rule 19b-4 of the of the Securities Exchange Act of 1934.<sup>6</sup>

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<sup>6</sup> 15 U.S.C. 78a.

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements;

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Exchange believes these measures effectively address the concerns noted above regarding the potential for conflicts of interest and informational advantages favoring NYFIX Millennium and NYFIX Securities vis-à-vis other non-affiliated market participants.

## 2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)<sup>7</sup> of the Exchange Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(1),<sup>9</sup> in particular, in that it enables the

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

<sup>8</sup> 15 U.S.C. 78a, et seq.

<sup>9</sup> 15 U.S.C. 78f(b)(1).

Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)<sup>10</sup> of the Exchange Act because the rules summarized herein would create a governance and regulatory structure that 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. In particular, the Proposed Rule Change sets forth certain conditions under which the Routing Services will be provided so as to assure that the potential for conflicts of interests and informational advantages are adequately addressed. The conditions under which the Exchange is permitted to be affiliated with the entities conducting the Routing Services will also be limited to no more than 6 months.

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

Within 35 days of the date of publication of this notice in the Federal Register or

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

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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 No. SR-NYSE-2009-96 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 No. SR-NYSE-2009-96. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. 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 No. SR-NYSE-2009-96 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>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).