

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59665; File No. SR-NYSEAmex-2009-05)

March 31, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Equities Rule 48.10 to Extend the Temporary Provisions of the Rule Relating to the Ability of the Exchange to Declare An Extreme Market Volatility Condition and Suspend Certain Exchange Requirements Relating to the Closing of Securities at the Exchange

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 March 23, 2009, NYSE Amex LLC<sup>4</sup> (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder,<sup>6</sup> which renders it effective upon filing with the Commission. 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 Equities Rule 48.10 to extend the temporary provisions of the rule relating to the ability of the Exchange to declare an extreme market

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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.

<sup>4</sup> See e-mail from Clare F. Saperstein, Managing Director, Office of General Counsel, NYSE Regulation, Inc., to David Liu, Assistant Director, Commission, dated March 31, 2009.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

volatility condition and suspend certain Exchange requirements relating to the closing of securities at the Exchange. 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 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

The Exchange proposes to amend NYSE Amex Equities Rule 48.10 to temporarily extend the provisions of the rule relating to declaring an extreme market volatility condition at the close.<sup>7</sup>

On November 26, 2008, NYSE Amex filed a rule proposal to conform its rules to those of the New York Stock Exchange LLC ("NYSE").<sup>8</sup> Among the rules amended in that filing was Rule 48, which was previously amended by the NYSE. On October 2, 2008, the NYSE filed for immediate effectiveness to amend NYSE Rule 48 to provide the NYSE with the ability to suspend certain rules at the close when extremely high

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<sup>7</sup> See SR-NYSE-2009-35 (formally submitted on March 23, 2009).

<sup>8</sup> See Securities Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10).

market volatility could negatively affect the ability to ensure a fair and orderly close.<sup>9</sup> The NYSE amended Rule 48 on an immediate effectiveness basis in order to respond swiftly to market conditions at that time. Those amendments were adopted on a temporary basis with the understanding that if the NYSE would like to adopt the closing provisions on a permanent basis, such proposal must be filed for notice and comment.

The Exchange has filed a rule proposal to amend NYSE Amex Equities Rules 48 and 123C to delete from Rule 48 the provisions relating to declaring an extreme market volatility condition at the close and add them in modified form to Rule 123C ( the “Rule 48/123C filing”).<sup>10</sup> That rule proposal has been filed under Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Act”)<sup>11</sup> and has been noticed for public comment. The comment period for that filing ends on March 31, 2009. In anticipation of the Rule 48/123C filing, the Exchange previously amended Rule 48.10 to extend from December 31, 2009 to March 27, 2009 the temporary time period that the Rule 48 at-the-close provisions would be in effect.<sup>12</sup> The Exchange now proposes to temporarily extend the NYSE Amex Equities Rule 48 at-the-close provisions pending the outcome of the Rule 48/123C filing. Accordingly, the Exchange proposes to amend Rule 48.10 to provide that

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<sup>9</sup> See SEC Release No. 58743 (Oct. 7, 2008), 73 FR 60742 (Oct. 14, 2008) (SR-NYSE-2008-102).

<sup>10</sup> See SEC Release No. 59488 (Mar. 3, 2009), 74 FR 10334 (Mar. 10, 2009) (SR-NYSEALTR-2009-15). The NYSE has filed a companion rule filing. See SEC Release No. 59489 (Mar. 3, 2009), 74 FR 10330 (Mar. 10, 2009) (SR-NYSE-2009-18).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> See SEC Release No. 59169 (Dec. 29, 2008), 74 FR 485 (Jan. 6, 2009) (SR-NYSEALTR-2008-18). The NYSE also filed a companion rule filing. See SEC Release No. 59168 (Dec. 29, 2008), 74 FR 483 (Jan. 6, 2009) (SR-NYSE-2008-139).

the provisions of that rule relating to declaring an extreme market volatility condition at the close will end April 30, 2009.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>13</sup> that an Exchange have rules that are designed 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. In particular, this rule proposal will permit the temporary provisions of Rule 48 to continue without interruption pending the outcome of the Rule 48/123C filing.

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

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<sup>13</sup> 15 U.S.C. 78f(b)(5).

(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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

The Exchange has requested that the Commission waive the 30-day operative delay in order to permit the temporary provisions of NYSE Amex Equities Rule 48 to continue without interruption pending the outcome of the Rule 48/123C filing. The Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>16</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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:

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to 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 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.

<sup>16</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. See 15 U.S.C. 78c(f).

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-2009-05 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-2009-05. 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-2009-05 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>17</sup>

Florence E. Harmon  
Deputy Secretary

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