

inbound routing of orders from PHLX to BOX through NOS in accordance with the terms and conditions governing order routing that have been approved by the Commission with respect to routing of orders from NOM through NOS.

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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the 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 (iii) does not become operative for 30 days after the date of the filing, 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) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the Exchange's proposal is substantially similar to the proposal of another national securities exchange previously approved by the Commission and does

not raise any new substantive issues.¹⁵ The Exchange proposes to implement the proposed rule change when PHLX implements its XLII trading system, and states that waiving the operative delay will ensure that the Exchange is able to implement the proposed rule change at such time.¹⁶ For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.¹⁷

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. Please include File Number SR-BX-2009-026 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-BX-2009-026. 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 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-BX-2009-026 and should be submitted on or before June 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60004; File No. SR-NYSE-2009-42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving the Proposed Rule Change Implementing NYSE Realtime Reference Prices Service on a Permanent Basis

May 29, 2009.

I. Introduction

On April 16, 2009, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish the NYSE Realtime Reference Prices service on a permanent basis and to establish a flat monthly fee for that service. The proposed rule change was published for comment in the **Federal**

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization 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.

¹⁴ *Id.*

¹⁵ See Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31).

¹⁶ See SR-BX-2009-026, Items 2 and 7.

¹⁷ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Register on April 24, 2009.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to establish the NYSE Realtime Reference Prices service on a permanent basis and to establish a flat monthly fee for that service. The Exchange currently provides this service pursuant to a pilot program.⁴ The service allows a vendor to redistribute, on a real-time basis last sale prices of transactions that take place on the Exchange ("NYSE Realtime Reference Prices"). The Exchange has found that the pilot program provides a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices, and relieves vendors of administrative burdens. The product is intended to be used for reference purposes, rather than as a basis for making trading decisions.

The Service

The NYSE Realtime Reference Prices service allows Internet service providers, traditional market data vendors, and others (collectively, "NYSE-Only Vendors") to make available NYSE Realtime Reference Prices on a real-time basis.⁵ The NYSE Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. The product includes only prices, and does not include the size of each trade or bid/asked quotations.

As with the pilot program, under the permanent service the Exchange will not permit NYSE-Only Vendors to provide NYSE Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as

required by Rule 603(c)(1) of Regulation NMS.

Also, as with the pilot program, the permanent service is intended to eliminate certain administrative burdens associated with the distribution of real-time CTA prices. Specifically, the permanent service would feature the same flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

The Fee

The Exchange proposes to retain the current \$70,000 monthly flat access fee for the NYSE Realtime Reference Prices service. For that fee, the NYSE-Only Vendor may provide unlimited NYSE Realtime Reference Prices to an unlimited number of the NYSE-Only Vendor's subscribers and customers. The pilot program does not impose any device or end-user fee for the NYSE-Only Vendors' distribution of NYSE Realtime Reference Prices and the Exchange is not proposing to add any new fees for the permanent service.

As with the pilot program, the Exchange proposes to require the NYSE-Only Vendor to identify the NYSE trade price by placing the text "NYSE Data" in close proximity to the display of each NYSE Realtime Reference Price or series of NYSE Realtime Reference Prices, or by complying with such other identification requirement as to which NYSE may agree. The NYSE-Only Vendor may make NYSE Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

Contracts

As with the pilot program, NYSE proposes to allow NYSE-Only Vendors to provide NYSE Realtime Reference Prices without requiring the end-users to enter into contracts for the benefit of the Exchange. Instead, the Exchange proposes to require NYSE-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE-Only Vendors to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the "Network A Vendor Form"). The Network A Vendor Form will authorize

the NYSE-Only Vendor to provide the NYSE Realtime Reference Prices service to its subscribers and customers. The Exchange will supplement the Network A Vendor Form with an Exhibit C that will provide terms and conditions that are unique to the NYSE Realtime Reference Prices service.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, it is consistent with Section 6(b)(4) of the Act,⁷ 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,⁸ 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,⁹ 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,¹⁰ 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.¹¹

⁶ 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).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(8).

¹⁰ 17 CFR 242.603(a).

¹¹ NYSE is an exclusive processor of the NYSE Realtime Reference Prices service 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 information with respect to quotations or transactions on an exclusive basis on its own behalf.

³ See Securities Exchange Act Release No. 59791 (April 20, 2009), 74 FR 18755.

⁴ See Securities Exchange Act Release Nos. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (SR-NYSE-2007-04) and 58443 (August 29, 2008), 73 FR 52436 (September 9, 2008) (SR-NYSE-2008-79). The Exchange initially proposed to end the pilot program on November 1, 2008. The Commission has approved three extensions of the end date for the pilot program, which expires on June 30, 2009. See Securities Exchange Act Release Nos. 58893 (October 31, 2008), 73 FR 66093 (November 6, 2008) (SR-NYSE-2008-113); 59185 (December 30, 2008), 74 FR 749 (January 7, 2009) (SR-NYSE-2008-141); and 59653 (March 30, 2009), 74 FR 15536 (April 6, 2009) (SR-NYSE-2009-34).

⁵ The Exchange notes that it will make the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

This proposal would make permanent the NYSE Realtime Reference Prices service and make permanent the \$70,000 flat monthly fee for that service.¹² The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.¹³ There are a variety of alternative sources of information that impose significant competitive pressures on NYSE in setting the terms for distributing the NYSE Realtime Reference Prices service. The Commission believes that the availability of those alternatives, as well as NYSE's compelling need to attract order flow, imposed significant competitive pressure on NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NYSE-2009-42), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60001; File No. SR-NYSEAmex-2009-21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 123E To Be More Consistent With the Exchange's Current Designated Market Maker System

May 29, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on May 22, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 Exchange. NYSE Amex filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ 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 NYSE Amex Equities Rule 123E ("DMM Combination Review Policy") to be more consistent with the Exchange's current Designated Market Maker ("DMM") system. 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 proposes to amend NYSE Amex Equities Rule 123E ("DMM Combination Review Policy") to be more consistent with the Exchange's current Designated Market Maker ("DMM") system. These amendments are proposed to conform to amendments filed by the New York Stock Exchange LLC ("NYSE").⁶

I. Background

As described more fully in a related rule filing,⁷ 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 now called NYSE Amex LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act").⁸ 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.⁹

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.¹⁰ The NYSE

⁶ See Securities Exchange Act Release No. 59383 (February 11, 2009), 74 FR 7947 (February 20, 2009) (SR-NYSE-2009-07).

⁷ 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).

⁸ 15 U.S.C. 78f.

⁹ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation).

¹⁰ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities

Continued

¹² See *supra* note 4.

¹³ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) ("NYSE Arca Order"). In the NYSE Arca Order, the Commission describes the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order. In addition, the Commission notes that it recently found that NYSE was subject to competitive forces when setting the terms of its NYSE OpenBook nonprofessional subscriber fee. See Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).