

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66599; File No. SR-NYSEAmex-2012-17)

March 14, 2012

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Fee Changes Relating to Trading Nasdaq Securities Pursuant to Unlisted Trading Privileges

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 March 1, 2012, NYSE Amex LLC (“NYSE Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the 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 Substance of the Proposed Rule Change

The Exchange proposes to amend its 2012 Price List (“Price List”) for certain fees relating to trading securities listed on the Nasdaq Stock Market LLC (“Nasdaq securities”) pursuant to unlisted trading privileges (“UTP”). The text of the proposed rule change is available at the Exchange, www.nyse.com, and 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 Exchange 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 these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

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 March 1, 2012.

Currently, market participants and Designated Market Makers ("DMMs") are charged a fee of \$0.0004 per share for orders in Nasdaq securities with a share price of \$1 or more and a fee of 0.20% of total dollar value of the transaction for orders in Nasdaq securities with a share price below \$1 traded pursuant to UTP that take liquidity. Under the proposal, the fee will be \$0.0027 per share for orders with a share price of \$1 or more that take liquidity and 0.30% of total dollar value of the transaction for orders with a share price below \$1 that take liquidity.

Currently, market participants and DMMs are charged a fee of \$0.0025 per share for orders in Nasdaq securities with a share price of \$1 or more and a fee of 0.20% of total dollar value of the transaction for orders in Nasdaq securities with a share price below \$1 that route to other markets. Under the proposal, the fee will be \$0.0027 per share for such orders with a share price of \$1 or more and .30% of total dollar value of the transaction for such orders with a share price below \$1.

Market participants, other than DMMs and Supplemental Liquidity Providers ("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 \$0.0010 per share. Under the proposal, such market participants will be paid a rebate of \$0.0030 per share.

Currently, for orders in Nasdaq securities with a share price of \$1 or more traded pursuant to UTP that provide liquidity, DMMs are paid a rebate of \$0.0020 per share, SLPs that

meet their quoting requirements pursuant to NYSE Amex Rule 107B are paid a rebate of \$0.0011 per share, and SLPs that do not meet their quoting requirements are paid a rebate of \$0.0010 per share. Under the proposal, the rebate for such orders will be \$0.0031 per share for DMMs, \$0.0031 per share for SLPs that meet their quoting requirements, and \$0.0030 per share for SLPs that provide liquidity but do not meet their quoting requirements.³

Currently, market participants and SLPs are paid a rebate of \$0.0020 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, market participants and SLPs will be 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.

Currently, DMMs receive a rebate of \$0.0020 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 \$0.0036 per share 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.

³ The Exchange notes that the proposed rebates will be the same as the rebates that were in place prior to September 1, 2011. See Securities Exchange Act Release No. 65283 (September 7, 2011), 76 FR 56850 (September 14, 2011) (SR-NYSEAmex-2011-67).

The Exchange also proposes a technical change to remove language in the Price List that references reduced fees for market participants that meet certain average daily executed volume requirements; those reduced fees were eliminated in September 2011 and this text was inadvertently not removed at that time.⁴ The Exchange proposes to include a reference within the Price List to the last date on which the Price List was amended.

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”),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 market participants will be charged or credited the same amount and access to the Exchange’s market is offered on fair and non-discriminatory terms.

With respect to the increased credits for providing liquidity, the Exchange believes that the credits 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. The Exchange further believes that the increases in the fees for DMMs, SLPs, and market participants for taking liquidity are appropriate in light of the increase in credits for providing liquidity. The Exchange also believes that it is reasonable not to increase the credits for providing liquidity in Nasdaq securities with a share price below \$1 because there are only a small number of issues that trade below \$1, these shares are thinly

⁴ See id.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

traded, and increased credits could have the potential of being greater than the spread, creating an inappropriate incentive to trade.

The Exchange believes that raising the fee for routing to other markets for orders in Nasdaq securities with a share price of \$1 or more to \$0.0027 is reasonable because the fee is lower than the fee previously charged by the Exchange⁷ and lower than routing fees charged by other markets, including BATS BYX with its CYCLE routing fee of \$0.0028 per share.⁸ The Exchange believes that raising the fee for routing to other markets for orders in Nasdaq securities with a share price below \$1 to 0.30% of total dollar value of the transaction is reasonable because it will cover the costs associated with routing orders away from the Exchange.

With respect to the increase in rebates to DMMs, SLPs, and market participants 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 increasing the fee for taking liquidity. The Exchange believes the fee change will attract more displayed liquidity, lower transaction costs, and improve overall trading.

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.

⁷ See supra note 4.

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

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSEAmex-2012-17 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 No. SR-NYSEAmex-2012-17. 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 available publicly. All submissions should refer

to File No. SR-NYSEAmex-2012-17 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).