

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66820; File No. SR-NYSEAmex-2012-22)

April 17, 2012

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Equities Rule 107B to Add a Class of Supplemental Liquidity Providers that are Registered as Market Makers at the Exchange

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 April 4, 2012, 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 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 NYSE Amex Equities Rule 107B to add a class of Supplemental Liquidity Providers (“SLP”) that are registered as market makers at the Exchange. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 107B ("Rule 107B"), which currently operates on a pilot basis, to add a class of SLPs that are registered as market makers at the Exchange.

Background

Rule 107B, which was adopted as a pilot program in January 2010, established a new class of off-Floor market participants referred to as Supplemental Liquidity Providers or "SLPs."³ Approved Exchange member organizations are eligible to be an SLP. SLPs supplement the liquidity provided by Designated Market Makers ("DMM"). SLPs have monthly quoting requirements that may qualify them to receive SLP rebates, which are larger than the general rebate available to non-SLP market participants.

The goal of the SLP program is to encourage participants to quote more often and to add displayed liquidity to the market. Thus, Rule 107B(a) requires that an SLP maintain a bid and/or an offer at the NBB or NBO averaging at least 5% of the trading day for each assigned security. Meeting this quoting requirement will enable an SLP to receive the basic SLP rebate (currently \$0.0032 per executed share) on security-by-security basis and to maintain their SLP status.⁴

³ See Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 5, 2010) (SR-NYSEAmex-2009-98) (establishing pilot program for market participants referred to as "Supplemental Liquidity Providers" or "SLPs."), which is based on the SLP program of the New York Stock Exchange, LLC ("NYSE"). The pilot is currently scheduled to end on July 31, 2012.

⁴ The Exchange may, from time to time, change the amounts of the scaled SLP rebates by filing a proposed rule change under Rule 19b-4(f)(2) of the Act. 17 CFR 240.19b-4(f)(2).

To qualify as an SLP under Rule 107B(c), a member organization is subject to a number of conditions, including adequate trading infrastructure to support SLP trading activity, quoting and volume performance that demonstrates an ability to meet the 5% average quoting requirement, and use of specified SLP mnemonics. In addition, the business unit of the member organization acting as an SLP must enter proprietary orders only and have adequate information barriers between the SLP unit and any member organization's customer, research, and investment-banking business. Pursuant to Rule 107B(g)(2)(A), a DMM may also be an SLP, but not in the same securities in which it is registered as a DMM.

Rules 107B(d) and (e) currently set forth the application process and voluntary withdrawal process for SLPs. Rule 107B(f) sets forth how the quoting requirements are calculated. The assignment of SLP securities is set forth in Rule 107B(g). Rule 107B(h) specifies the entry of orders by SLPs, which may only be entered electronically from off the Floor of the Exchange from the proprietary account of the member organization.

Rule 107B(i) imposes certain non-regulatory penalties if an SLP fails to meet the quoting requirements. Specifically, an SLP would not be able to earn a rebate unless it maintained a quote at the NBB or NBO an average of 5% of the trading day. An SLP is also at risk of losing its SLP status if it fails to meet the 5% quoting requirement for three consecutive months. Rule 107B(j) specifies the process for the appeal of any non-regulatory penalties.

Proposed SLP Market Makers

The Exchange proposes to amend Rule 107B to add a category of SLPs that would be registered as market makers at the Exchange. As proposed, the term "SLP" would refer to member organizations that provide supplemental liquidity and there would be two classes of

SLP. The existing SLP member organizations and associated requirements would continue unchanged and would be applicable to a new class of SLPs referred to as “SLP-Prop.”

The Exchange proposes to add a new class of SLP, referred to as “SLMM”, which would be registered as market makers at the Exchange. As proposed, the SLMMs would have differing qualification requirements and increased regulatory obligations as compared to SLP-Props, but would otherwise be subject to the existing SLP program. Because the Exchange proposes that the SLMMs would be subject to specified regulatory obligations, including the requirement to maintain a continuous two-sided quote, the Exchange believes that this class of registered market makers could be eligible for market maker treatment under federal rules,⁵ such as the close-out requirements for fail-to-deliver positions applicable to market makers under Rule 204 of Regulation SHO.⁶

As with the SLP program in general, SLMMs are intended to supplement the liquidity provided by DMMs, and are not intended to replace DMMs.⁷ The Exchange proposes to add SLMMs in order to assist in the maintenance of a fair and orderly market, as reasonably practicable. While all securities that trade at the Exchange are required to be assigned to a DMM, not all securities would be required to be assigned to an SLMM, which is how the SLP program operates today. The Exchange believes that the proposed rule change would expand the number of member organizations eligible to participate in the SLP program. In particular, it

⁵ Among other things, a “market maker” is defined under the Securities Exchange Act of 1934 (the “Act”) as “any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communication system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.” 15 U.S.C. 78c(a)(38).

⁶ 17 CFR 242.204(a)(3).

⁷ The Exchange notes that NYSE Arca, Inc. (“NYSE Arca”) has two classes of market makers: lead market makers and regular market makers. The proposed SLMM class would have obligations similar to those applicable to NYSE Arca regular market makers.

would enable member organizations that are registered as market makers on other exchanges that are not interested in joining the existing proprietary-only SLP program to join the SLP program.

As set forth in the proposed amendment to Rule 107B(a), an SLP can choose to be either an SLP-Prop or an SLMM. As proposed, SLMMs would have different qualification requirements, specified regulatory obligations, expanded entry of order requirements, and a security-by-security withdrawal ability. SLP-Props and SLMMs would be subject to the same application and overall program withdrawal process, quoting requirements, manner by which SLP securities are assigned, and non-regulatory penalties. The Exchange does not propose to amend those aspects of the SLP program that would be applicable to both SLP-Props and SLMMs.⁸ For these purposes, the rule would continue to refer to “SLPs,” which refers to both SLP-Prop and SLMM.

As proposed, the qualification requirements specified in Rule 107B(c) would be applicable and unchanged to SLP-Props. The Exchange proposes to add Rule 107B(d) to specify the qualification requirements of SLMMs, and re-number the rest of Rule 107B accordingly. As proposed, to be approved, an SLMM would need to meet the qualification requirements currently set forth in Rule 107B(c)(1), and (3) – (5), relating to requirements for adequate technology and performance history.

If approved as an SLMM, an SLMM must meet specified regulatory obligations, which are set forth in proposed Rule 107B(d). Because these are regulatory obligations, failure to comply with these obligations could result in disciplinary action. First, pursuant to proposed

⁸ As part of the application process, a prospective SLP would make an election of whether it is seeking to be an SLP-Prop or SLMM. Based on this election, the Exchange would review the application for whether the SLP applicant meets the qualification requirements of Rule 107B(c) or proposed Rule 107B(d), as applicable. Current SLPs may also apply with the Exchange to convert to be an SLMM, provided that they meet proposed Rule 107B(d) qualification requirements.

Rule 107B(d)(1), the SLMM must maintain a continuous two-sided quotation in those securities in which the SLMM is registered to trade as an SLP (“Two-Sided Obligation”). As proposed, the Two-Sided Obligation applicable to SLMMs would be virtually identical to the market-maker two-sided obligations adopted by the equities markets in 2010.⁹ Second, pursuant to proposed Rule 107B(d)(2), the SLMM would be required to maintain net capital in accordance with the provisions of Rule 15c3-1 under the Act, which specifies the capital requirements for market makers.¹⁰ Finally, pursuant to proposed Rule 107B(d)(3), the SLMM would be required to maintain unique mnemonics specifically dedicated to SLMM activity. Use of these unique mnemonics will enable SLMMs to meet their requirement under proposed Rule 107B(d)(1)(A) to identify their market-making activity to the Exchange. As proposed, such mnemonics may not be used for trading in securities other than SLP Securities assigned to the SLMM.¹¹

Pursuant to Rule 107B(c)(6), SLPs must currently maintain adequate information barriers between the SLP unit and the member organization’s customer, research and investment-banking business. This requirement ensures that the orders submitted by SLPs are proprietary only, and

⁹ See Securities Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR-BATS-2010-025; SR-BX-2010-66; SR-CBOE-2010-087; SR-CHX-2010-22; SR-FINRA-2010-049; SR-NASDAQ-2010-115; SR-NSX-2010-12; SR-NYSE-2010-69; SR-NYSEAmex-2010-96; and SR-NYSEArca-2010-83) (order approving enhanced quoting requirements for market makers).

¹⁰ 17 CFR 240.15c3-1. For purposes of that rule, the term “market maker” is defined as “a dealer who, with respect to a particular security, (i) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (ii) furnishes bona fide competitive bid and offer quotations on request; and (iii) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers.” 17 CFR 240.15c3-1(c)(8).

¹¹ Because of the regulatory obligations associated with the SLMM Two-Sided Obligations, the Exchange believes that requiring dedicated, unique mnemonics for SLMM trading activity will enable SLMMs to comply with the proposed Rule 107B(d)(1)(A) requirement to identify such market-making quotes to the Exchange. The use of unique mnemonics will also facilitate the review by FINRA, on behalf of the Exchange and NYSE Regulation, Inc., of SLMM compliance with the Two-Sided Obligation.

are not related to any customer-facing business, including potentially market-making businesses. The Exchange proposes to maintain this requirement for SLP-Props. However, because market making sometimes involves a customer-facing business, the Exchange does not believe that the information barrier requirement is necessary for the proposed SLMMs.¹² Accordingly, the Exchange proposes that this qualification requirement be applicable only to the SLP-Prop class of SLPs.

As a related matter, the Exchange proposes to amend Rule 107B(h) (as proposed Rule 107B(i)) to modify the entry of order requirements. SLP-Prop would continue to be required to enter proprietary orders only. As proposed, SLMMs would similarly be required to enter orders for their own account, however, they could be entered in either a proprietary capacity or a principal capacity on behalf of an affiliated or unaffiliated person. Accordingly, an SLMM could be submitting SLMM quotes to the Exchange on behalf of customers, or other unaffiliated or affiliated persons.

The Exchange proposes to add an additional ability for SLMMs to voluntarily withdraw from registration as a market maker in a particular security. In proposed Rule 107B(f)(2), the Exchange proposes that an SLMM may withdraw its registration in a security by giving written notice to the SLP Liaison Committee and FINRA. As proposed, the Exchange may require a certain minimum notice period for withdrawal, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets. An SLMM that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action.

¹² The Exchange notes that other exchanges do not require information barriers for equities market makers. See, e.g., The NASDAQ Stock Market LLC (“Nasdaq”) Rules Series 4600 (Requirements for Nasdaq Market Makers and Other Nasdaq Market Center Participants) and NYSE Arca Equities Rule 7, Section 2 (Market Makers).

The Exchange believes that the security-by-security withdrawal provision will enable SLMMs to comply with legal or regulatory requirements that may conflict with meeting the SLMM requirements. For example, permitting an SLMM to withdraw its quotations may enable it to meet otherwise conflicting obligations under Rule 104 of Regulation M.¹³ In particular, because the Exchange will always have a DMM assigned to a security, the Exchange believes that having a flexible policy toward withdrawal of registration in a security will not harm investors. Moreover, the proposed rule is identical to that of another exchange.¹⁴

The final proposed change to the SLP rule is to add to Rule 107B(g) (as proposed Rule 107B(h)) that an SLP-Prop may not also act as an SLMM in the same securities in which it is registered as an SLP-Prop and vice versa. The Exchange believes that under the SLP program, a member organization should be either an SLP-Prop or SLMM. However, if a member organization has more than one business unit, and the SLP-Prop business unit is walled off from the SLMM business unit, the member organization may engage in both an SLP-Prop and SLMM business from those different business units. Provided there is no coordinated trading between the SLP-Prop and SLMM business units, they may be assigned the same securities.

The Exchange proposes to implement the changes to the SLP program by adding the SLMM class effective on the first day of the month following Commission approval of this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements

¹³ 17 CFR 242.104 (setting forth restrictions on entering stabilizing bids or penalty bids in connection with an offering of any security).

¹⁴ The proposed rule is based on BATS Exchange, Inc. (“BATS”) Rule 11.7(b). As noted below, a number of self-regulatory organizations have similar provisions, with varying language.

of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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.

The Exchange believes that adding an additional registered market maker program to the Exchange will promote just and equitable principles of trade as it could potentially expand the number of market participants trading at the Exchange that would be required to assist in the maintenance of a fair and orderly market, as reasonably practicable. In particular, the current SLP program is limited solely to member organizations that trade for their own account, and that are walled off from any customer-facing business. With the proposed rule change, additional market participants, including member organizations that are registered as market makers on other exchanges that engage in a customer-facing business, would be able to participate in the SLP program.

As noted above, the Exchange would continue to require that a DMM be registered in every security at the Exchange, and similar to NYSE Arca's market maker program, which has two classes of market maker, the SLMMs would provide supplemental liquidity in addition to the DMMs. Because the proposed SLMMs would be required to meet the Two-Sided Obligation applicable to all equities market makers, the Exchange believes that the proposed rule change would also remove impediments to and perfect the mechanism of a free and open market and a national market system by increasing the number of market participants that are required to

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

maintain a continuous two-sided quotation in the securities in which they are registered. The Exchange further believes that adding additional registered market makers would protect investors and the public interest by providing additional sources of liquidity for trading.

In addition, the Exchange believes that the proposed rule change is consistent with the requirements of the Act because the proposed requirements for the SLMMs are based on existing, approved requirements for registered market makers on other exchanges. In addition to the Two-Sided Obligation, the proposed SLMMs would also be required to assist in the maintenance of a fair and orderly market, as reasonably practicable, and maintain net capital consistent with federal requirements for market makers.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2012-22 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-2012-22. 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 website (<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 website 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 10:00 a.m. and 3:00 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2012-22 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).