

should be submitted on or before June 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62169; File No. SR-NYSEAmex-2010-43]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Certain Reporting Requirements Punishable Under its MRVP

May 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on May 7, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") 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. 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 Disciplinary Rule 476A (Imposition of Fines for Minor Violation(s) of Rules) to add a new Part 1D: List of Reports Required to be Filed with the Exchange by ATP Holders and Filing Deadlines. The Exchange also proposes to add violations of NYSE Amex Rule 340.01 to Part 1C of Disciplinary Rule 476A, and to make other technical changes to the Rule. The text of the proposed rule change is available on NYSE Amex's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at NYSE Amex, 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend NYSE Amex Disciplinary Rule 476A (Imposition of Fines for Minor Violation(s) of Rules) to add a new Part 1D: List of Reports Required to be filed with the Exchange by ATP Holders and Filing Deadlines. The Exchange also proposes to add violations of NYSE Amex Rule 340.01 to Part 1C of Disciplinary Rule 476A, and to make other technical changes to the Rule.

###### Background

As described more fully in a related rule filing, effective October 1, 2008, NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). Pursuant to the Merger the Exchange's predecessor, the American Stock Exchange LLC, a subsidiary of AMC, became a subsidiary of NYSE Euronext.<sup>3</sup>

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange's legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to new trading systems and facilities located at 11 Wall Street, New York, New York (known as "NYSE Amex Equities").<sup>4</sup> Similarly, on March 2, 2009, the Exchange relocated all options trading conducted on the Exchange's legacy trading systems and facilities to new trading systems and facilities

located at 11 Wall Street (known as "NYSE Amex Options").<sup>5</sup>

As part of this process, the Exchange adopted NYSE Rules 475-477, including Rule 476A, subject to such changes as necessary to apply the Rules to the Exchange, as NYSE Amex Disciplinary Rules 475-477 to govern transactions and the conduct of its members and member organizations on both NYSE Amex Equities and NYSE Amex Options.<sup>6</sup>

Current NYSE Amex Disciplinary Rule 476A

NYSE Amex Disciplinary Rule 476A, the Exchange's Minor Rule Violation Plan ("MRVP"), governs transactions and conduct on both NYSE Amex Equities and NYSE Amex Options.

Under NYSE Amex Disciplinary Rule 476A, the Exchange may impose a summary fine on any member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization for a minor violation of specified Exchange rules: Supplementary Part 1A to the Rule contains a list of NYSE Amex Equities Rules subject to summary fine; Part 1B contains a list of legacy Exchange rules; and Part 1C contains a list of NYSE Amex Options Rules. The fines permitted under the MRVP provide an appropriate sanction when, given the facts and circumstances of a particular rule violation, a response stronger than a simple admonition letter is needed but the initiation of a formal disciplinary proceeding under Disciplinary Rule 476 is unwarranted.

Violations of the listed rules are subject to the fine schedules in NYSE Amex Disciplinary Rule 476A. For violations of the rules listed in Parts 1A and 1B, individuals may be charged \$500.00 for a first offense, \$1,000.00 for a second offense and \$2,500.00 for subsequent offenses; member firms may be charged \$1,000.00 for a first offense, \$2,500.00 for a second offense and \$5,000.00 for subsequent offenses. Violations of the rules listed in Part 1C are subject to varying fines as specified, depending on the rule violated.

<sup>5</sup> See Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR-NYSEALTR-2008-14) (approving the adoption of the "NYSE Amex Options" rules).

<sup>6</sup> See Securities Exchange Act Release Nos. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (adopting NYSE Amex Disciplinary Rules 475-477); 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (adopting NYSE Amex Disciplinary Rule 476A).

<sup>3</sup> 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).

<sup>4</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (approving the adoption of the "NYSE Amex Equities" rules).

<sup>26</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.

## Proposed Changes to NYSE Amex Disciplinary Rule 476A

### a. Adoption of Part 1D: List of Reports Required To Be Filed With the Exchange by ATP Holders and Filing Deadlines

The Exchange proposes to add Part 1D to NYSE Amex Disciplinary Rule 476A to provide a list of financial reports required to be filed with the Exchange by NYSE Amex Options members and member organizations (also known as "ATP Holders") and corresponding filing deadlines, subject to a different fine schedule than for Parts 1A, 1B and 1C. The list of reports includes equity and net capital computations, FOCUS reports, ITSFEA forms and annual audited statements, all of which are already required to be filed under existing Exchange rules and Federal securities laws and regulations. Under proposed Part 1D, ATP Holders that fail to file any of the listed reports on the date they are due will be subject to a summary fine of \$100 per day for each day such a report is not timely filed, for a period not to exceed 10 business days. Violations of the provisions of Part 1D will be subject to the procedures of the Exchange's MRVP under Disciplinary Rule 476A.

Proposed Part 1D is based, *inter alia*, on Part 3 of legacy NYSE Amex Rule 590, which similarly provided that members and member organizations that failed to timely file certain listed financial reports with the American Stock Exchange were subject to a fine of \$50 per day.<sup>7</sup> Part 1D also draws on the Financial Industry Regulatory Authority, Inc.'s ("FINRA") By-Laws, which impose a fee of \$100 per day on any member that fails to file similar reports in a timely manner, not to exceed 10 business days.<sup>8</sup>

The Exchange further proposes to implement proposed Part 1D on May 24, 2010, in order to give ATP Holders sufficient notice of the new fine schedule for late reporting. Because it is still listed on the Exchange's Web site, the Exchange also proposes to add language to legacy NYSE Amex Rule 590 that clarifies that its provisions apply only to transactions and/or

conduct that occurred on or through the Exchange's legacy systems or facilities located at 86 Trinity Place.

### b. Addition of NYSE Amex Rule 340.01 to Part 1C

The Exchange also proposes to add NYSE Amex Rule 340.01 (Disapproval of Employees) to Part 1C of Disciplinary Rule 476A and the list of NYSE Amex Options Rules subject to the Exchange's MRVP.

NYSE Amex Rule 340.01 provides that any and all employees of an ATP Holder that are to be admitted to the Trading Floor must be registered and approved by the Exchange through the submission of a Form U-4. In addition, any such employees must submit fingerprints to the Exchange or its designee for identification and appropriate processing. Rule 340.01 further provides that ATP Holders must file a Form U-5 within 10 days of the date of termination of an employee that has been admitted by the Exchange to the Trading Floor.

The Exchange believes that the current regulatory approach for dealing with these reporting requirements is too inflexible. The Exchange recognizes that ATP Holders may, for many reasons, fail to timely submit a Form U-4 or U-5 pursuant to NYSE Amex Rule 340.01. In some such circumstances, formal disciplinary proceedings in accordance with Disciplinary Rule 476 are warranted. However, in other instances such a proceeding may be unwarranted, and the Exchange believes that the addition of Rule 340.01 to the list of rule violations and fines under Part 1C of Disciplinary Rule 476A will provide a more flexible and appropriate mechanism for enforcing the reporting requirements of Rule 340.01, while preserving the Exchange's discretion to seek formal discipline when appropriate.

The Exchange further proposes related technical changes to Parts 1B and 1C in order to accommodate these proposed changes.

### c. Technical Changes to Part 1A

The Exchange proposes to make technical changes to Parts 1A, 1B and 1C of NYSE Amex Disciplinary Rule 476A to clarify the effective date and the trading and conduct covered by each of these provisions.

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Act,<sup>9</sup> in that they

are designed to prevent fraudulent and manipulative acts and practices, 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. The proposed rule changes also further the objectives of Sections 6(b)(1) and 6(b)(6) of the Act,<sup>10</sup> in that they enforce compliance with, and provide for appropriate discipline for, violations of the Act, the rules and regulations thereunder, and Exchange rules and regulations.

In addition, because the Exchange's MRVP provides procedural rights to a member or member organization fined thereunder to contest the fine and permits disciplinary proceedings on the matter, the Exchange believes that its MRVP provides a fair procedure for disciplining members, member organizations, and persons associated therewith consistent with Sections 6(b)(7) and 6(d)(1) of the Act.<sup>11</sup>

The Exchange believes that the proposed rule changes will provide the Exchange with greater regulatory flexibility to enforce the reporting requirements set forth in NYSE Amex Rule 340.01 and Part 1D of NYSE Amex Disciplinary Rule 476A, consistent with the purposes of the Act.

### 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

Because the foregoing 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) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has

<sup>10</sup> 15 U.S.C. 78f(b)(1) and (6).

<sup>11</sup> 15 U.S.C. 78f(b)(7) and (d)(1).

<sup>7</sup> See NYSE Amex Rule 590, Part 3. Although the current NYSE Amex Disciplinary Rules govern transactions and/or conduct by Exchange members and member organizations on the trading systems and facilities located at 11 Wall Street, legacy NYSE Amex Rule 590 is still listed on the Exchange's Web site for the purposes of regulating transactions and/or conduct that occurred on or through the Exchange's legacy systems or facilities located at 86 Trinity Place prior to March 2, 2009. See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008).

<sup>8</sup> See FINRA By-Laws, Schedule A, Section 4(g).

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

become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposal raises no novel issues and is consistent with prior approved rules on which it is based.<sup>14</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>15</sup>

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-2010-43 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-2010-43. 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 Web site viewing and printing 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 available publicly. All submissions should refer to File Number SR-NYSEAmex-2010-43 and should be submitted on or before June 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62167; File No. SR-NYSE-2010-37]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Certain Violations of Its Communications and Give-Up Policies to Its MRVP

May 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on May 12, 2010, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange

Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Rule 476A to add Rule 36 (Communications Between Exchange and Members' Offices) to its List of Exchange Rule Violations and Fines Applicable Thereto ("Minor Rule Violation Plan").<sup>3</sup> The text of the proposed rule change is available on NYSE's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at NYSE, 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend NYSE Rule 476A to add Rule 36 (Communications Between Exchange and Members' Offices) to its Minor Rule Violation Plan.

###### Background

Effective October 1, 2008, the Exchange's parent company, NYSE Euronext, acquired the parent company of NYSE Amex pursuant to an Agreement and Plan of Merger (the "Merger").<sup>4</sup> In connection with the

<sup>3</sup> The Exchange's corporate affiliate, NYSE Amex LLC ("NYSE Amex"), submitted a companion rule filing proposing corresponding amendments to NYSE Amex Disciplinary Rule 476A. See SR-NYSEAmex-2010-44.

<sup>4</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3,

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to 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.

<sup>14</sup> See e.g., Securities Exchange Act Release No. 44512 (July 3, 2001), 66 FR 36812 (July 13, 2001) (SR-NASD-00-39).

<sup>15</sup> For purposes only of waiving the operative delay for 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>16</sup> 17 CFR 200.30-3(a)(12) and 200.30-3(a)(44).

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

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