

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-NYSE-2010-27 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-NYSE-2010-27. 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 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-NYSE-

2010-27 and should be submitted on or before April 28, 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. 34-61810; File No. SR-NYSE-2010-26]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 1 To Provide for the Designation of Qualified Employees and NYSE Rule 51 To Clarify the Scope of Authority Vested in the Chief Executive Officer

March 31, 2010.

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 March 25, 2010, 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 and II 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 amend NYSE Rule 1 ("The Exchange") to provide that the Exchange may formally designate one or more qualified employees to act in place of any person named in a rule as having authority to act under such rule if the named person is not available to administer the rule; and (2) amend NYSE Rule 51 ("Hours of Business") to clarify the scope of authority vested in the Chief Executive Officer ("CEO") and to make several non-substantive stylistic changes to the rule text. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, <http://www.sec.gov>, and <http://www.nyse.com>.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

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

#### 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

NYSE proposes to amend NYSE Rule 1 to provide that the Exchange may formally designate one or more qualified employees to act in place of any person named in a rule as having authority to act under such rule in the event that the named person is not available. The Exchange believes that providing for such delegations will enable administration of NYSE rules in a more efficient manner in the event the specified individual is unavailable. Separately, the Exchange proposes to amend NYSE Rule 51 to clarify the scope of authority vested in the Chief Executive Officer ("CEO") to take certain actions when he deems such actions necessary or appropriate for the maintenance of a fair and orderly market, the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).<sup>4</sup>

###### NYSE Rule 1

NYSE Rule 1 provides that "the Exchange" is defined as the New York Stock Exchange LLC or the officer, employee, person, entity or committee to whom appropriate authority to administer such rule has been delegated by the Exchange when used with reference to the administration of any rule.

Additionally, NYSE Rule 1 provides that all references to the "Board," "Board of Directors," "Chairman," "Chairman of the Board," "Chief Executive Officer" and "CEO" refer to those persons and entities of the Exchange.

<sup>4</sup> See SR-NYSEAmex-2009-29 [sic].

Through this filing, the Exchange proposes to amend NYSE Rule 1 to include a provision that the CEO or the Chief Regulatory Officer (“CRO”) of the Exchange may formally designate one or more qualified employees of NYSE Euronext to act in place of any person named in a rule as having authority to act under such rule in the event that the named person is not available to administer the rule. For purposes of designation by a CEO, a qualified employee is defined as: (1) Any officer of NYSE Euronext; or (2) any employee of the Exchange that the Board of Directors deems to possess the requisite knowledge and job qualifications to administer that rule.<sup>5</sup>

Additionally, in certain instances, the Exchange’s CRO is one of the named persons identified to administer particular NYSE rules. In these situations, a qualified employee of NYSE Regulation, Inc. (“NYSER”) may serve as the CRO’s designee if the CRO and the Board of Directors of NYSER deem such employee to have the requisite knowledge and job qualifications to administer the rule in place of the CRO. All qualified employees of NYSE Euronext shall be subject to the jurisdictions set forth in Section 7.1 of NYSE Euronext’s Amended and Restated Bylaws.<sup>6</sup>

The Exchange believes that it is important that its rules provide for

<sup>5</sup> Rule 46.10 provides that for purposes of Rule 46 only, the term “qualified NYSE Euronext employee” shall mean “employees of NYSE Euronext, Inc. or any of its subsidiaries, excluding employees of NYSE Regulation, Inc., who shall have satisfied any applicable testing or qualification required by the NYSE for all Floor Governors.” That definition shall not be applied to any other NYSE Rule and is separate and distinct from the Rule 1 definition discussed herein.

<sup>6</sup> Article VII, Section 7.1 of the Amended and Restated Bylaws of NYSE Euronext states the following:

Submission to Jurisdiction of U.S. Courts and the SEC. The Corporation, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries (and shall be deemed to agree that the Corporation may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and the Corporation and each such director, officer or employee, in the case of any such director, officer or employee by virtue of his acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

appropriate delegations of authority to ensure business continuity and that all rules can be properly administered even if the specified official is unavailable. The proposed provision applicable to all NYSE rules will enable consistent delegation standards and eliminate any potential for confusion that could result because some rules currently provide for delegation while others do not.

The Exchange has implemented policies and procedures to formally identify the officers and employee [sic] who have been delegated authority to administer a particular rule on behalf of any named person identified in that rule. The Exchange considers the delegation of authority to be a corporate function; accordingly, such formal delegation is subject to approval by the CEO, CRO and Boards of Directors of the Exchange or NYSE, as applicable, as well as compliance with all applicable Bylaws of the Exchange. These delegations of authority are centrally maintained and periodically updated by the Office of General Counsel to remain current with final approval by the CEO of the Exchange or NYSE as applicable.

#### NYSE Rule 51

NYSE Rule 51 vests the CEO with the powers to suspend or halt trading in any security traded on the Exchange, as well as to close some or all Exchange facilities, if he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances. “Extraordinary circumstances” are defined in NYSE Rule 51 as “(1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event.”

The Exchange proposes to amend NYSE Rule 51 to clarify that the CEO has the authority to extend the hours for the transaction of business on the Exchange and to set a delayed closing time if the CEO deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances. The Exchange has interpreted the CEO’s authority to halt securities and determine the length of such halt to include extending the regular closing, in order to ensure that closing trades in securities traded on the Exchange are

conducted in a manner consistent with a fair and order market and the protection of investors and the public interest.<sup>7</sup> However, in order to provide appropriate transparency to market participants, the Exchange proposes to clarify and codify the CEO’s authority in this regard.

The Exchange also proposes to make several non-substantive changes to the rule text by amending the rule text in Rule 51(a) to conform with proposed Rule 51(b)(ii) and by abbreviating references to “Chief Executive Officer” with “CEO.”

#### 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),<sup>8</sup> which requires that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 change is consistent with these objectives in that these amendments establish the appropriate Exchange protocols and procedures to administer Exchange rules designed to protect investors and the public interest.

#### 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.

<sup>7</sup> NYSE has previously announced this policy in several Information Memos that were issued in connection with the Russell Reconstitution in June 2008 and June 2009. Those memos described (among other things) the Exchange’s various contingency scenarios and procedures, including extending the closing time in the event that a systems malfunction occurs at or near the regular 4:00 p.m. closing time. See NYSE Rule 51; See also IM 08–30 and IM 09–27. The Exchange has also periodically issued memoranda from its Floor Operations staff, advising of the same contingency scenarios and procedures.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

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-NYSE-2010-26 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-NYSE-2010-26. 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 publicly available. All submissions should refer to File Number SR-NYSE-2010-26 and should be submitted on or before April 28, 2010.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61807; File No. SR-NYSEAmex-2010-09]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of Proposed Rule Change Amending Its Trust Unit Rules and Proposing the Listing of the Nuveen Diversified Commodity Fund

March 31, 2010.

On January 29, 2010, NYSE Amex LLC ("NYSE Amex" or "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 NYSE Amex Rule 1600 *et seq.* to permit the listing and trading of shares ("Shares") of the Nuveen Diversified Commodity Fund (the "Fund"). The proposed rule change was published in the **Federal Register** on

March 1, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

### I. Description of the Proposal

NYSE Amex previously adopted Rule 1600 *et seq.* to permit the listing of Trust Units, which are defined as securities that are issued by a trust or other similar entity that invests in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts and/or commodities.<sup>4</sup> Rule 1600 was adopted in contemplation of the listing of shares of the Nuveen Commodities Income and Growth Fund (the "Fund"), a fund sponsored by Nuveen Investments, Inc. ("Nuveen"). Nuveen now proposes to go forward with a listing of shares (the "Shares") of the Fund under a new name, the Nuveen Diversified Commodity Fund, and with a modified investment plan, which is described in detail in the Notice.<sup>5</sup> NYSE Amex Rule 1600 as currently in effect permits only the listing of Trust Units whose issuers utilize the master/feeder structure originally intended to be used for the Fund. According to the Exchange, due to a change in the interpretation of applicable tax law by the Internal Revenue Service, the originally expected trust reporting procedures would no longer be available under a master/feeder structure. Nuveen therefore proposes to modify its approach and have the listed Fund make its own direct investments. Consequently, the Exchange proposes to amend the definition of Trust Units in Rule 1600 to remove the master/feeder structure requirement and permit the listing of Trust Units where the issuer is constituted as a commodity pool which invests directly in commodities and commodity derivatives. Nuveen has represented to the Exchange that there are no material revisions to the Fund's structure or investment approach other than those described in this current filing.

<sup>3</sup> See Securities Exchange Act Release No. 61571 (February 23, 2010), 75 FR 9265 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 56880 (December 3, 2007), 72 FR 69259 (December 7, 2007) (SR-Amex-2006-96) (order approving NYSE Amex Rule 1600 *et seq.*).

<sup>5</sup> See Securities Exchange Act Release No. 56465 (September 19, 2007), 72 FR 54489 (September 25, 2007) (SR-Amex-2006-96) (notice providing a description of the Fund).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<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.