

Certificates.<sup>22</sup> S&P, which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with S&P. With respect to any index upon which the value of an issue of Trust Certificates is based and that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a “firewall” around personnel responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer. In addition, the Exchange states that it has a generally policy prohibiting the distribution of material, non-public information by its employees.

The Commission also notes that the Trust Certificates will be subject to the requirements of NYSE Arca Equities Rule 5.2(j)(7), including the continued listing criteria thereunder. Additionally, NYSE Arca states that: (1) At least one million publicly held trading units will be issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders; (2) the issuer, Citigroup Funding, Inc., has total assets of at least \$100 million and a net worth of at least \$10 million; and (3) the issuer will be required to have either (a) a minimum tangible net worth of \$250,000,000, or (b) a minimum tangible net worth of \$150,000,000 and the original issue price of the Certificates, combined with all of the issuer’s other Trust Certificates listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25% of the issuer’s tangible net worth at the time of issuance.<sup>23</sup>

Further, the Exchange represents that the Certificates are equity securities subject to the Exchange’s rules governing the trading of equity securities, including the Exchange’s equity margin rules. In support of this proposal, the Exchange has made representations, including:

(1) The Exchange’s surveillance procedures are adequate to properly monitor Exchange trading of the Certificates in all trading sessions and to deter and detect violations of Exchange

rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members of the ISG.

(2) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Certificates. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and exchanges of Trust Certificates; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; (c) trading hours; and (d) trading information. In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

This approval order is based on the Exchange’s representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that it has previously approved for listing and trading on the Exchange other issues of Trust Certificates issued by Citigroup Funding, Inc. based on the Index and other indexes that have similar characteristics and payout provisions to the Certificates.<sup>25</sup> The Commission believes that the Exchange’s proposal to list and trade the Certificates does not present any novel or significant regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Trust Certificates.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR–NYSEArca–2009–46) be, and it hereby is, approved on an accelerated basis.

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> See Securities Exchange Release Nos. 59861 (May 5, 2009), 74 FR 21839 (May 11, 2009) (SR–NYSEArca–2009–33) (approving the listing and trading of Safety First Trust Certificates linked to the Dow Jones Industrial Average); 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR–NYSEArca–2008–123) (approving the listing and trading of 14 issues of Trust Certificates under NYSE Arca Equities Rule 5.2(j)(7)); and 59747 (April 10, 2009), 74 FR 18012 (April 20, 2009) (SR–NYSEArca–2009–20) (approving the listing and trading of Trust Certificates linked to the S&P 500 Index).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60062; File No. SR–NYSE–2009–53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers Pursuant to NYSE Rule 107A and Competitive Traders Pursuant to NYSE Rule 110 to the Earlier of the Approval of SR–NYSE–2009–08 or June 30, 2009

June 8, 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 June 2, 2009, 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 extend the moratorium related to the qualification and registration of Registered Competitive Market Makers (“RCMMs”) pursuant to NYSE Rule 107A and Competitive Traders (“CTs”) pursuant to NYSE Rule 110 to the earlier of the approval of SR–NYSE–2009–08 or June 30, 2009.

#### 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

<sup>27</sup> 17 CFR 200.30–3(a)(12).

<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.

<sup>22</sup> Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>23</sup> The Commission notes that the foregoing criteria relating to the issuance and the issuer are substantially similar to the requirements applicable to Index-Linked Securities. See NYSE Arca Equities Rule 5.2(j)(6)(A).

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 to extend the moratorium related to the qualification and registration of Registered Competitive Market Makers ("RCMMs") pursuant to NYSE Rule 107A and Competitive Traders ("CTs") pursuant to NYSE Rule 110 to the earlier of the approval of SR-NYSE-2009-08<sup>4</sup> or June 30, 2009.

On September 22, 2005, the Exchange filed SR-NYSE-2005-63<sup>5</sup> with the Securities and Exchange Commission ("Commission") proposing to implement a moratorium on the qualification and registration of new RCMMs and CTs ("Moratorium").<sup>6</sup> The Moratorium allowed the Exchange to review the viability of RCMMs and CTs in the Exchange's evolving more electronic market.

During the Moratorium, the Exchange reviewed the quarterly volume data of RCMM and CT trading data to determine the average trading volume of RCMMs. As a result of its review, the Exchange concluded that RCMMs and CTs no longer serve as viable supplemental market makers. Accordingly, the Exchange determined that RCMMs and CTs should no longer be viable classes of traders on the Exchange. On April 10, 2009, the Exchange filed a separate proposed rule change, SR-NYSE-2009-08 ("2009-08") with the Commission to eliminate

RCMMs and CTs as viable classes of NYSE traders.<sup>7</sup>

The Exchange proposes to extend the Moratorium as amended<sup>8</sup> to the earlier of the approval of proposed rule change 2009-08 or June 30, 2009 to allow 2009-08 to complete the rule filing process pursuant to Rule 19b-4.<sup>9</sup>

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

##### 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed 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. The Exchange believes that the instant filing is consistent with these principles. Based on its review of data associated with RCMM and CT trading, the Exchange has concluded that RCMMs and CTs no longer serve as viable supplemental market makers. In this instant filing, the Exchange seeks an extension of the Moratorium to complete the 19b-4 rule filing process following its proposed rule filing to eliminate RCMMs and CTs as viable classes of NYSE traders.

#### *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**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)

thereunder<sup>11</sup> because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>12</sup> The Exchange believes that an extension of the Moratorium is appropriate to permit the resolution of the rule filing process with respect to SR-NYSE-2009-08. Therefore, the Commission believes that this proposed rule change qualifies for immediate effectiveness under paragraph (f)(6) of Rule 19b-4.<sup>13</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Moratorium to continue without interruption while awaiting the completion of the rule filing process with respect to SR-NYSE-2009-08. Therefore, the Commission designates that the proposed rule change become operative immediately.<sup>16</sup>

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

<sup>4</sup> See Securities Exchange Act Release No. 59746 (April 10, 2009), 74 FR 17702 (April 16, 2009) (SR-NYSE-2009-08).

<sup>5</sup> See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

<sup>6</sup> See Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR-NYSE-2006-48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR-NYSE-2006-113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR-NYSE-2007-57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR-NYSE-2007-86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR-NYSE-2007-125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR-NYSE-2008-22); 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR-NYSE-2008-49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR-NYSE-2008-96); 59069 (December 8, 2008); 73 FR 76081 (December 15, 2008) (SR-NYSE-2008-124); 59551 (March 10, 2009), 74 FR 11624 (March 18, 2009) (SR-NYSE-2009-24).

<sup>7</sup> See Securities Exchange Act Release No. 59746 (April 10, 2009), 74 FR 17702 (April 16, 2009) (SR-NYSE-2009-08).

<sup>8</sup> See Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR-NYSE-2006-11) (making certain amendments to the Moratorium).

<sup>9</sup> 17 CFR 240.19b-4.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE has satisfied this requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>16</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. 15 U.S.C. 78c(f).

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-2009-53 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-2009-53. 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-NYSE-2009-53 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60055; File No. SR-NYSEAmex-2009-24]

### Self-Regulatory Organizations; NYSE Amex LLC, Notice of Filing of a Proposed Rule Change Amending Rule 70.25 To Permit All Available Contra-side Liquidity To Trigger the Execution of a d-Quote

June 5, 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 June 4, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") 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. 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 70.25 to permit all available contra-side liquidity to trigger the execution of a d-Quote. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 to amend NYSE Amex Equities Rule 70.25(c)(iii) to provide that all available contra-side liquidity within the possible execution range of a d-Quote will be considered when determining whether to activate a d-Quote.<sup>3</sup>

##### Background

As described more fully in a related rule filing,<sup>4</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 and was renamed NYSE Amex LLC ("NYSE Amex" or the "Exchange"), 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>5</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>6</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>7</sup> The NYSE

<sup>3</sup> The purpose of the proposed rule changes is to amend NYSE Amex Equities Rule 70.25 to conform with proposed amendments to corresponding NYSE Rule 70.25 submitted in a companion filing by the New York Stock Exchange LLC ("NYSE"). See SR-NYSE-2009-55, formally submitted June 2, 2009.

<sup>4</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>5</sup> 15 U.S.C. 78f.

<sup>6</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>7</sup> See Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008)

<sup>17</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.