

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 Section, 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 filings will also be available for inspection and copying at the principal office of ICC and on ICC's Web site at [https://www.theice.com/publicdocs/regulatory\\_filings/ICEclearCredit\\_022912.pdf](https://www.theice.com/publicdocs/regulatory_filings/ICEclearCredit_022912.pdf).

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-ICC-2012-02 and should be submitted on or before April 2, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Kevin O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66518; File No. SR-NYSEAmex-2012-15]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Changes to the NYSE Amex Options Fee Schedule To Add Fees for Reserve Floor Market Maker Amex Trading Permits

March 6, 2012.

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 February 28, 2012, 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, II, and III 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 [sic] amend the NYSE Amex Options Fee Schedule ("Fee Schedule") to add fees for Reserve Floor Market Maker Amex Trading Permits ("Reserve ATPs"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](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 the Fee Schedule to add fees for Reserve ATPs.

Under the current Fee Schedule, an ATP Holder<sup>3</sup> acting as a Market Maker must pay \$5,000 per month per Amex Trading Permit ("ATP").<sup>4</sup> In order to act as a Floor Market Maker, an individual must be specifically named on the relevant Market Maker's ATP. On some occasions, a Floor Market Maker may be absent from the floor due to illness or other unexpected absence, in which

case the ATP Holder may wish to have a Market Maker Authorized Trader ("MMAT")<sup>5</sup> employee engage in open outcry trading to cover for the absent Floor Market Maker. If the ATP Holder activates an individual on an ATP for any portion of a month, even as little as one day, the ATP Holder is charged the full \$5,000 monthly ATP fee.

To provide an option to Market Maker firms to address the short-term absence of an employee in a more economical way, the Exchange recently added NYSE Amex Options Rule 902NY(j) to create a Reserve ATP under which an ATP Holder would be permitted to have a qualified MMAT employee cover for the absent Floor Market Maker under the firm's ATP, effectively empowering the individual acting as a qualified MMAT to act as a Floor Market Maker in lieu of the absent individual until such time as he or she returns.<sup>6</sup>

The fee for a Reserve ATP will be \$175 per month. The fee will be assessed to an ATP Holder that notifies the Exchange that it wishes to obtain a Reserve ATP, such that MMATs in its employ will be eligible to be named to the ATP to act as a Floor Market Maker to cover for another Floor Market Maker who is otherwise unable to be at work that day. The fee change will be implemented on March 1, 2012.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed change is equitably allocated and not unfairly discriminatory because it will apply equally to all ATP Holders that choose to use the Reserve ATP alternative. The Exchange believes that the proposed change is reasonable because it provides a method for ATP Holders to have fully qualified personnel step in to handle other

<sup>5</sup> A "Market Maker Authorized Trader" is an authorized trader who performs market making activities pursuant to Rule 920NY on behalf of an ATP Holder registered as a Market Maker. See NYSE Amex Rule 900.2NY(37). A Market Maker Authorized Trader must meet the same registration requirements as Floor Market Maker before they can be designated as a Market Maker Authorized Trader. See NYSE Amex Rule 921.1NY.

<sup>6</sup> See Securities Exchange Act Release No. 66237 (January 25, 2012), 77 FR 4848 (January 31, 2012) (SR-NYSEAmex-2012-02).

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>5</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.

<sup>3</sup> An "ATP Holder" is a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an Amex Trading Permit. See NYSE Amex Rule 900.2NY(5).

<sup>4</sup> The fee is calculated based on the maximum number of ATPs held by the ATP Holder during the calendar month.

employees' absences without requiring the ATP Holders to pay the full fee every month for the ATPs used by such substitute persons, thereby contributing to the efficient use of ATP Holder personnel and resources, and fair and orderly markets.

#### *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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2012-15 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-2012-15. 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 NW., 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 available publicly. All submissions should refer to File Number SR-NYSEAmex-2012-15 and should be submitted on or before April 2, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-5853 Filed 3-9-12; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66514]

### **Order Granting Temporary Exemption of Morningstar Credit Ratings, LLC From the Conflict of Interest Prohibition in Rule 17g-5(c)(1) of the Securities Exchange Act of 1934**

March 5, 2012.

#### **I. Introduction**

Rule 17g-5(c)(1) of the Securities Exchange Act of 1934 ("Exchange Act") prohibits a nationally recognized

statistical rating organization ("NRSRO") from issuing or maintaining a credit rating solicited by a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equaling or exceeding 10% of the total net revenue of the NRSRO for the fiscal year. In adopting this rule, the Commission stated that such a person would be in a position to exercise substantial influence on the NRSRO, which in turn would make it difficult for the NRSRO to remain impartial.<sup>1</sup>

#### **II. Application and Exemption Request of Morningstar Credit Ratings, LLC**

Morningstar Credit Ratings, LLC ("Morningstar"), formerly known as Realpoint LLC ("Realpoint"), is a credit rating agency registered with the Commission as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. Morningstar traditionally has operated mainly under the "subscriber-paid" business model, in which the NRSRO derives its revenue from restricting access to its ratings to paid subscribers. After Morningstar acquired Realpoint in the spring of 2010, Morningstar began to expand the scope of its business and initiated an issuer-paid ratings service for initial ratings on commercial mortgage-backed securities. In connection with this expansion, Morningstar has requested a temporary and limited exemption from Rule 17g-5(c)(1) on the grounds that the restrictions imposed by Rule 17g-5(c)(1) would pose a substantial constraint on the firm's ability to compete effectively with large rating agencies offering comparable ratings services. Specifically, Morningstar argues that because the fees typically associated with issuer-paid engagements tend to be relatively high when compared to the fees associated with its existing subscriber-based business, in the early stages of its expansion the fees associated with a single issuer-paid engagement have exceeded ten percent of its total net revenue for the fiscal year. Accordingly, Morningstar has requested that the Commission grant it an exemption from Rule 17g-5(c)(1) for any revenues derived from non-subscription based business during calendar years 2012 and 2013, which are the end of Morningstar's 2011 and 2012 fiscal years, respectively.

<sup>1</sup> Release No. 34-55857 (June 5, 2007), 72 FR 33564, 33598 (June 18, 2007).

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

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).