

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59956; File No. SR-NYSEAmex-2009-15)

May 21, 2009

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 935NY – Order Exposure Requirements to Reduce the Exposure Periods from Three Seconds to One Second

I. Introduction

On April 21, 2009, NYSE Amex LLC (“NYSE Amex” or the “Exchange”), filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to reduce certain order exposure periods from three seconds to one second. The proposed rule change was published for comment in the Federal Register on May 5, 2009.³ The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 to the proposal on May 20, 2009.⁴ This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to reduce the exposure time during which Amex Users may not execute as principal against orders they represent as agent from three seconds to one second. Under the current Rule 935NY, Order Exposure Requirements, Users may not execute as principal orders they represent as agent unless agency orders are first exposed on the Exchange for at least three seconds, or the User has been bidding or offering on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59825 (April 27, 2009), 74 FR 20771 (“Notice”).

⁴ Amendment No. 1 was a technical amendment to correct an inadvertent error in language in the Purpose Section of the 19b-4.

the Exchange for at least three seconds prior to receiving an agency order that is executable against such bid or offer. During this three-second exposure period, other market participants may enter orders to trade against the exposed order. Under this proposal, the exposure periods contained in Rule 935NY would be reduced to one second.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, 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 Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,⁷ which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic nature of the NYSE Amex System, reducing the exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that NYSE Amex members could receive,

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(8).

process, and communicate a response back to the Exchange within one second, the Exchange stated that it conducted a survey of Amex Trading Permit Holders (“ATP Holders”) to find out whether their systems were capable of receiving, processing, and responding to orders in a meaningful way within one second. NYSE Amex stated that of the six member firms that responded to the Exchange’s survey, four indicated that the turnaround time was less than one second, one declined to comment regarding its turnaround time, and one stated that it was not exactly sure of its turnaround time.⁸ NYSE Amex also stated that none of the responding ATP Holders anticipated any problems related to order processing if the Exchange reduced the exposure periods to one second, and none of the responding ATP Holders were opposed to the reduced exposure periods.⁹ Based on NYSE Amex’s statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for NYSE Amex to reduce the exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the Federal Register. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that the Exchange has provided reasonable support for its belief that the Exchange’s market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed.

⁸ See Notice.

⁹ Id. NYSE Amex stated that one respondent, when asked about the proposed one second exposure periods, indicated that it “might be hard to respond that rapidly” but then went on to state that they felt NYSE Amex should make the change in order to match other option exchanges’ rules. Id.

Finally, the Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, NASDAQ OMX PHLX, Inc., and NYSE Arca, Inc.¹⁰ Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹¹ to approve the proposed rule change on an accelerated basis.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSEAmex-2009-15), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹⁰ See Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008)(SR-CBOE-2008-16); 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94); 59081 (December 11, 2008), 73 FR 76432 (December 16, 2008) (SR-Phlx-2008-79); and 59194 (January 5, 2009), 74 FR 976 (January 9, 2009).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).