

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59939; File No. SR-NYSEAmex-2009-17)

May 19, 2009

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Revising Rules Governing the Use of Telephones on the Options Trading Floor

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 4, 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Exchange filed Amendment No. 1 to the proposed rule change on May 18, 2009.<sup>5</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

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<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> Amendment No. 1 amended the Exchange’s proposed revision of Part 1C(i)(12) of the Supplementary Material to Rule 476A (Imposition of Fines for Minor Violations of Rules) to more accurately cite Exchange Rule 902NY(i)(1). Amendment No. 1 further amended the description of the violation in Part 1C(i)(12) to more closely reflect Rule 902NY(i)(1), which prohibits an employee of an ATP Holder, as well as an ATP Holder, to employ any alternative communication device on the Trading Floor without prior approval of the Exchange. In addition, Amendment No. 1 made corresponding changes to the Minor Rule Plan Recommended Fine Schedule also contained in Rule 476A.

The Exchange proposes to (i) eliminate old rules governing telephones and hand held devices, (ii) introduce new rules governing the use of telephones on the Trading Floor, and (iii) clarify recently adopted language regarding the removal of hand held devices from the Trading Floor. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the Exchange's principal office 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.

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

1. Purpose

The purpose of this filing is to (i) eliminate old rules governing telephones, hand held devices, and Floor Wires, (ii) introduce new rules governing the use of telephones on the Trading Floor<sup>6</sup> and (iii) clarify recently adopted language regarding the removal of hand held devices from the Trading Floor.

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<sup>6</sup> NYSE Amex LLC recently relocated its Options Trading Floor to 11 Wall Street, New York, New York effective with the approval of SR-NYSEALTR-2008-14,

The Exchange proposes to delete, from PART II - Rules Principally Applicable to Floor Transactions, Section 6 – Floor Wires in its entirety. This section is obsolete given changes in telecommunications devices, changes in market structure, enhanced requirements for the systematization of orders, and maintenance of electronic records.

In its place, the Exchange proposes new Rule 902NY(i), Telephones on the Trading Floor. The new Rule is modeled on NYSE Arca Rule 6.2 (h), although it does not include certain outdated or inapplicable concepts of the NYSE Arca Rule.<sup>7</sup>

The proposed rule requires all ATP Holders to register with the Exchange, prior to use, any telephone to be used on the Trading Floor.<sup>8</sup> At the time of registration, ATP Holder representatives must agree that they are aware of and understand the rules governing telephones on the Trading Floor.

In addition, the Exchange notes that separate from the registration and use of telephones, the Exchange shall retain the authority to review and approve, prior to their use, any alternative communication device (including but not limited to devices offering

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See Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (notice of filing of Amendment No. 1 and order granting accelerated approval of the SR-NYSEALTR-2008-14 as modified by Amendment No. 1).

<sup>7</sup> Certain concepts in NYSE Arca Rule 6.2(h) have no natural corollary within NYSE Amex rules, including, for example, the terms OTP Firm and trading posts. In the alternative, NYSE Amex rules refer to employees of ATP Holders or Trading Zones, respectively—and such concepts will be so reflected throughout the proposed rule. Further, concepts such as Floor Managers or General Access Phones are not applicable to NYSE Amex and therefore are not included in the proposed NYSE Amex rule.

<sup>8</sup> The Exchange is not proposing to require ATP Holders to register by category of user. Such a requirement is inapplicable since (i) the proposed rule applies to ATP Holders and all employees of ATP Holders, regardless of category and (ii) such a requirement was a historical response to capacity limitations (which no longer apply) thereby allowing the Exchange to restrict use by certain categories of users if capacity issues arose.

capabilities such as email, instant messaging, texting, or internet-supported communications). Also, according to proposed Rule 902NY(i)(1): no ATP Holder or employee of an ATP Holder, may employ any alternative communication device (other than telephones as described herein) on the Trading Floor without prior approval of the Exchange.

The proposed rule specifically prohibits the use of any device to maintain an open line of continuous communication that would allow a person off the Trading Floor to continuously monitor the activities in the Trading Crowd. This prohibition covers intercoms, walkie-talkies and any similar devices.<sup>9</sup>

The proposed rule governs all ATP Holders and employees of ATP Holders while on the Floor.<sup>10</sup> As with NYSE Arca Rule 6.2(h)(3), this proposed rule restricts the transmission of quotation information to only those quotations that have been publicly disseminated. It requires any order that is transmitted over the phone to be immediately recorded in the EOC device. It prohibits the receipt of an order over a phone when the call is placed from off the Floor into the Trading Crowd. The Rule also provides that the

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<sup>9</sup> Certain capacity restrictions set forth in NYSE Arca Rule 6.2(h)(2) are no longer relevant and will not be included in the NYSE Amex proposed rule.

<sup>10</sup> By applying the proposed rule to ATP Holders and employees of ATP Holders, the Exchange is using a term designed to encompass the same scope of individuals as the equivalent NYSE Arca rule. In doing so, NYSE Amex eliminates the need to specifically reference, as NYSE Arca Rule 6.2(h) does, each type of covered employee, such as Floor Broker, Market Maker, or Clerk. As a result, NYSE Amex (i) collapsed the substantive provisions of NYSE Arca Rule 6.2(h)(4)–(5) into proposed Rule 902NY(i)(4) and (ii) has not carried over the specific references to Floor Broker Clerks, Stock Execution Clerks and Market Maker Clerks set forth in the NYSE Arca Rule. Finally, NYSE Arca Rule 6.2(h)(5)(D), regarding Lead Market Makers, is entirely inapplicable and therefore not copied into the proposed rule.

Exchange may require the taping of any telephone line, and that ATP Holders and their employees agree to consent to tape recording of any line.

The Exchange also proposes Rule 902(i)(5), Records, in order to require the retention of certain records of all telephones and all other approved communications devices used to conduct business on the Exchange.<sup>11</sup> NYSE Amex further proposes a retention period of three years, the first two years in an accessible place, consistent with the retention period of Securities and Exchange Commission Rule 17a-4.

The Exchange further proposes Rule 902(i)(6), Revocation of Registration, which establishes the Exchange's authority to deny, limit or revoke an ATP Holder's permission to use of any registered telephone on the Trading Floor. Although an ATP Holder need only register with the Exchange, prior to use, any telephone to be used on the Trading Floor, the Exchange retains the right to deny, limit, or revoke an ATP Holder's permission. Specifically, according to the proposed rule, the Exchange may deny, limit or revoke registration of any telephone whenever it determines, in accordance with the procedures set forth in Rule 476,<sup>12</sup> that use of such device is inconsistent with the public interest, the protection of investors, or just and equitable principles of trade, or such device has been or is being used to facilitate any violation of the Securities Exchange Act of 1934, as amended, or rules thereunder, or the Exchange rules.

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<sup>11</sup> This proposed rule is modeled on NYSE Arca Rule 6.2(h)(9).

<sup>12</sup> See e-mail from Andrew Stevens, Chief Counsel – U.S. Equities & Derivatives, NYSE Euronext, to Gary Rubin, Attorney-Advisor, Commission, dated May 19, 2009, confirming that the reference to Rule 475 in the Purpose section and Exhibit 1 of the proposal should be corrected to refer to Rule 476.

Finally, similar to NYSE Arca Rule 6.2(h)(10), the Exchange will not assume any liability for problems associated with the use of telephones or other communication devices.<sup>13</sup>

The Exchange proposes changes to Rule 476A (Imposition of Fines for Minor Violations of Rules) to replace obsolete references to Exchange Rule 220 with accurate references to Exchange Rule 902NY(i). The Exchange also proposes adding text designed to specifically address violations of Exchange Rule 902NY(i) pertaining to the pre-approval of alternative communication devices. Consistent with violations of Exchange Rule 902NY(i) regarding an ATP Holder's failure to register telephones prior to their use, the Exchange proposes to establish first, second and third level monetary fines of \$500.00, \$1,000.00, and \$2,500.00 regarding an ATP Holder's unauthorized use of alternative communication devices.

The Exchange also seeks to clarify recently adopted language in Rule 902NY(g) governing the removal of Hand Held Trading Devices from the Trading Floor to make it clear that removal of such devices is prohibited, that the prohibition extends to any person, including but not limited to ATP Holders and ATP Holder employees, and that such violation is subject to disciplinary action pursuant to Rules 476 or 476A.

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<sup>13</sup> The Exchange notes that Commentaries .01-.02 and .04 to NYSE Arca Rule 6.2 do not apply specifically to subsection (h) and therefore are not reflected in the NYSE Amex proposed rule. The Exchange also notes that the concept reflected in Commentary .03 to NYSE Arca Rule 6.2 is incorporated into NYSE Amex proposed Rule 902NY(i)(3)(B) and (4)(C).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>14</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>15</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest, in that it proposes modernize and clarify rules for the use of telephones and other communication devices on the Trading Floor.

### 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> Because the 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

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<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>19</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>20</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>21</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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>22</sup>

#### 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:

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>22</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on May 18, 2009, the date the Exchange filed Amendment No. 1.

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-2009-17 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-2009-17. 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 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-2009-17 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>23</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).