

(44 U.S.C. 3501–3520), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 19(a) (15 U.S.C. 80a–19(a)) of the Investment Company Act of 1940 (the “Act”)¹ makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company’s net income, unless the payment is accompanied by a written statement to the company’s shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of such statement by rule.

Rule 19a–1 (17 CFR 270.19a–1) under the Act, entitled “Written Statement to Accompany Dividend Payments by Management Companies,” sets forth specific requirements for the information that must be included in statements made pursuant to section 19(a) by or on behalf of management companies.² The rule requires that the statement indicate what portions of distribution payments are made from net income, net profits from the sale of a security or other property (“capital gains”) and paid-in capital. When any part of the payment is made from capital gains, rule 19a–1 also requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to section 19(a) or in the first report to shareholders following the discovery of the inaccuracy.

The purpose of rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a–1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 9200 series of registered investment companies that are management companies may be subject to rule 19a–1 each year,³ and

that each portfolio on average mails two statements per year to meet the requirements of the rule.⁴ The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement required under the rule is approximately 1 hour per statement. The total annual burden for all portfolios therefore is estimated to be approximately 18,400 burden hours.

The staff estimates that approximately one-third of the total annual burden (6,133 hours) would be incurred by a paralegal with an average hourly wage rate of approximately \$168 per hour,⁵ and approximately two-thirds of the annual burden (12,267 hours) would be incurred by a compliance clerk with an average hourly wage rate of \$67 per hour.⁶ The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately \$1,852,233 ((6,133 hours × \$168) + (12,267 hours × \$67)).

To comply with state law, many investment companies already must distinguish the different sources from which a shareholder distribution is paid and disclose that information to shareholders. Thus, many investment companies would be required to distinguish the sources of shareholder dividends whether or not the Commission required them to do so under rule 19a–1.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collection of information required by rule 19a–1 is mandatory for management companies that make statements to shareholders pursuant to section 19(a) of the Act. An agency may

of management investment company portfolios that make distributions for which compliance with rule 19a–1 is required depends on a wide range of factors and can vary greatly across years. Therefore, the calculation of estimated burden hours is based on the total number of management investment company portfolios, each of which may be subject to rule 19a–1.

⁴ A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

⁵ Hourly rates are derived from the Securities Industry and Financial Markets Association (“SIFMA”), Management and Professional Earnings in the Securities Industry 2010, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

⁶ Hourly rates are derived from SIFMA’s Office Salaries in the Securities Industry 2010, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, <http://www.reginfo.gov>. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 5, 2011.

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2011–31607 Filed 12–8–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65893; File No. SR–NYSEAmex–2011–92]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Specifying in Its Rules an Existing Policy Related to the Application of NYSE Amex Options Rule 935NY

December 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that, on November 23, 2011, NYSE Amex 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 the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit

¹ 15 U.S.C. 80a.

² Section 4(3) of the Act (15 U.S.C. 80a–4(3)) defines “management company” as “any investment company other than a face amount certificate company or a unit investment trust.”

³ This estimate is based on statistics compiled by Commission staff as of May 31, 2011. The number

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

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 specify in its rules an existing policy related to the application of NYSE Amex Options Rule 935NY. The text of the proposed rule change is available at the Exchange, at <http://www.nyse.com>, the Commission's Public Reference Room, and at <http://www.sec.gov>.

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 specify in its rules an existing policy related to the application of NYSE Amex Options Rule 935NY.

NYSE Amex Options Rule 935NY provides, in part, that Users⁵ may not execute as principal orders they represent as agent unless agency orders are first exposed on the Exchange for at least one second. This requirement gives other market participants an opportunity to participate in the execution of orders before the entering User executes them. The Exchange recognizes, however, that because the Exchange does not identify the User that entered an order to the NYSE Amex System, orders from the same ATP Holder may inadvertently execute against each other as a result of being entered by different persons and/or systems at the same ATP Holder. Therefore, when enforcing NYSE Amex Options Rule 935NY, the Exchange does not consider the inadvertent interaction of orders from the same ATP Holder

⁵ The term "User" means any ATP Holder that is authorized to obtain access to the NYSE Amex System pursuant to NYSE Amex Options Rule 902.1NY. See NYSE Amex Options Rule 900.2NY(87).

within one second to be a violation of the exposure requirement.

When investigating potential violations of NYSE Amex Options Rule 935NY, the Exchange takes into consideration whether orders that executed against each other within one second in the NYSE Amex System were entered by persons, business units and/or systems at the same ATP Holder that did not have knowledge of the order in the NYSE Amex System.⁶ Commonly, ATP Holders are able to demonstrate that orders were entered by individuals or systems that did not have the ability to know of the preexisting order in the NYSE Amex System due to information barriers in place at the time the orders were entered.

The Exchange proposes to codify this policy in Commentary .07 to NYSE Amex Options Rule 935NY. Proposed Commentary .07 would specify that ATP Holders may demonstrate that orders were entered without knowledge of a preexisting order in the NYSE Amex System represented by the same ATP Holder by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders on the Exchange were in existence at the time the orders were entered. Commentary .07 would require that such information barriers be fully documented and provided to the Exchange upon request.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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. In

⁶ The Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange and pursuant to a Regulatory Services Agreement ("RSA"), conducts routine surveillance to identify instances when an order in the NYSE Amex System is executed against an order entered by the same ATP Holder within one second.

⁷ Information barrier documentation is reviewed by FINRA on the Exchange's behalf to evaluate whether an ATP Holder has implemented processes that are reasonably designed to prevent the flow of pre-trade order information given the particular structure of the ATP Holder. Additionally, information barriers are reviewed as part of the Exchange's examination program, which is also administered by FINRA pursuant to the RSA.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

particular, the Exchange believes that codifying the Exchange's policy that appropriate information barriers may be used to demonstrate that the execution of two orders within one second was inadvertent because the orders were entered without knowledge of each other, would clarify the intent and application of NYSE Amex Options Rule 935NY for ATP Holders.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(7) of the Act,¹⁰ which requires the rules of an exchange to provide a fair procedure for the disciplining of members and persons associated with members. In particular, by specifying that the information barriers must be fully documented for the purpose of demonstrating that orders were entered without knowledge that there was a pre-existing unexecuted agency or proprietary order on the Exchange, ATP Holders would be better prepared to properly respond to requests for information by the Exchange in the course of a regulatory investigation. Moreover, while ATP Holders are generally required to provide information to the Exchange as requested, specifying that ATP Holders must provide written documentation regarding information barriers within the context of NYSE Amex Options Rule 935NY would require that all ATP Holders adhere to the same standard for demonstrating compliance with NYSE Amex Options Rule 935NY.

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 significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has

¹⁰ 15 U.S.C. 78f(b)(7).

become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to rule-comments@sec.gov. Please include File Number SR-NYSEAmex-2011-92 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-2011-92. This file number should be included on the subject line if email 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 the 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-NYSEAmex-2011-92 and should be submitted on or before December 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65878; File No. SR-NASDAQ-2011-165]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Transaction Execution Fee and Credit Schedule in Rule 7018

December 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 30, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") 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 the Substance of the Proposed Rule Change

The Exchange is proposing to modify NASDAQ's transaction execution fee and credit schedule in Rule 7018. NASDAQ proposes to implement the proposed rule change on December 1, 2011. The text of the proposed rule change is available on the Exchange's Web site at <http://>

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

nasdaq.cchwallstreet.com/Filings, at the principal office of the Exchange, 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 III [sic] 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

NASDAQ is amending its fee and credit schedule for transaction executions in Rule 7018(a).³ First, NASDAQ is expanding the criteria under which a member may qualify for its highest liquidity provider credit tier (\$0.00295 per share executed for displayed quotes/orders and \$0.0015 per share executed for non-displayed quotes/orders). Currently, a member qualifies for this rebate tier if either (i) the shares of liquidity provided in all securities through one of its Market Participant Identifiers ("MPIDs") represent more than 0.90% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities ("Consolidated Volume")⁴ during the month; or (ii) the member provides shares of liquidity in all securities during the month representing more than 1.0% of Consolidated Volume during the month through one or more of its NASDAQ Market Center MPIDs, and the member has an average daily volume during the month of more than 200,000 contracts of liquidity accessed or provided through one or more of its Nasdaq Options Market MPIDs. Under the proposed change, a member may also qualify for this rebate tier if (i) it is a registered market maker, through a single MPID, in

³ Rule 7018(a) applies to executions at \$1 or more per share.

⁴ In addition to the substantive changes that it is proposing, NASDAQ is also (i) adopting the defined term "Consolidated Volume" and introducing it where appropriate throughout Rule 7018, and (ii) making minor clarifying edits to the text of Rule 7018(a)(3).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 satisfied this requirement.