

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60698; File No. SR-NYSEAmex-2009-61)

September 21, 2009

Self-Regulatory Organizations; NYSE Amex, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Implementing a Fee for Complex Orders to Its Schedule of Fees and Charges for Exchange Services

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 9, 2009, NYSE Amex, LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE Amex. NYSE Amex filed Amendment No. 1 to the proposal on September 18, 2009.³ NYSE Amex filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposed rule change, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the “Schedule”). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 9, 2009. The amended section of the Schedule is included as Exhibit 5 hereto. A copy of this filing is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 revises the proposal to: (1) correct an example in the purpose section of the proposal of the fee applicable when one firm represents both sides of a transaction; and (2) provide additional discussion of the statutory basis for the proposal.

⁴ 15 U.S.C. 78s(b)(3)(A).

available on the Exchange's Web site at 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 Exchange 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Pursuant to a recent rule filing⁶ the Exchange will be introducing automated complex order trading for all market participants on NYSE Amex. In conjunction with this new functionality, the Exchange proposes to introduce two new transaction fees specific to Complex Order executions.

Complex Orders that are executed against other similar Complex Orders will be subject to a transaction fee of \$0.10 per contract. For example, if a Complex Order, comprised of two legs, executes against a similar two-legged Complex Order, each market participant will be charged \$0.20 (\$0.10 per contract). To expand on this example, if the same strategy is executed a total of ten (10) times, each participant would be charged \$2.00. If a Complex Order comprised of three legs executes against a similar three-legged Complex Order then each

⁵ 17 CFR 19b-4(f)(2).

⁶ See Securities and Exchange Act Release No. 60554 (August 21, 2009) 74 FR 43737 (August 27, 2009) (Order granting accelerated approval of NYSEAmex-2009-42).

participant would be charged \$0.30, for the transaction. To expand on this example, if the same three-legged Complex Order is executed a total of ten (10) times, each participant would be charged \$3.00. All electronically executed Complex Orders, regardless of whether they are entered by Market Makers, Brokers Dealers, or OTP Firms representing Public Customers, will be billed this same rate when their order is executed against another Complex Order.

The Exchange proposes a separate fee for electronically executed Complex Orders when the same member firm represents both sides of the transaction. Complex Orders, entered by a firm that trade against a similar Complex Order represented by the same firm, will be subject to a transaction fee of \$0.05 per contract side. For example, if a Complex Order comprised of two legs is entered by Firm A, and executes against a similar two-legged Complex Order also for Firm A, the firm will be charged a total of \$0.20 (four contracts at \$.05 per contract), for each time the complex order strategy is executed. To expand on this example, if the same strategy is executed a total of ten (10) times, the firm would be subject to a transaction fee of \$1.00 per Complex Order, and since the same firm is a party to both sides of the transaction, they would be charged a total of \$2.00. If a Complex Order entered by Firm A, which is comprised of three legs, executes against a similar three-legged Complex Order entered by Firm A, then the firm would be charged \$0.30, for each time the three legged Complex Order is executed. To expand on this example, if the same three-legged Complex Order is executed a total of ten (10) times, the firm would be subject to a transaction fee of \$1.50 per Complex Order, and since the firm represents both sides of the transaction, they would be charged a total of \$3.00.

There may be occasions where a Complex Order will not execute against a similar contra-side Complex Order, but instead will execute against the individual leg markets represented by quotes and/or orders in the Consolidated Book. This scenario will occur when the

best price for the Complex Order strategy is actually represented by a combination of individual quotes and/or orders, resting in the Consolidated Book. In situations where Complex Orders are executed utilizing two or more individual quotes or orders from the Consolidated Book, standard transaction fees, as shown on the Schedule, will apply to all participants on the trade.

Additionally, standard Marketing Charges apply to all electronic complex order executions.

The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to all similarly situated Users. Additionally, the proposed fees are the same as those currently charged by NYSE Arca.⁷

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members. The Exchange believes that the proposed rates are reasonable. The proposed rate structure is part of the Exchange's efforts to attract and enhance participation on the Exchange, with respect to the implementation of electronic complex order trading. The Exchange also believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to all market participants on NYSE Amex.

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.

⁷ See Securities and Exchange Act Release No. 58473 (September 8, 2008) 73 FR 53312 (September 15, 2008) (Notice of filing and immediate effectiveness for SR-NYSEArca-2008-97).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder because it establishes a due, fee, or other charge imposed by NYSE Amex.

At any time within 60 days of the filing of such proposed rule change, as amended, 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.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Number SR-NYSEAmex-2009-61 on the subject line.

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.

⁸ 5 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 19b-4(f)(2).

¹⁰ The Commission considers the 60-day period within which the Commission may summarily abrogate the proposal pursuant to Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), to commence on September 18, 2009, the date NYSE Amex filed Amendment No. 1 to the proposal.

All submissions should refer to File Number SR-NYSEAmex-2009-61. 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 NYSEAmex. 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2009-61 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).