

a second violation within the same period, and \$5,000 for a third violation within the same period. The MRP currently provides for fines of \$1,000 for the first violation of Rule 933NY(a) in a rolling 24-month period, \$2,500 for a second violation within the same period, and \$3,500 for a third violation within the same period. The MRP currently provides for fines of \$500 for the first violation of Rule 935NY in a rolling 24-month period, \$1,000 for a second violation within the same period, and \$2,500 for a third violation within the same period. The MRP currently provides for a fine of \$500 for the first violation of Rule 963NY in a rolling 24-month period, \$1,000 for a second violation within the same period, and \$2,000 for a third violation within the same period. The Exchange believes that, given the nature of these violations, the current fine levels are inadequate, and that increased fines for these violations are needed to deter future violations.<sup>8</sup>

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires that the rules of an exchange be designed to, among other things, protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>11</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and exchange rules. Furthermore, the Commission believes that the proposed changes to the MRP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. Therefore, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>12</sup> which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE Amex rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NYSE Amex will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP or whether a violation requires formal disciplinary action under NYSE Amex Rule 476.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>13</sup> and Rule 19d-1(c)(2) under the Act,<sup>14</sup> that the proposed rule change (SR-NYSEAmex-2009-45) be, and it hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60744; File No. SR-NYSEAmex-2009-62]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 900.3NY

September 29, 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 14, 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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 Rule 900.3NY to (i) offer PNP Blind orders to its Participants and (ii) make technical corrections to the numbering of Rule 900.3NY. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing 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 has an existing order type known as PNP (Post No Preference)<sup>5</sup> which is a limit order that is only to be executed on the Exchange, and may be ranked in the Consolidated Book if not marketable, but is never to be routed. A PNP order that is marketable against the NBBO when entered is cancelled back to the entering ATP Holder.

Certain ATP Holders have asked for a similar order type that will also not route if marketable against the NBBO, but, unlike a PNP order, will not be cancelled if similarly marketable.

A PNP Blind order is a limit order that is to be executed on the Exchange, but never routed to another market. The

<sup>8</sup> See Notice, *supra* note 3, 74 FR at 43178.

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>11</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>12</sup> 17 CFR 240.19d-1(c)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 240.19d-1(c)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

<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)(6).

<sup>5</sup> See NYSE Amex Rule 900.3NY(p).

unexecuted portion of a PNP Blind order is to be ranked in the Consolidated Book. Unlike a conventional PNP order, a PNP Blind Order that is marketable against the NBBO will not be cancelled; however, the price and size will not be disseminated to OPRA. If the NBBO moves so that the PNP Blind Order no longer locks or crosses the NBBO, the order's price and size will be disseminated. When a PNP Blind order is not displayed, it provides price improvement to any incoming contra-side order. A PNP Blind order will be executed at its limit price, if displayed, or at a price that matches the contra side of the NBBO, if undisplayed.

The Exchange believes that the implementation of the aforementioned rule change modifying NYSE Amex order entry options will preserve order execution opportunities on the NYSE Amex market, provide greater control over the circumstances of executions, and provide an opportunity for enhanced executions.

The Exchange is also making technical corrections to the numbering of the subparagraphs in Rule 900.3NY.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by providing investors with additional order types that allow greater flexibility in maintaining compliance with the rules, or providing an opportunity for enhanced executions, or managing the circumstances in which their orders are executed.

### *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 does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) 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 become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission hereby grants the Exchange's request.<sup>8</sup> The proposed rule is identical to that in use by NYSE Arca, Inc. ("NYSE Arca")<sup>9</sup> and does not raise any novel or significant issues. Therefore, the Commission believes that waiving the 30-day period to allow the proposed rule change to become operative upon filing is consistent with the protection of investors and the public interest and designates the proposal as operative upon filing.

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:

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</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 provided such a notice.

<sup>8</sup> For purposes only of waiving the 30-day operative delay, 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> See NYSE Arca Rule 6.62(u); see also Securities Exchange Act Release No. 59603 (March 19, 2009), 74 FR 13279 (March 26, 2009) (amending Rule 6.62 to provide additional order types).

## 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-2009-62 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-2009-62. 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 Section, 100 F Street, NE., Washington, DC 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE Amex's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2009-62 and should be submitted on or before October 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>10</sup> 17 CFR 200.30-3(a)(12).