

with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay in order to immediately remove an impediment to the efficient execution of customer orders and transmission of order-related messages or information. The Exchange believes that it promotes the protection of investors and serves the public interest to have its systems allow for the delivery of customer orders to the point of sale and order-related messages or information back to the customer immediately now that hand-held technology is capable of meeting all audit trail requirements. The Commission notes the Exchange's representation that the proposed changes to the Wireless Policy do not change the content of what is sent to and from the hand-helds, but simply amends the procedure for transmitting such information. In addition, the Commission notes the Exchange's representation with regard to the ability of Exchange systems to capture and record all information sent to and transmitted from the handhelds. For these reasons, the Commission believes that waiving the 30-day operative delay<sup>17</sup> is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal 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:

##### *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-2009-33 on the subject line.

<sup>17</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).

##### *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-2009-33. 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 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-2009-33 and should be submitted on or before April 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-7214 Filed 3-31-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59627; File No. SR-NYSEAmex-2009-02]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Formally Adopting and Codifying Its Wireless Data Communications Initiatives

March 25, 2009.

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 March 23, 2009, NYSE Amex US LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Amex. NYSE Amex has submitted the proposed rule change pursuant to Rule 19b-4(f)(6) under the Act,<sup>3</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 formally adopt and codify its Wireless Data Communications Initiatives (referred to herein as the "Wireless Policy").

#### 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Amex LLC ("NYSE Amex" or "Exchange"), formerly the American Stock Exchange LLC and NYSE Alternext US LLC<sup>4</sup> proposes to formally adopt and codify a Wireless Data Communications Initiative (referred to herein as the "Wireless Policy"). The proposed Wireless Policy is identical to a proposal separately submitted by the New York Stock Exchange LLC ("NYSE").<sup>5</sup>

Background

As described more fully in a related rule filing,<sup>6</sup> NYSE Euronext acquired The Amex Membership Corporation ("AMC") pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the "Merger"). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC ("Amex"), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act").<sup>7</sup> The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the "Equities Relocation"). The Exchange's equity trading systems and facilities at 11 Wall Street (the "NYSE Amex Trading Systems") are operated by the NYSE on behalf of the Exchange.<sup>8</sup>

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE

Amex Trading Systems.<sup>9</sup> The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Pursuant to the Equities Relocation, the Exchange's equity trading systems and facilities are operated by the NYSE on behalf of the Exchange. As a result, NYSE Amex Trading Systems currently operate pursuant to the NYSE's policies and procedures that govern wireless data communication technology of the Floor.<sup>10</sup> The NYSE formally submitted a proposal to the Securities and Exchange Commission to modify its policies and procedures that govern wireless data communications technology on the systems NYSE operates on behalf of the Exchange. As such, the Exchange submits this proposal to formally adopt and codify those amended policies and procedures.

Wireless Policy

The Exchange now proposes to formally adopt a Wireless Policy that allows wireless communications to be sent to and received directly to and from: (i) A Floor broker's booth premise; or (ii) wireless technology in the form of wireless hand-held data communication devices. A wireless hand-held device ("hand-held") is a tool used by Floor brokers as part of an integrated Floor order management system to trade and to send and receive messages. Such

messages can consist of orders and cancellations and modification of orders, as well as electronic text messages permitting the communication of text or graph information. Pursuant to the policy, orders entered from off the Floor may be transmitted to a Floor broker's booth or directly to a hand-held.<sup>11</sup> Likewise, Floor brokers may send order-related messages (e.g., cancellations and administrative messages) and information (e.g., Market Look data) back to the customer from the booth premise or directly from the hand-held.

Pursuant to the proposed Wireless Policy, where: (1) Orders are transmitted electronically from a member's off-Floor location to a booth terminal and then the order is retransmitted from the booth terminal to a member's hand-held; or (2) order-related messages or information are transmitted directly to the hand-held, bypassing the booth, a record must be established and maintained which reflects the time the order or order-related message or information was received by the booth terminal or the hand-held. The time of receipt will be captured by the Booth or the hand-held, depending upon where the order was routed. The record of time of receipt by a hand-held may be established and maintained by such device or the Booth and by the server which receives a message acknowledgment from the hand-held or the Booth. The Booth will not be required to print records.

Orders sent from off-Floor to the booth or the hand-held are first sent through a secured network and routed to an Exchange wired database that captures and records the orders. Likewise, order-related messages or information generated from the booth or the Floor broker's hand-held are transmitted back to the Exchange-wired databases via the secured wireless network, where the information is captured and recorded, and then sent off-Floor to the customer via the Exchange's secured network. In short, Exchange wired databases capture and record all of the information sent to and transmitted from the hand-held.

<sup>4</sup> On March 3, 2009, the Exchange submitted a rule filing to change its name from NYSE Alternext US LLC to NYSE Amex LLC (SR-NYSEALTR-2009-24).

<sup>5</sup> See SR-NYSE-2009-33 (filed on March 20, 2009). The NYSE filing includes a historical discussion of the implementation of the NYSE Wireless Policy.

<sup>6</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) (approving the Merger).

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

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

<sup>9</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex 2008-63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR-NYSE-2008-106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR-NYSEALTR-2008-03) (together, approving the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR-NYSEALTR-2008-10) (adopting amendments to NYSE Alternext Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR-NYSEALTR-2008-11) (adopting amendments to Rule 62—NYSE Alternext Equities to track changes to corresponding NYSE Rule 62).

<sup>10</sup> The Exchange's Wireless Communications Plan governing the use of the hand-held on the Equities Trading Floor is the same as the NYSE's, which was previously approved by the Commission. See Securities Exchange Act Release No. 36156 (August 25, 1995), 60 FR 45756 (September 1, 1995) (SR-NYSE-95-22). The approval order of the initial filing and subsequent amendment by the Commission to changes to the Wireless Data Communications Initiatives has historically been referred to by the NYSE as its "Wireless Policy." See also Securities Exchange Act Release No. 39379 (December 1, 1997), 62 FR 64615 (December 8, 1997) (SR-NYSE-97-17).

<sup>11</sup> Pursuant to NYSE Amex Equities Rule 54, appropriately registered and supervised employees working in Exchange Regulation-approved booths are permitted to process orders sent to a Floor broker's booth premise in the same manner that sales traders in an "upstairs" office are allowed to process orders. The proposed Wireless Policy would not impact this ability because the direct transmittal of an order from off the Floor to the handheld would constitute a determination to have the order represented and executed on the Exchange Floor, and not processed in the booth in the same manner as an "upstairs" trading desk.

The Exchange notes that the transmission of orders from off-Floor locations directly to the hand-helds and order-related messages or information sent from hand-helds to off-Floor locations will not result in an increased risk of loss of order information. As is the case today, all orders and order-related messages or information will be recorded in an Exchange database upon receipt and prior to delivery to the hand-held. In the event that a hand-held loses connectivity with the database, all incoming and outgoing transactions will continue to be captured and stored in said database and will be re-transmitted to the hand-held once connectivity is restored. To further mitigate the risk of any loss of data, the Exchange infrastructure offers a fully redundant, dual-sited back-up database. This same infrastructure is currently in place today for orders received into NYSE Amex systems destined for a booth. Therefore, all the information captured by the database is the identical information that would be captured had the order been sent to the Floor booth before being sent to the hand-held or the order-related message or information had been sent from the hand-held to the Floor booth. The informational content transmitted to and from the hand-held remains the same and is not affected by the proposed Wireless Policy.

Furthermore, this change will not impact the requirements for the system entry of orders and execution reports pursuant to NYSE Amex Equities Rule 123(e) and (f). All orders, order messages and report information captured by the database will be provided electronically in the same manner as orders transmitted directly to a booth today for audit trail purposes. The wireless infrastructure captures the same information that was previously captured in the Floor booth. The hand-held will operate as the functional equivalent as the Floor booth premise for order receipt and retention purposes.

Hand-helds will continue to provide the requisite information as to price, size and time of the order, and information if the order is cancelled. Audit trail information will be captured electronically by the hand-held, thereby obviating the need for the transmission to the booth terminal which historically recorded this information.

Pursuant to NYSE Amex Equities Rule 117, any order transmitted directly to the hand-held to constitute a written order since the requisite information as to price, size and time of the order, and information if the order is cancelled will be captured by the hand-held. Furthermore, the information directly sent to the hand-held satisfies the

Exchange's audit trail requirements and all other Exchange reporting and record-keeping requirements.

The Exchange believes that this proposal will facilitate an efficient and expeditious mechanism for order execution. The Exchange further believes that its customers and market participants will benefit from faster order execution, enhanced market quality and a reduction in latency of order executions as a result of this proposal.

## 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5),<sup>12</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 it enables the Exchange to further facilitate transactions on the Exchange Trading Floor by allowing for the direct transmission of orders and order-related messages and information to the hand-held for representation and execution. Likewise, the ability to transmit order-related messages or information from the hand-held to off-Floor customers provides the customer with speed of execution and greater market transparency for off-Floor participants. Overall, the Exchange believes that its Wireless Policy provides for a faster, more efficient method of order execution.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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>12</sup> 15 U.S.C. 78f(b)(5).

## 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>15</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Amex requests that the Commission waive the 30-day operative delay in order to immediately remove an impediment to the efficient execution of customer orders and transmission of order-related messages or information. The Exchange represents that the proposed changes merely seek to adopt the identical provisions of the NYSE Wireless Policy. The Exchange believes that it promotes the protection of investors and serves the public interest to have its systems allow for the delivery of customer orders to the point of sale and order-related messages or information back to the customer immediately now that hand-held technology is capable of meeting all audit trail requirements. The Commission notes the Exchange's representation that the proposed changes to the Wireless Policy do not change the content of what is sent to and from the hand-helds, but simply amends the procedure for transmitting such information. In addition, the Commission notes the Exchange's representation with regard to the ability of Exchange systems to capture and record all information sent to and transmitted from the handhelds. For these reasons, the Commission believes that waiving the 30-day operative delay<sup>17</sup> is consistent with the protection

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. NYSE Amex has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the

of investors and the public interest. Therefore, the Commission designates the proposal 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:

##### *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-2009-02 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-2009-02. 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 the Exchange. All

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEAmex-2009-02 and should be submitted on or before April 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE**

#### **SMALL BUSINESS ADMINISTRATION**

##### **Interest Rates**

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 3.375 (3<sup>3</sup>/<sub>8</sub>) percent for the April-June quarter of FY 2009.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

**Grady B. Hedgespeth,**

*Director, Office of Financial Assistance.*

[FR Doc. E9-7315 Filed 3-31-09; 8:45 am]

**BILLING CODE 8025-01-P**

#### **DEPARTMENT OF TRANSPORTATION**

##### **Office of the Secretary**

##### **Providing Guidance on Airline Baggage Liability and Responsibilities of Code Share Partners Involving International Itineraries**

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The Department is publishing the following notice on Airline Baggage

Liability and Responsibilities of Code Share Partners Involving International Itineraries.

##### **FOR FURTHER INFORMATION CONTACT:**

Nicholas Lowry, Attorney, Office of Aviation Enforcement and Proceedings (C-70), 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366-9349.

This notice is intended to give guidance to U.S. and foreign air carriers on two tariff matters: First, tariffs relating to liability for lost, stolen, delayed or damaged baggage carried on international itineraries; and second, tariffs that appear to assign responsibility, in code-share service, to the operating carrier rather than the selling carrier (*i.e.*, the carrier shown on the ticket).

We have become aware of tariff provisions filed by several carriers that attempt, with respect to checked baggage, to exclude certain items, generally high-cost or fragile items such as electronics, cameras, jewelry or antiques, from liability for damage, delay, loss or theft. A typical provision found in carrier tariffs and disclosed on carrier Web sites states that the carrier does not assume liability for loss, damage, or delay of "certain specific items, including: \* \* \* antiques, documents, electronic equipment, film, jewelry, keys, manuscripts, medication, money, paintings, photographs \* \* \*."

Such exclusions, while not prohibited in domestic contracts of carriage, are in contravention of Article 17 of the Montreal Convention (Convention),<sup>1</sup> as revised on May 28, 1999. Article 17 provides that carriers are liable for damaged or lost baggage if the "destruction, loss or damage" occurred while the checked baggage was within the custody of the carrier, except to the extent that the damage "resulted from the inherent defect, quality or vice of the baggage."<sup>2</sup> Article 19 provides that a carrier is liable for damage caused by delay in the carriage of baggage, except to the extent that it proves that it took all reasonable measures to prevent the damage or that it was impossible to take such measures. Although carriers may wish to have tariff terms that prohibit passengers from including certain items in checked baggage, once a carrier accepts checked baggage, whatever is contained in the checked baggage is protected, subject to the terms of the

<sup>1</sup> Convention for the Unification of Certain Rules for International Carriage by Air, adopted on May 28, 1999 at Montreal.

<sup>2</sup> The quoted language might absolve a carrier from liability for a fragile item that is damaged during transport. It would not absolve the carrier from liability for the item's loss or theft.

<sup>18</sup> 17 CFR 200.30-3(a)(12).