specialists or the equivalent (which are known as DPMs on CBSX). Therefore, the Commission believes that it is reasonable and consistent with the Act to make additional securities available for trading on CBSX without the participation of a DPM. In taking this action, the Commission has relied on CBOE's representation that this proposal is not intended to affect existing DPM appointments. The Commission further believes that it is within the discretion of the Exchange to require DPMs to begin quoting in their required securities at 8:30 a.m. rather than, as under the Exchange's current rule, at 8:15 a.m. (Chicago time).

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2009–030) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60117; File No. SR–NYSEAmex–2009–25]**

## Self-Regulatory Organizations; NYSE Amex, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Schedule of Fees and Charges for Exchange Services by Adding a Ratio Threshold Fee

June 16, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 10, 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, 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 its Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') by adding a Ratio Threshold Fee. While changes to the Schedule pursuant to this proposal will be effective upon filing, the proposed fee will become operative on June 10, 2009. 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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes adding a Ratio Threshold Fee to its Fee Schedule. The proposed Ratio Threshold Fee will be charged to ATP Holders based on the number of orders entered compared to the number of executions received in a calendar month. The fee will be assessed as follows:

| Monthly order to execution ratio | Monthly charge |
|---|---|
| Between 10,000 and 14,999 to 1 ... | $5,000 |
| Between 15,000 and 19,999 to 1 ... | 10,000 |
| Between 20,000 and 24,999 to 1 ... | 20,000 |
| 25,000 to 1 and greater ..... | 35,000 |

This fee shall not apply to orders that improve the Exchange's prevailing best bid-offer (BBO) market at the time the orders are received.

ATP Holders with order to execution ratios of 10,000 to 1 or greater have the potential residual effect of exhausting system resources, bandwidth, and capacity. Such order to execution ratios may, in turn, create latency and impact other ATP Holder's ability to receive timely executions. Recognizing that orders and executions often occur in large numbers, the purpose of this fee is to focus on activity that is truly disproportionate while fairly allocating costs among members. The proposed fee has multiple thresholds and is greater at higher order to execution ratios because the potential impact on exchange systems, bandwidth and capacity becomes greater with increased order to execution ratios.

Additionally, the Exchange proposes an exception whereby ATP Holders will not be charged the Ratio Threshold Fee if they incur charges on a monthly basis pursuant to the Cancellation Fee. The Cancellation Fee is charged only for cancelled public customer orders in excess of the established thresholds and is designed to protect customer priority. By virtue of this exception, the Ratio Threshold Fee will, in effect, only be assessed on non-customer orders. Due to the necessity of the Cancellation Fee to protect customer priority and the Exchange's need to allocate costs for the use of bandwidth and capacity among all members, the Exchange believes the structure of the Ratio Threshold Fee compared to the Cancellation Fee is appropriate because firms paying the Cancellation Fee will not also be charged the Ratio Threshold Fee.

The new Ratio Threshold Fee will become effective on June 10, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Amex Options. Under this proposal, all similarly situated members of NYSE Amex Options will be charged the same reasonable dues, fees and other charges.

*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.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[4] of the Act and subparagraph (f)(2) of Rule 19b–4[5] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

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.* Please include File Number SR–NYSEAmex–2009–25 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–2009–25. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–2009–25 and should be submitted on or before July 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010–01–P**

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60132; File No. SR–FINRA–2009–015]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Expedited Administration of Promissory Note Cases

June 17, 2009.

On April 7, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to the Code of Arbitration Procedure for Industry Disputes (''Industry Code''). The proposed rule change was published for comment in the **Federal Register** on May 14, 2009.[3] The Commission received no comments on the proposed rule change.

**I. Description of the Proposal**

FINRA proposed to adopt Rule 13806 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code''), to establish procedures to expedite the administration of arbitrations in which a member's only claim is that an associated person failed to pay money owed on a promissory note; and to amend Rules 13214 and 13600 of the Industry Code to make conforming changes.

In order to proceed under proposed new Rule 13806, a claimant would not be permitted to include any additional allegations in the Statement of Claim. FINRA stated that, in the absence of additional allegations by members or associated persons, promissory note cases involve straightforward contracts with few documents being entered into evidence. The new procedures would streamline the process for promissory note cases and reduce expenses for the parties while maintaining the procedural safeguards in the Industry Code for the associated person against whom a member asserts a claim.

Specifically, under the proposed procedures:

- Parties would choose a single public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims,[4] unless an associated person files a counterclaim or third party claim of more than $100,000, exclusive of interest or expenses, or the counterclaim or third party claim is unspecified or does not request money damages.[5] In FINRA's view, the arbitrators on this roster would be especially suited to resolve these disputes because of the depth of their experience and their familiarity with employment law;
- If the associated person does not file an answer, simplified discovery procedures would apply[6] and, regardless of the amount in controversy, the single arbitrator would render an award based on the pleadings and other materials submitted by the parties. The arbitrator would be paid an honorarium

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 59885 (May 7, 2009); 74 FR 22788 (May 14, 2009).

[4] *See* Rule 13802(c)(3). These specially qualified arbitrators are attorneys familiar with employment law who have at least ten years of legal experience. In addition, a chair or single arbitrator may not have represented primarily the views of employers or of employees within the last five years. Primarily means 50 percent or more of the arbitrator's business or professional activities within the last five years.

[5] The $100,000 threshold was chosen because FINRA recently raised the threshold for a single chair-qualified arbitrator in all cases to $100,000. Under the rule change, if the amount of a claim is more than $100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator. *See* Exchange Act Release No. 59340 (February 2, 2009), 74 FR 6335 (February 6, 2009) (SR–FINRA–2008–047).

[6] Rule 13800(d) (Simplified Arbitration—Discovery and Additional Evidence) provides for limited discovery in arbitrations involving $25,000 or less, exclusive of interest and expenses.