SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64321; File No. SR-NYSEAmex-2011-11)

April 21, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Amending Rule 103B – NYSE Amex Equities to Modify the Application of the Exchange's Designated Market Maker Allocation Policy in the Event of a Merger Involving One or More Listed Companies

I. Introduction

On February 24, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Rule 103B – NYSE Amex Equities ("Exchange Equities Rule 103B") to modify the application of the Exchange's Designated Market Maker ("DMM") allocation policy in the event of a merger involving one or more listed companies. The proposed rule change was published for comment in the Federal Register on March 10, 2011.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Currently, Policy Note VI(D)(1) to Exchange Equities Rule 103B provides that when two NYSE Amex listed companies merge, the post-merger listed company is assigned to the DMM in the company that is determined to be the survivor-in-fact (dominant company). Where no survivor-in-fact can be identified, the post-merger listed company may select one of the DMM units trading the merging companies without the security being referred for reallocation, or it

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 64040 (March 4, 2011), 76 FR 13249.

may request that the matter be referred for allocation through the allocation process pursuant to Exchange Equities Rule 103B, Section III.

In addition, Policy Note VI(D)(3) to Exchange Equities Rule 103B provides that in situations involving the merger of a listed company and an unlisted company, where the unlisted company is determined to be the survivor-in-fact, the post-merger listed company may choose to remain registered with the DMM unit that had traded the listed company entity in the merger, or it may request that the matter be referred for allocation through the allocation process pursuant to Exchange Equities Rule 103B.

The Exchange proposes to amend Policy Notes VI(D)(1) and (3) to Exchange Equities Rule 103B to provide that in all listed company mergers, either between two listed companies or a listed company and an unlisted company, the management of the post-merger listed company will be able to choose to retain either of the incumbent DMMs (in the case of a merger between two listed companies) or the incumbent DMM (in the case of a merger between a listed company and an unlisted company) or request to have the security referred for reallocation. In no case will the policy dictate that a post-merger listed company must retain an incumbent DMM unless it chooses to do so.

The Exchange also proposes to amend Policy Notes VI(D)(1) and (3) to provide that a DMM unit that is ineligible to receive a new allocation due to its failure to meet the requirements of Exchange Equities Rule 103B, Section II(D) and (E) will be eligible to be selected in its capacity as the DMM for one of the two pre-merger listed companies (in the case of a merger between two listed companies) or in its capacity as DMM of the pre-merger listed company (in the case of a merger between a listed company and an unlisted company), but will not be eligible to participate in the allocation process if the post-merger company requests that the matter be

referred for allocation through the allocation process pursuant to Exchange Equities Rule 103B, Section III. In the event that such a situation were to arise, the Exchange would inform the listed company of such DMM unit's ineligibility under Exchange Equities Rule 103B, Section II(D) or (E).

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of a national securities exchange be 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 Commission believes that the proposed rule change is consistent with the Act because it would provide post-merger listed companies with greater flexibility with respect to the DMM allocation process in connection with a merger.

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4 In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

5 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR-NYSEAmex-2011-11) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn
Deputy Secretary

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6 15 U.S.C. 78s(b)(2).

7 17 CFR 200.30-3(a)(12).