

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59658; File No. SR-NYSEAmex-2009-01)

March 31, 2009

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Amending its Schedule of Fees and Charges for Exchange Services

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 March 19, 2009 NYSE Amex LLC ("NYSE Amex" 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 Exchange. On March 26, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 proposes to amend its Schedule of Fees and Charges for Exchange Services. The text of the proposed rule change 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.

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

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

<sup>3</sup> In Amendment No. 1, the Exchange revised the purpose section and Exhibit 1 to the proposed rule change and clarified that the title of its Fee Schedule reflects the Exchange's recent name change. See infra at n.4.

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 Exchange 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 these 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 aspects 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 adding a Cancellation Fee of \$1.50 to its Fee Schedule. The proposed Cancellation Fee will be charged to an executing clearing member for each public customer order (origin code "C") cancelled in excess of 500 public customer orders per month. The Cancellation Fee will only be assessed on cancelled orders in excess of the number of public customer orders that the clearing member executes in a month on behalf of itself or a correspondent firm.

The Exchange also proposes to aggregate and count as one execution all public customer options orders from the same correspondent firm executed in the same series on the same side of the market at the same price within a 300 second period. Recognizing that order cancels and trades often happen in large numbers, the purpose of this fee is to focus on activity that is truly excessive and uses bandwidth and system capacity while fairly allocating costs among members.

Additionally, this fee will not apply to cancelled public customer orders that improve the Exchange's prevailing best bid-offer ("BBO") market at the time the orders are received. Orders that match the prevailing BBO market at the time the order is received and are subsequently

cancelled will be included in the Cancellation Fee calculation. This provision seeks to remove any disincentives for firms to enter at risk orders that improve the BBO.

Excessive order cancelling has the residual effect of exhausting system resources, bandwidth, and capacity. To effectively allocate the costs associated with order cancellation activity, the Exchange believes the fee should be calculated based on cancels at the correspondent firm level. While the clearing firm will ultimately be responsible for payment of the fee, the Exchange proposes to calculate the fee for cancellations [sic] in excess of the threshold that occur at the correspondent firm level. If the clearing firm does not have any correspondent firms associated with it, the fee will be assessed based on the clearing firm's order cancellation activity. This practice will fairly allocate the fee to the party responsible for order cancellations.

The Exchange proposes to waive the Cancellation Fee until June 1, 2009.

The Exchange also proposes clarifying language to the Specialist / e-Specialist / DOMM Rights Fee. The Specialist / e-Specialist / DOMM Rights Fee is based on the average number of national daily customer contracts traded in a given issue over a three month period. The Exchange calculates the number of average national daily customer contracts on a rolling three month basis with a one month lag. For example, the monthly base rate for Specialists, e-Specialists, and DOMMs trading in a given symbol in May will be based on the national average daily customer volume in that issue in January, February, and March. The rationale [sic] for a one month lag is to give Specialists, e-Specialists, and DOMMs seeking to register in a given symbol a clear understanding of the monthly base rate at the time of registration. The monthly base rate is then divided and charged to all of the Specialists, e-Specialists and DOMM's registered in that

issue based on their prorated share of volume on the Exchange in that issue during the month. The proposed language seeks to clarify the concepts discussed above.

The Exchange also seeks to reflect the name change from NYSE Alternext US LLC to NYSE Amex LLC in the Fee Schedule.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Amex Options. Under this proposal, all similarly situated members and other Exchange participants of NYSE Amex Options will be charged the same reasonable dues, fees and other charges.

### 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 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 either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and paragraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it

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<sup>4</sup> See SR-NYSEALTR-2009-24 Proposal to change the name of the Exchange to NYSE Amex LLC.

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

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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.<sup>7</sup>

#### 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-2009-01 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-2009-01. 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

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<sup>7</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 26, 2009, the date the Exchange filed Amendment No. 1.

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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-01 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>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).