

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 a.m. and 3 p.m. Copies of the 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-NYSE-2009-34 and should be submitted on or before April 27, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to extend the pilot program for three months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, it is consistent with Section 6(b)(4) of the Act,¹³ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with

the provisions of Section 6(b)(8) of the Act,¹⁵ which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹⁶ adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.¹⁷

The Commission approved the fee for NYSE Realtime Reference Prices for a pilot period which runs until March 31, 2009.¹⁸ The Commission notes that the Exchange proposes to extend the pilot program for three months. The Exchange proposes no other changes to the existing pilot program. In addition, the Commission notes that it did not receive any comments on the previous extensions of the pilot program.¹⁹

On December 2, 2008, the Commission issued an approval order ("Order") that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for "non-core" market data products, such as NYSE Realtime Reference Prices.²⁰ The Commission believes that NYSE's proposal to temporarily extend the pilot program is consistent with the Act for the reasons noted in the Order.²¹ The Commission believes that approving NYSE's proposal to temporarily extend the pilot program that imposes a fee for NYSE Realtime Reference Prices for an additional three months will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information. In addition, extending the pilot program for an additional three months will allow the public to

comment on, and the Commission to analyze consistent with the Order and in light of Section 19(b) of the Act, a proposal to permanently approve the fee for NYSE Realtime Reference Prices.²²

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in NYSE Realtime Reference Prices. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,²³ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis to extend the operation of the pilot until June 30, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2009-34), as modified by Amendment No. 1, is hereby approved on an accelerated basis until June 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-7587 Filed 4-3-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59659; File No. SR-NYSE-2009-36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending to September 1, 2009, the Operative Date of New York Stock Exchange Rule 2 Requirement That NYSE-Only Member Organizations Apply for and be Approved as a Member of the Financial Industry Regulatory Authority, Inc.

March 31, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

²² The Exchange has represented that it will file a proposed rule change within thirty days of filing Amendment No. 1 to the proposal seeking to make the NYSE Realtime Reference Price service a permanent service rather than a pilot program. See *supra* note 9.

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78f(b)(8).

¹⁶ 17 CFR 242.603(a).

¹⁷ NYSE is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

¹⁸ See *supra* notes 3, 7, and 8. NYSE reduced the flat monthly fee for NYSE Realtime Reference Prices from \$100,000 per month to \$70,000 per month. See Securities Exchange Act Release No. 58443 (August 29, 2008), 73 FR 52436 (September 9, 2008) (SR-NYSE-2008-79).

¹⁹ See *supra* notes 7 and 8.

²⁰ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

²¹ See *supra* notes 3, 7, and 8.

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 25, 2009, the New York Stock Exchange, LLC ("NYSE" or the "Exchange") 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 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 extend to September 1, 2009, the operative date of New York Stock Exchange ("NYSE" or the "Exchange") Rule 2 requirement that NYSE-only member organizations apply for and be approved as a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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 is proposing to extend to September 1, 2009, the grace period for NYSE-only member organizations to apply for and be approved as a FINRA member, as required by NYSE Rule 2.

In connection with the consolidation of NASD and NYSE Regulation member firm regulation operations into FINRA, which closed on July 30, 2007, the Exchange amended NYSE Rule 2 to require NYSE member organizations to

also be FINRA members.³ In connection with those rule changes, the Commission approved a 60-day grace period within which NYSE-only member organizations must apply for and be approved for FINRA membership. In that rule filing, NYSE-only member organizations were defined as those member organizations that were not NASD members as of the date of the closing of the FINRA transaction. This grace period began on October 12, 2007, the date of Commission approval of the Exchange's rule filing. In furtherance of the consolidation, FINRA adopted NASD IM-1013-1 to enable eligible NYSE member organizations to become FINRA members through an expedited process (the "FINRA Waive-in application process").⁴

At the close of the 60-day grace period, all but two of the former NYSE-only member organizations had applied for and been approved as FINRA members. On December 12, 2007, the Exchange filed for an extension of the grace period to June 30, 2008 for those two firms.⁵ On June 30, 2008, the Exchange filed for another extension of the grace period to December 31, 2008.⁶ On December 22, 2009, the Exchange filed for an additional extension to March 27, 2009.⁷ In that filing, the Exchange noted that those two firms had unique member qualification issues and were ineligible to participate in the FINRA Waive-in application process. As of December 19, 2008, one of those two firms has been approved as a FINRA member. With respect to the other firm, because the Exchange is working on a rule filing to amend Rule 2 to permit a broker dealer to be an NYSE member organization without a FINRA membership, the Exchange believes that the grace period should be further extended so that the remaining firm does not have to re-apply for Exchange membership if the proposed change to Rule 2 is approved. Accordingly, the NYSE proposes to extend the grace period to September 1, 2009 for the firm that was an NYSE member organization

as of July 30, 2007, but not a FINRA member.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,⁹ in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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 foregoing rule change is being filed for immediate effectiveness pursuant to Section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(3)¹¹ promulgated thereunder. The proposed rule change goes solely to the administration of the self-regulatory organization in that it is not a substantive change to NYSE Rule 2 and simply extends a pre-existing grace period.

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.

³ See Securities Exchange Act Release No. 56654 (Oct. 12, 2007), 72 FR 59129 (Oct. 18, 2007) (SR-NYSE-2007-67).

⁴ See Securities Exchange Act Release No. 56653 (Oct. 12, 2007), 72 FR 59127 (Oct. 18, 2007) (SR-NASD-2007-56).

⁵ See Securities Exchange Act Release No. 56953 (Dec. 12, 2007), 72 FR 71990 (Dec. 19, 2007) (SR-NYSE-2007-115).

⁶ See Securities Exchange Act Release No. 58096 (July 3, 2008), 73 FR 39764 (July 10, 2008) (SR-NYSE-2008-54).

⁷ See Securities Exchange Act Release No. 59143 (Dec. 22, 2008), 73 FR 80491 (Dec. 31, 2008) (SR-NYSE-2008-135).

⁸ The proposed September 1, 2009 date conforms to the grace period available under NYSE Rule 300.10T for eligible NYSE Amex US LLC ("NYSE Amex") member organizations that are seeking to be waived in as an NYSE member organization pursuant to NYSE Rule 2.10. Pursuant to Rule 300.10T, such NYSE Amex member organizations have six months from March 2, 2009, which is the date that the 86 Trinity Permits expired, to comply with Exchange rules, including the Rule 2(b) requirement pertaining to FINRA membership.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(3).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Number SR-NYSE-2009-36 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-NYSE-2009-36. 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 a.m. and 3 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-36 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59656; File No. SR-NYSEALTR-2009-26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Alternext US LLC, as Modified by Amendment No. 1, Changing Certain NYSE Amex Equities Rules To Conform Them With Changes to Corresponding Rules Submitted in a Companion Filing by the New York Stock Exchange LLC

March 30, 2009.

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 March 9, 2009, NYSE Alternext US LLC (n/k/a NYSE Amex LLC) ("Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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, formerly the American Stock Exchange LLC and NYSE Alternext US LLC,⁴ proposes changes to certain NYSE Amex Equities Rules, retroactively effective to December 15, 2008, to conform them with changes to corresponding rules submitted in a companion filing by the New York Stock Exchange LLC ("NYSE").⁵ The text of the proposed rule change is available at the Exchange, the

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 to SR-NYSEALTR-2009-26 replaces the original filing in its entirety.

⁴ On March 3, 2009, the Exchange formally submitted a filing with the Commission changing its name to NYSE Amex LLC. See SR-NYSEALTR-2009-24.

⁵ See SR-NYSE-2009-25 (formally submitted on March 9, 2009), as amended.

Commission's Public Reference Room, and <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 purpose of the proposed rule changes is to change certain NYSE Amex Equities Rules to conform them with amendments to corresponding NYSE Rules submitted in a companion filing by the NYSE.

Background

As described more fully in a rule filing,⁶ NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 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 Amex US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Act.⁷ 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 NYSE on behalf of the Exchange.⁸

⁶ 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).

⁷ 15 U.S.C. 78f.

⁸ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008).