

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61627; File No. SR-NYSEAMEX-2010-11)

March 2, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Rule 476 to Add a Provision for Violations Relating to Failing to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade

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 February 9, 2010, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 amend NYSE Amex Rule 476 to add a provision for violations relating to failing to observe high standards of commercial honor and just and equitable principles of trade. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://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 it

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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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In this filing, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) proposes to amend NYSE Amex Rule 476 to add a provision for violations relating to failing to observe high standards of commercial honor and just and equitable principles of trade. The Commission previously approved an amendment to NYSE Amex Rule 476 to delete subsection (a)(6), which concerned just and equitable principles of trade.<sup>4</sup> The rationale for that deletion was because NYSE Amex adopted an equities rule – NYSE Amex Equities Rule 2010 – that provided for the same content as the prior version of Rule 476(a)(6) and that harmonized the Exchange rule with the New York Stock Exchange LLC (“NYSE”) and Financial Industry Regulatory Authority, Inc. (“FINRA”) standards for just and equitable principles of trade.

However, in deleting Rule 476(a)(6) as part of the NYSE Amex equities harmonization process, the Exchange inadvertently deleted this standard for its options trading platform. Accordingly, the Exchange proposes to amend Rule 476 to add subsection (a)(6) to cover the same content that was previously deleted. To ensure that the standards for just and equitable principles of trade are consistent across the Exchange, NYSE, and FINRA, the Exchange proposes to adopt rule text that mirrors the standard set forth in NYSE Amex Equities Rule 2010, which is virtually identical to NYSE Rule 2010 and FINRA Rule 2010. As proposed, NYSE

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<sup>4</sup> See Securities Exchange [sic] Release No. 59975 (May 27, 2009) [sic], 74 FR 26449 (June 2, 2009) (SR-NYSEAmex-2009-26) [sic].

Amex Rule 476(a)(6) would read as follows: “failing to observe high standards of commercial honor and just and equitable principles of trade.”

In adopting this revised rule text for Rule 476(a)(6), the Exchange would also be able to bring a charge relating to failing to observe high standards of commercial honor and just and equitable principles of trade against not only members and member organizations, but also against principal executives, approved persons, and employees of member organizations. This proposal is consistent with FINRA Rule 2010 because under FINRA Rule 0140, persons associated with a FINRA member have the same duties and obligations as a member under FINRA rules. Accordingly, FINRA has the authority to charge an associated person with a violation of Rule 2010. By adding this standard to Rule 476(a)(6), the Exchange will similarly have the authority to charge an employee of a member organization with a violation relating to failing to observe high standards of commercial honor and just and equitable principles of trade.

To ensure full harmonization, the Exchange also proposes amending Rule 476(a)(5) and deleting the phrase “fraud or fraudulent acts” and replacing it with the rule text from NYSE Amex Equities Rule 2020 to provide that the Exchange can bring charges against an employee of a member organization for effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

Finally, the Exchange proposes fixing a typographical error and replacing the term “principle” with “principal” in connection with the rule text relating to “principal executives.”

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act<sup>5</sup> which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>6</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes this rule proposal ensures that it will be enabled to charge, as necessary, when a member, member organization, principal executive, approved person, or employee of a member organization fails to observe high standards of commercial honor and just and equitable principles of trade, as contemplated by the Act, or effects any transaction in, or induces the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

### 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

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

<sup>6</sup> 15 U.S.C. 78k-1(a)(1).

the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</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 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</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>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. 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 notes that the proposed rule change is restoring rule text that was inadvertently deleted and is providing the Exchange with the authority to bring charges against an employee of a member organization under paragraphs (a)(5) and (a)(6) of NYSEAmex Rule 476. The proposed rule change does not raise any new substantive issues and will harmonize NYSE, NYSEAmex and Finra's rules in this regard. For these reasons, the Commission believes that the waiver of the 30-day operative date is consistent with the protection of investors and the

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization 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 5 business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

public interest.<sup>11</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.

#### 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-2010-11 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-2010-11. 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

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<sup>11</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>12</sup> 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for

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<sup>12</sup> The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov/>.

inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-2010-11 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).