

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59720; File No. SR-NYSEAmex-2009-09)

April 7, 2009

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

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 [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> 15 U.S.C. 78s(b)(3)(A).

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

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

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<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).

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 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 10:00 a.m. and 3:00 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 [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>6</sup>

Florence E. Harmon  
Deputy Secretary

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