

7. The Board of the Fund, including a majority of the independent Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in Fund Shares exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in Fund Shares in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their

respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Fund Shares in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

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

[FR Doc. E9-23891 Filed 10-2-09; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 8, 2009 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 8, 2009 will be:

Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings; and  
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: September 30, 2009.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. E9-24026 Filed 10-1-09; 4:15 pm]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-60739; File No. SR-NYSEAMEX-2009-63]**

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Permitting Affiliation With NYFIX Millennium L.L.C. and NYFIX Securities Corporation**

September 29, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 22, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 self-regulatory organization. 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 be affiliated with two registered broker-dealer subsidiaries of NYFIX, Inc. ("NYFIX"), NYFIX Millennium L.L.C. ("NYFIX Millennium") and NYFIX Securities Corporation ("NYFIX Securities"), for a period not to exceed six months and subject to certain limitations and obligations relating to the relationship.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 is making this submission in connection with the proposed acquisition of NYFIX by NYSE Technologies. On August 26, 2009, NYSE Technologies entered into an Agreement and Plan of Merger (as it may be amended from time to time, the "Merger Agreement") with NYFIX and CBR Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of NYSE Technologies. Under the terms of the Merger Agreement, CBR Acquisition Corp. will merge with and into NYFIX, with NYFIX surviving the merger as a direct wholly owned subsidiary of NYSE Technologies (the "Merger"). Following the Merger, both the Exchange and NYFIX will be indirect wholly owned subsidiaries of NYSE Euronext and affiliates.

As a result of the Merger, NYSE Technologies will acquire, among other things, NYFIX's Transaction Services Division. In the U.S., the Transaction Services Division is currently comprised of two U.S. registered broker-dealer subsidiaries, NYFIX Millennium, which is also an alternative trading system registered under SEC Regulation ATS, and NYFIX Securities.<sup>4</sup> Each has the Financial Industry Regulatory Authority ("FINRA"), an unaffiliated self-regulatory organization ("SRO"), as its designated examining authority. Neither broker-dealer is a member of the Exchange. The Exchange notes that there is competition in the market to provide introducing broker services to the Exchange and the Exchange believes that there will continue to be effective competition after the Merger.

For purposes of this proposed rule change, Routing Services shall mean any of the activities of NYFIX Millennium and NYFIX Securities which relate to routing to marketplaces that are not operated by NYFIX, orders (including NYFIX Millennium "pass through" orders) which flow through the matching facility on their way to an exchange, electronic communications network, or ATS,<sup>5</sup> and NYFIX Securities' direct electronic market access and algorithmic trading products.

The Exchange is currently exploring various alternatives for the Transaction Services Division. Because of the manner in which the Transaction Services Division may interact with the Exchange and its affiliates, which gives rise to concerns regarding (1) the potential for conflicts of interest in instances where an exchange is affiliated with a broker-dealer conducting an order routing business that may interact with the exchange itself, and (2) the potential for informational advantages that could place such an affiliated broker-dealer at a competitive advantage vis-à-vis other non-affiliated broker-dealers, the Exchange proposes to be affiliated with NYFIX Millennium and NYFIX Securities for a period not to exceed six months and subject to the terms and conditions set out below.

<sup>4</sup> Outside of the U.S., the NYFIX Transaction Services Division also operates the desk agency execution business of NYFIX International in the U.K. and Euro Millennium, a multi-lateral trading facility for non-displayed liquidity in pan-European listed equities housed within NYFIX International. These services are not within the scope of the Exchange's Proposed Rule Change.

<sup>5</sup> These orders are only executed if they find a match at or within the national best bid and offer by guaranteeing customers the best available ask price when buying securities, and the best available bid price when selling securities. If there is not a match, these orders are immediately routed to their ultimate destination.

##### **a. Conditions**

Accordingly, the Exchange represents as follows, in each case for so long as the Exchange is affiliated with NYFIX Millennium and NYFIX Securities, with respect to the Routing Services:

(1) Neither NYFIX Millennium nor NYFIX Securities are members of the Exchange nor will they become members of the Exchange.

(2) NYFIX does not offer order routing services other than the Routing Services, and none of the Routing Services will be modified unless such modification is approved by the Commission.

(3) NYFIX will not engage in proprietary trading.

(4) NYFIX will not accept any new clients for its Routing Services after the Merger.

(5) There will continue to be independent functionality of, and full public access to, NYSE facilities.

(6) There will be a complete separation between NYFIX, on the one hand, and the Exchange and its affiliates, on the other (e.g., no shared office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or their facilities, including but not limited to advance knowledge of related filings by the Exchange pursuant to Rule 19b-4 of the Securities Exchange Act of 1934.<sup>6</sup>

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements;

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the

<sup>6</sup> 15 U.S.C. 78a.

Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Exchange believes these measures effectively address the concerns noted above regarding the potential for conflicts of interest and informational advantages favoring NYFIX Millennium and NYFIX Securities vis-à-vis other non-affiliated market participants.

## 2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)<sup>7</sup> of the Exchange Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(1),<sup>9</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)<sup>10</sup> of the Exchange Act because the rules summarized herein would create a governance and regulatory structure that is 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. In particular, the Proposed Rule Change sets forth certain conditions under which the Routing Services will be provided so as to assure that the potential for conflicts of interests and informational advantages are adequately addressed. The conditions under which the Exchange is permitted to be affiliated with the entities conducting the Routing Services will also be limited to no more than 6 months.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78a, *et seq.*

<sup>9</sup> 15 U.S.C. 78f(b)(1).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

### *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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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 No. SR-NYSEAMEX-2009-63 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 No. SR-NYSEAMEX-2009-63. 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 such filing also will be available for inspection and copying at the principal office of NYSE Amex. 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 No. SR-NYSEAMEX-2009-63 and should be submitted on or before October 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. E9-23850 Filed 10-2-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60720; File No. SR-NYSEAmex-2009-64]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Commentary .06 to Rule 903, Series of Options Open for Trading**

September 25, 2009.

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 September 23, 2009, 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

<sup>11</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.