

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65283; File No. SR-NYSEAmex-2011-67)

September 7, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to Fees for Trading Securities Listed on the Nasdaq Stock Market LLC Pursuant to Unlisted Trading Privileges

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 1, 2011, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 amend its 2011 Price List (“Price List”) for certain fees relating to trading pursuant to unlisted trading privileges (“UTP”) of securities listed on the Nasdaq Stock Market LLC (“Nasdaq”). The proposed amendment to the Exchange’s Price List for equities is attached hereto as Exhibit 5. The text of the proposed rule change is available at the Exchange, on the Exchange’s website at www.nyse.com, on the Commission’s website at www.sec.gov, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List for certain fees relating to trading Nasdaq securities pursuant to UTP. The amended pricing will become operative on September 1, 2011.

Currently, market participants, Supplemental Liquidity Providers ("SLPs") and Designated Market Makers ("DMMs") are charged a fee of \$0.0027 per share for orders in Nasdaq securities with a share price of \$1 or more traded pursuant to UTP that take liquidity. Under the proposal, there will be a fee of \$0.0004 per share for orders that take liquidity.

Currently, market participants and DMMs are charged a fee of \$0.0029 per share for orders in Nasdaq securities with a share price of \$1 or more that route to other markets when reduced fee volume requirements are not met. Under the proposal, there would be a fee of \$0.0025 per share for such orders.

Market participants, other than DMMs and SLPs, that provide liquidity in Nasdaq securities with a share price of \$1 or more traded pursuant to UTP are currently paid a rebate of \$0.0030 per share. Under the proposal, such market participants will be paid a rebate of \$0.0010 per share.

Currently, for orders in Nasdaq securities with a share price of \$1 or more traded pursuant to UTP that provide liquidity, DMMs, as well as SLPs that meet their quoting requirements pursuant to Rule 107B are paid a rebate of \$0.0031 per share, and SLPs that do not meet their quoting requirements are paid a rebate of \$0.0030 per share for orders that provide liquidity. Under the proposal, the rebate will be \$0.0011 per share for orders that provide liquidity for SLPs that meet their quoting requirements while SLPs that provide liquidity but do not meet their quoting requirements will be paid a rebate of \$0.0010 per share. The rebate will be \$0.0020 per share for orders that provide liquidity for DMMs.

Currently, market participants and SLPs are paid a rebate of \$0.0036 per share for executions of displayed liquidity in Nasdaq securities with a share price of \$1 or more when they are adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least \$5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares. Under the proposal, such market participants and SLPs will be paid a rebate of \$0.0020 per share.

Currently, DMMs receive a rebate of \$0.0036 per share in Nasdaq securities with a share price of \$1 or more traded pursuant to UTP for executions of the displayed portions of s-Quotes that provide liquidity and display 2,000 shares or more at the time of execution with a trading price of at least \$5.00 per share. Under the proposal, DMMs will be paid a rebate of \$0.0020 per share.

In a rule filing submitted on March 29, 2011,⁴ the Exchange adopted a new tier with a reduced “take” fee of \$0.0019 per share (compared with \$0.0027 then in effect) and a reduced routing fee of \$0.0019 per share (compared with \$0.0029 then in effect) for market participants

⁴ See Securities Exchange Act Release No. 64195 (April 5, 2011), 75 FR 20428 (April 12, 2011) (SR-NYSEAmex-2011-21).

and DMMs that meet certain average daily executed volume requirements in either shares or a combination of shares and contracts traded on the NYSE Amex options market. Under the proposal, this tier and the related routing fee will be eliminated for all Nasdaq securities traded pursuant to UTP.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the “Act”),⁵ in general, and Section 6(b)(4) of the Act,⁶ 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 proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be charged the same amount and access to the Exchange’s market is offered on fair and non-discriminatory terms.

With respect to the reduction of fees for taking liquidity, the Exchange believes that the reduction of fees will attract more volume to the Exchange from participants that are seeking to lower their overall transaction costs and thereby will result in a more competitive market in the trading of Nasdaq securities pursuant to UTP. Additionally, the approach for lowering fees for taking liquidity was previously adopted by NASDAQ OMX BX, Inc. in 2009 in Tape A and C securities, lowering the fee for taking liquidity from \$0.0014 per share to a rebate of \$0.0006 per share.⁷ The Exchange further believes that lowering the rebate for DMMs, SLPs, and market participants is appropriate in light of the reduction of fees for taking liquidity.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ See Securities Exchange Act Release No. 59682 (Apr. 1, 2009), 74 FR 16015 (Apr. 8, 2009) (SR-NASDAQ OMX BX-2009-018).

With respect to lowering the fee for routing to other markets to \$0.0025, the Exchange notes that the practice of offering routing fees at a discount to the fees of taking liquidity at most other markets has been previously adopted by other markets, including BATS BYX with its CYCLE routing fee of \$0.0028 per share.⁸

With respect to the reduction in rebates to market participants, SLPs, and DMMs for providing liquidity in 2,000 or more share orders for securities priced at \$5 or more, the Exchange believes that the proposed rebates are fair given that the Exchange is reducing the fee for taking liquidity. The Exchange believes the fee change will attract more liquidity, lower transaction costs, and improve overall trading.

The Exchange believes that maintaining a tier that allows market participants, SLPs, and DMMs to qualify for a reduced fee for taking liquidity will no longer be necessary as the fee for taking liquidity was greatly reduced.

With respect to the higher rebate of \$0.0020 per share for DMMs providing liquidity compared with the rebate of \$0.0011 per share for SLPs providing liquidity in stocks in which they meet their quoting requirements, the Exchange notes that the approach of paying DMMs a higher rebate than SLPs has been previously adopted by the New York Stock Exchange LLC (“NYSE”) with NYSE DMMs receiving rebates of up to \$0.0035 per share compared with NYSE SLPs receiving rebates of up to \$0.0022 per share.⁹ The Exchange believes that the proposed rebates are fair given the greater DMM obligations compared to SLP obligations.

⁸ See BATS BYX Exchange Fee Schedule, available at http://batstrading.com/resources/regulation/rule_book/BYX_Fee_Schedule.pdf.

⁹ See Securities Exchange Act Release Nos. 58921 (November 7, 2008), 73 FR 68478 (November 18, 2008) (SR-NYSE-2008-111) (notice of filing and immediate effectiveness of proposed rule change to establish system of rebates for Designated Market Makers); 63642 (January 4, 2011), 76 FR 1653 (January 11, 2011) (SR-NYSE-2010-87) (notice of filing and immediate effectiveness of proposed rule change to amend

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which customers may qualify for higher liquidity provider credits.

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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes or changes a due, fee, or other charge imposed on its members by the Exchange. 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.

the Exchange Price List).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

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-2011-67 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-2011-67. 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-2011-67 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.¹²

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).