

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59825; File No. SR-NYSEAmex-2009-15)

April 27, 2009

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending Rule 935NY – Order Exposure Requirements

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 April 21, 2009, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) 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 its rules governing order exposure requirements on the NYSE Amex System. This proposal will revise Rule 935NY. The text<sup>4</sup> of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange’s Web site at [www.nyse.com](http://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 self-regulatory organization included statements

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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> The Exchange requested that the Commission correct a typographical error in this sentence. Telephone conversation between Glenn Gsell, Managing Director, NYSE Amex, and Kristie Diemer, Special Counsel, Commission, on April 27, 2009.

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 purpose of the proposed rule change is to reduce the exposure period contained in Rule 935NY - Order Exposure Requirements, from three seconds to one second.

Rule 935NY provides that with respect to orders routed to the NYSE Amex System, Users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least three (3) seconds or (ii) the User has been bidding or offering on the Exchange for at least three (3) seconds prior to receiving an agency order that is executable against such bid or offer.

Specifically, order entry firms may not execute as principal, orders they represent as agent unless; [sic] (i) the agency order has first exposed on the NYSE Amex System for at least three seconds; [sic] (ii) the order entry firm has been bidding or offering for at least three seconds prior to receiving the agency order that is executable against such bid or offer. During this three-second exposure period, other market participants may enter orders to trade against the exposed order. Under this proposal, the exposure periods contained in Rule 935NY would be reduced to one second.

The Exchange notes that the existing three-second order exposure period contained in Rule 935NY, is not necessarily long enough to allow human interaction with the exposed orders. Rather, market participants on NYSE Amex are sufficiently automated that they can react to

these orders electronically. In this context, NYSE Amex believes it would be in all market participants' best interest to minimize the exposure period to a time frame that continues to allow adequate time for market participants to electronically respond, while at the same time reducing any market risk associated with the longer exposure period. In this respect, the Exchange states that its experience with the three-second exposure time period indicates that one second would provide an adequate response time.<sup>5</sup> Accordingly, the Exchange does not believe it is necessary or beneficial to the orders being exposed to continue to subject them to market risk for a full three seconds.

Since NYSE Amex market participants have the ability [sic] react to these orders electronically, and regularly do so in less than one second, the Exchange believes that reducing the time period to one second will continue to afford sufficient time to ensure effective interaction with orders. At the same time, NYSE Amex believes that reducing the time period to one second will allow it to provide investors and other market participants with more timely executions, thereby reducing market risk.

A shortened exposure period would be fully consistent with the electronic nature of the NYSE Amex System. In order to substantiate that market participants on NYSE Amex would not be disadvantaged by a reduced exposure period, the Exchange conducted a survey of Amex Trading Permit Holders (“ATP Holders”) to find out whether they had the systems capability available that would allow them to respond in a meaningful way within the proposed timeframe.<sup>6</sup>

The Exchange surveyed 48 member firms, representing 132 ATP Holders, all of whom regularly

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<sup>5</sup> There are numerous market participants on NYSE Amex that have the capability and already opt to respond within the first one-second of the present three second exposure period, currently in force for the NYSE Amex System.

<sup>6</sup> NYSE Amex introduced a new trading system on March 1, 2009. In order to allow sufficient time for ATP Holders to evaluate the new system, the Exchange requested ATP Holders respond to the survey by April 1, 2009.

access the Exchange on an electronic basis,<sup>7</sup> regarding the proposed change to Rule 935NY, specifically the Exchange asked; 1. “What is the approximate turnaround time for your firm to take in, process and respond to trading interest posted on NYSE Amex Options?” and 2. “Do you foresee any problems if NYSE Amex Options reduces the exposure time from three seconds to one second?” Of the 6 different member firms that responded to the Exchange’s survey, four indicated that their response time was less than one second, one declined to comment as to their response time while the sixth said that they were not exactly sure of their response time. None of the responding ATP Firms anticipated any problems related to order processing if the Exchange was to reduce the exposure period to one second. In addition, none of the responding ATP Holders indicated to the Exchange that they were opposed to the reduced exposure period.<sup>8</sup>

Based on the findings of the survey, the Exchange believes that the proposed exposure period will continue to provide sufficient time for market participants with to respond, and compete for orders, while also reducing some of the risks associated with a prolonged exposure period.

## 2. Statutory Basis

NYSE Amex believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

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<sup>7</sup> Collectively, these 132 ATP Holders participated in excess of 90% of all electronic orders executed on the NYSE Amex System during the month of March 2009. The remaining 10% of transactions generally consisted of customer orders executed against other customer orders, or orders executed by non-ATP Holder Broker Dealers. The Exchange did not survey ATP Holders who act as Floor Brokers and transact business strictly on a manual basis.

<sup>8</sup> One respondent did indicate that it “might be hard to respond that rapidly” when asked about the proposed one second exposure period, but then went on to state that they felt the Exchange should make the change in order to match other options Exchanges (rules).

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the Exchange believes that the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all orders 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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the Federal Register. The Commission

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<sup>9</sup> 15 U.S.C. 78f (b).

<sup>10</sup> 15 U.S.C. 78f (b)(5).

is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

#### 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-2009-15 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-2009-15. 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 Section, 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00

a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at NYSE Amex's principal office. 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-2009-15 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).