

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61360; File No. SR-NYSEAMEX-2010-03)

January 14, 2010

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 452 – NYSE Amex Equities and Section 723 of the NYSE Amex Company Guide to Insert a Date (January 1, 2010) that was Inadvertently Omitted in a Previous Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 8, 2010, NYSE Amex LLC (“Exchange” or “NYSE Amex”) 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 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 Rule 452 – NYSE Amex Equities and Section 723 of the NYSE Amex Company Guide (the “Company Guide”). The text of the proposed rule change is available at the Exchange, at the Commission’s Public Reference Room, on the Commission’s Web site at [www.sec.gov](http://www.sec.gov), and on the Exchange’s Web site at [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 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

On January 5, 2010, the Commission issued a release pursuant to Section 19(b)(1)<sup>3</sup> of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4<sup>4</sup> thereunder declaring immediate effectiveness of a rule change proposed by the Exchange to eliminate broker discretionary voting for the election of directors.<sup>5</sup> Specifically, the language of Rule 452 – NYSE Amex Equities and Section 723 of the Company Guide was revised to add the election of directors to a list of specific non-routine matters as to which a member organization may not give a proxy to vote without instructions from beneficial owners. That rule change was identical to a rule change filed by the New York Stock Exchange ("NYSE") and approved by the Commission on July 1, 2009.<sup>6</sup> The Form 19b-4 for the earlier Exchange filing stated that, "The proposed amendment will be applicable to proxy voting for shareholder meetings held on or after January 1, 2010." In requesting the Commission to waive the 30-day delayed operative date for that earlier filing, the Exchange also noted "that the NYSE's new rules will be applicable to shareholder meetings held on or after January 1, 2010 and believes that its proposed rule change should be operative no later than that date to conform to the Commission's mandate to eliminate any disparities involving voting."

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<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

<sup>5</sup> See Securities Exchange Act Release No. 34-61292 (January 5, 2010), 75 FR 1664 (January 12, 2010) (notice of filing and immediate effectiveness of SR-NYSEAmex-2009-93) ("Notice of Filing").

<sup>6</sup> See Securities Exchange Act Release No. 34-60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92) ("NYSE Approval Order").

While the proposed January 1, 2010 operative date of the Exchange’s prior rule text change was correctly identified in the Form 19b-4 for that rule filing, it was inadvertently left out of the related Exhibit 5. Instead, the general phrase “insert effective date” was left in the text in the two places where the specific operative date should have been inserted. Consequently, the Exchange is making this “cleanup” filing so that the operative date of January 1, 2010 that was accurately described in the earlier Form 19b-4 and in the Notice of Filing is reflected in the rule text of Rule 452 – NYSE Amex Equities and Section 723 of the Company Guide as well.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>7</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed correction would protect investors and the public interest by eliminating any potential confusion to investors and others that might result from leaving the current generalized reference to the effective date in the text of the Exchange’s rules.

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>7</sup> 15 U.S.C. 78f(b)(5).

the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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) by its terms, 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)<sup>10</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</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>13</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 requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In making this request, the Exchange stated that waiver of this period will permit the text of the Exchange's rules to exactly match the corresponding text of the NYSE's rules as soon as possible and will eliminate any potential confusion to investors and others that might result from the more generalized reference to the effective date of the new rule that is in the current rule text.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). 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 Commission has waived the pre-filing requirement in this case.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

The Commission believes that the waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest.<sup>14</sup> The proposal would correctly insert the effective date, as described in the Exchange's prior proposed rule change, into the text of the Exchange's rules to ensure that investors and issuers are aware that the Exchange's rule is operative on the same date as NYSE's rule change. Based on the foregoing, the Commission deems the proposal operative upon filing.

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-2010-03 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.

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<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NYSEAmex-2010-03. 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 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-2010-03 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).