

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59720; File No. SR-NYSEAmex-2009-09]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Fees Payable by Member Organizations for Which the Exchange Is the Designated Examining Authority

April 7, 2009.

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 April 1, 2009, NYSE Amex LLC ("NYSE Amex Options" 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 proposed rule change has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal 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 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 <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 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

NYSE Amex proposes to revise its fees payable by member organizations for which the Exchange is the Designated Examining Authority ("DEA").

Currently, this fee is set at \$1,000 per month for firms engaged in a public business and \$275 per quarter for firms not engaged in a public business. The Exchange also charges a \$250 annual fee per trader and a \$100 annual FOCUS filing fee. Under the proposed structure, the Exchange will eliminate the current fees and replace them with a fee of \$.00040 per dollar of gross revenue as reported on quarterly or annual FOCUS Report Form X-17A-5. Commission revenue generated from the conduct of a retail commodities future business will be excluded from DEA fee calculation. Going forward, for purposes of establishing minimum DEA fees, the Exchange will no longer distinguish among member organizations on the basis of whether they are engaged in public business and will instead categorize them based on whether or not they are clearing firms. The minimum fee for non-clearing firms will be a monthly fee of \$275 (\$825 per quarter) and the minimum fee for clearing firms will be a monthly fee of \$1,000 (\$3,000 per quarter). The revisions proposed in this filing make the Exchange's DEA fees identical to those charged by the Chicago Board Options Exchange ("CBOE") and more reflective of the costs the Exchange incurs in connection with its role as DEA.<sup>5</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 members for which the Exchange is the DEA will be charged DEA fees at the same rate based on gross revenue.

#### 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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and SEC Rule 19b-4(f)(2) thereunder in that it establishes or changes a due, fee, or other charge imposed only on members by the self-regulatory organization.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2009-09 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-09. 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

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

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

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

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

<sup>5</sup> See Securities and Exchange Act Release No. 46062 (June 11, 2002), 67 FR 41552 (June 18, 2002) (notice of immediate effectiveness of SR-CBOE-2001-66).

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 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-2009-09 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59716; File No. SR-NYSEArca-2009-11]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To Amend Rule 6.69—Reporting Duties

April 6, 2009.

#### I. Introduction

On February 13, 2009, NYSE Arca, Inc. ("NYSE Arca" 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rule 6.69 to revise the procedures for reporting open outcry trades that occur on the options trading floor. The proposed rule change was published for comment in the **Federal Register** on March 3, 2009.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description

NYSE Arca's proposal revises the procedures for reporting open outcry trades that occur on the options trading floor. Under existing NYSE Arca rules, all option transactions that occur on the options trading floor must immediately be reported to the Exchange, in a form and manner prescribed by the Exchange, for dissemination to the Options Price Reporting Authority ("OPRA").<sup>4</sup> This requirement applies to all OTP Holders who are required to report trades either directly to OPRA or to another party who is responsible for reporting trades to OPRA. Currently, pursuant to existing Rule 6.69(b), the responsible party for reporting a transaction is the party that participates on the transaction as the seller.

The proposed rule change makes several clarifying changes to these reporting obligations. First, the revised rule provides that whenever a Floor Broker is participating on one side of a transaction, the Floor Broker becomes the responsible party for reporting the trade, regardless of whether the Floor Broker is the buyer or seller. Second, in the event that there is a Floor Broker participating on both sides of a transaction, the Floor Broker participating as the seller must report the transaction to the Exchange. Third, for transactions occurring on the Exchange between two Market Makers, the Market Maker participating as the seller must report the transaction to the Exchange.

Finally, in order to further clarify the rules regarding reporting duties, the Exchange proposes a new provision regarding Complex Orders. Since each party to a Complex Order transaction (which involves the simultaneous purchase and/or sale of two or more option series in the same underlying security) could be both buying and selling different series that make up an order, there may be no clearly defined seller, as is required by the existing rule. Consequently, pursuant to the proposed rule change, for Complex Order transactions between two Floor Brokers or two Market Makers, the party responsible for reporting the transaction will be the OTP Holder that first initiated the transaction. This provision does not affect the obligation that a Floor Broker has to report transactions pursuant to proposed Rule 6.69(b)(i), but will have bearing when a Complex

Order is executed between two Floor Brokers or between two Market Makers.<sup>5</sup>

Presently, almost all orders on the Exchange are required to be in electronic format prior to representation on the trading floor.<sup>6</sup> The Exchange represents that, typically, Floor Brokers enter the terms of orders they receive into the Electronic Order Capture System ("EOC")<sup>7</sup>, and upon consummating a trade, the Floor Broker is able to electronically report the transaction to the Exchange for processing and dissemination to OPRA. In contrast, the Exchange notes that Market Makers trading for their own proprietary account are not required to electronically systematize their orders prior to responding to a call from a Floor Broker. Consequently, a Market Maker acting as a "seller" (who would be the responsible reporting party under the current rules) would be required to re-enter all the order information already contained in the Floor Broker's EOC system and then send the information to the Exchange for processing. The Exchange believes that it will be more efficient for the Floor Broker to be the responsible party for reporting a transaction. The Exchange further does not believe that requiring a Floor Broker to report every transaction to which they are a party will create any undue hardship or unnecessary burden on the Floor Broker, given the existing requirement that orders be put in electronic format prior to representation on the floor.

#### III. Discussion and Commission's Findings

After careful review, 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.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> 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

<sup>5</sup> The proposal also eliminates Rule 6.69 Commentary .04, which relates to an obsolete and outdated practice. "Hard cards," which refer to the cardboard backing of a paper trade ticket, are no longer in use on the trading floor.

<sup>6</sup> See Rule 6.67(c).

<sup>7</sup> The EOC system is the Exchange's electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange.

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59440 (February 24, 2009), 74 FR 9325 ("Notice").

<sup>4</sup> For transactions executed on the Exchange's electronic trading platform, NYSE Arca will report the trade directly to OPRA.