

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59834; File No. SR-NYSEAmex-2009-14)

April 28, 2009

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rules 1000, 60 and 123C to be more Consistent with the Trading Characteristics of Securities Traded on NYSE Amex

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 20, 2009, NYSE Amex LLC (“NYSE Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 amend NYSE Amex Equities Rule 1000 (“Automatic Execution of Limit Orders Against Orders Reflected in Exchange Published Quotation”), NYSE Amex Equities Rule 60 (“Dissemination of Quotations”) and NYSE Amex Equities Rule 123C (“Market on the Close Policy and Expiration Procedures”) to be more consistent with the trading characteristics of securities traded on NYSE Amex. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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

¹ 15 U.S.C. 78s(b)(1).

² 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex LLC (“NYSE Amex” or “Exchange”), formerly the American Stock Exchange LLC and NYSE Alternext US LLC,³ proposes to amend NYSE Amex Equities Rule 1000 (“Automatic Execution of Limit Orders Against Orders Reflected in Exchange Published Quotation”), NYSE Amex Equities Rule 60 (“Dissemination of Quotations”) and NYSE Amex Equities Rule 123C (“Market on the Close Policy and Expiration Procedures”) to be more consistent with the trading characteristics of securities traded on NYSE Amex.

Specifically, the Exchange proposes to amend NYSE Amex Equities Rule 1000 to allow securities priced at \$1000 or higher (“high-priced securities”) to be eligible for automatic execution and make a conforming amendment to NYSE Amex Equities Rule 60(d)(iii)(B)(I)-(II). The Exchange also seeks to amend NYSE Amex Equities Rule 123C(5) to reduce the order imbalance size required for mandatory imbalance publications at 3:40 p.m. and 3:50 p.m. from 50,000 shares to 25,000 shares.

a. Background

As described more fully in a related rule filing,⁴ NYSE Euronext acquired The Amex Membership Corporation (“AMC”) pursuant to an Agreement and Plan of Merger, dated January

³ On March 3, 2009, the Exchange submitted a rule filing to change its name from NYSE Alternext US LLC to NYSE Amex LLC (SR-NYSEALTR-2009-24).

⁴ 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 Merger).

17, 2008 (the “Merger”). In connection with the Merger, the Exchange’s predecessor, the American Stock Exchange LLC (“Amex”), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the “Act”).⁵ The effective date of the Merger was October 1, 2008.

In connection with the Merger on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”). The Exchange’s equity trading systems and facilities at 11 Wall Street (the “NYSE Amex Trading Systems”) are operated by the New York Stock Exchange (“NYSE”) on behalf of the Exchange.⁶

As part of the Equities Relocation, NYSE Amex 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 Trading Systems.⁷ The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current

⁵ 15 U.S.C. 78f.

⁶ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

⁷ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03) (implementing the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10) (adopting amendments to NYSE Amex Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11) (adopting amendments to Rule 62 - NYSE Amex Equities to track changes to corresponding NYSE Rule 62).

NYSE Rules 1-1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

NYSE Amex Equities Rules 1000(a)(vi) and 60(d)(iii)(B)(I)-(II), as adopted from the NYSE, provide that high-priced securities, i.e., securities priced above \$1,000, are ineligible for automatic executions. High-priced securities are traded manually by the assigned Designated Market-Maker (“DMM”).

NYSE Amex Equities Rule 123C, as adopted from the NYSE, sets forth the procedures for the entry of market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders.⁸ Included in these procedures is the requirement that at 3:40 p.m. if a security has a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell of 50,000 shares or more, the assigned DMM is required to disseminate a publication informing the investing public of the disparity⁹ In addition, a DMM may, with Floor Official approval, disseminate an imbalance publication even if the disparity is less than 50,000 shares if the imbalance in the security is significant in relation to the average daily trading volume in the security. At 3:50 p.m. the DMM is required to provide an update of the previous imbalance publication.

b. Proposed Amendments

As previously discussed, NYSE Amex adopted NYSE Rules 1-1004, subject to minor changes as necessary to apply those rules as NYSE Amex Equities Rules on the NYSE Amex trading Floor. Since the implementation of these rules on December 1, 2008, the Exchange has determined that NYSE Amex Equities Rule 1000, NYSE Amex Equities Rule 60 and NYSE

⁸ In the NYSE Rules and for the purposes of this discussion, the terms “market-on-close” and “limit-on-close” are used interchangeably with “market-at-the-close” and “limit-at-the-close.”

Amex Equities Rule 123C, as applied, are inconsistent with the trading characteristics of its securities. Accordingly, the Exchange seeks to amend these rules to provide regulatory imbalance information and automatic execution that is more aligned with the trading activity and volume on its Floor.

The Exchange proposes to amend NYSE Amex Equities Rule 1000 to make high-priced securities eligible for automatic execution. Prior to the Exchange's relocation and implementation of Amex Equities Rules, all securities, including high-priced securities, traded on the Amex Exchange, were automatically executed.¹⁰ Given the specific market characteristics of NYSE Amex, the Exchange believes it is appropriate to make high-priced securities eligible for automatic execution because such automation benefits the NYSE Amex market participant and serves the public interest. Liquidity in NYSE Amex-listed securities is more dispersed among multiple market centers than securities traded on the NYSE. As such, high-priced securities on NYSE Amex must be eligible for immediate and automatic execution in order to effectively compete for order flow with protected quotes.

Accordingly, the Exchange proposes to rescind section (a)(vi) from NYSE Amex Equities Rule 1000, thereby allowing high-priced securities to be automatically executed on the Exchange. In addition, the Exchange seeks to make conforming changes to NYSE Amex Equities Rule 60. The Exchange proposes to amend section (d)(iii)(B)(I) and (II) in order to have all high-priced securities autoquoted like all other securities pursuant to the provision of NYSE Amex Equities Rule 60.

⁹ NYSE Amex Equities Rule 123C(5).

¹⁰ Amex Legacy Rules established the automatic execution of securities traded on the Amex. See Amex Rule 128A – AEMI (Automatic Execution), Amex Rule 123 – AEMI (Manner of Bidding and Offering), and Amex Rule 126 – AEMI (Precedence of Bids and

The Exchange further proposes to amend NYSE Amex Equities Rule 123C to reduce the share volume required to disseminate a mandatory imbalance publications at 3:40 p.m. and 3:50 p.m. from 50,000 shares to 25,000 shares. Prior to the adoption of NYSE Amex Equities Rule 123C, Amex Rule 131A governed entry and execution of MOC and LOC orders as part of the closing transaction. Pursuant to Amex Rule 131A, a specialist was required to disseminate an imbalance publication if there was a buy or a sell disparity in the amount of 25,000 shares.

Exchange-listed securities are significantly different from those securities listed on the NYSE which overall have a much higher Average Daily Volume (“ADV”) and therefore are more likely to have MOC/LOC orders that result in imbalances of 50,000 shares or more. Conversely, a MOC/LOC imbalance of 25,000 - 50,000 shares in an NYSE Amex listed security is generally significant given the typically lower ADV of such securities; thus, publication of an imbalance is appropriate. The Exchange reviewed trading statistics of MOC/LOC orders submitted to NYSE Amex and found that from January 2, 2009 – January 20, 2009, NYSE Amex only had six out of 248 securities that had received MOC/LOC orders for shares totaling more than 50,000 shares. This represented 2.4% of NYSE Amex MOC/LOC orders that met this 50,000 share threshold. Additionally, none of the trading imbalances in the 247 Amex securities ever totaled 50,000 shares.

Given this information, NYSE Amex proposes to amend NYSE Amex Equities Rule 123C to reduce the order imbalance size required for mandatory imbalance publication from 50,000 to 25,000 shares. Currently, an imbalance of 25,000 shares would not be subject to the mandatory publication requirement. The DMM on the Exchange would not be required to publish an imbalance of 25,000 shares unless the DMM determined, with Floor Official

Offers). Auto-Ex Eligible Securities are defined in Amex Rule 128A - AEMI as “all ETFs, equities, and securities that trade like equities traded on the Exchange.”

approval, that such imbalance was significantly greater than the average daily volume in the security. The Exchange believes that reducing the share volume from 50,000 to 25,000 shares will result in more transparency for NYSE Amex market participants and promotes the principles of a free and open market which benefits the public interest.

The Exchange believes that the reduction of the size parameter for mandatory publishing of imbalances is appropriate for the Exchange's listed securities because it provides mandatory imbalance publications consistent with trading volume on the Exchange, thus providing investors with more accurate information about disparities in MOC/LOC orders consistent with the trading volume on the Exchange.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),¹¹ which requires that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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 Exchange believes that the proposed amendments are consistent with these objectives. Currently DMMs manually trade NYSE Amex high-priced securities. This proposed rule change would allow for these high-priced securities to be eligible for automatic execution and auto-quoting which would allow NYSE Amex to protect its quote and remain competitive with the other market centers. Furthermore, reducing the mandatory publication of imbalances to 25,000 shares provides more transparency to the NYSE Amex

¹¹ 15 U.S.C. 78f(b)(5).

market participants. NYSE Amex submits that these proposed rule changes remove impediments to and perfects the mechanism to a free and open market.

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

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁴ However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

designate the proposed rule change operative upon filing. The Exchange stated that the waiver of this period will allow orders in high-priced securities to effectively compete as protected quotations. In addition, the Exchange stated that waiver of the operative delay will allow the Exchange to conform the mandatory publication requirements to the market characteristics of the Exchange, benefitting NYSE Amex market participants and the public interest. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.¹⁶

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. Please include File No. SR-NYSEAmex-2009-14 on the subject line.

¹⁵

Id.

¹⁶

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).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-14. 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-2009-14 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).