

The Exchange believes that the proposal is non-discriminatory because it applies to all Members.

The Exchange also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. 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-EDGA-2012-20 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-EDGA-2012-20. 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 NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-EDGA-2012-20 and should be submitted on or before July 5, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67155; File No. SR-NYSEAmex-2012-22]

#### **Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval 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**

June 7, 2012.

#### **I. Introduction**

On April 17, 2012, NYSE Amex LLC ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change 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 proposed rule change was published for comment in the *Federal Register* on April 23, 2012.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposal**

NYSE Amex Equities Rule 107B ("Rule 107B") was adopted as a pilot program in January 2010 and established a new class of off-floor market participants referred to as Supplemental Liquidity Providers or "SLPs."<sup>4</sup> 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.<sup>5</sup>

To qualify as an SLP under Rule 107B(c), a member organization is subject to a number of conditions, including adequate trading

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 66820 (April 17, 2012), 77 FR 24236 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR-NYSEAmex-2009-98). The pilot is currently scheduled to end on July 31, 2012.

<sup>5</sup> Rule 107B(a) requires that an SLP maintain a bid and/or an offer at the national best bid ("NBB") or national best offer ("NBO") averaging at least 5% of the trading day for each assigned security. Meeting this volume requirement will enable an SLP to receive the basic SLP rebate (currently \$0.0032 per executed share) on a security-by-security basis and to maintain their SLP status.

*CBOEFeeSchedule.pdf*; and NASDAQ Rule 7032 regarding late fees.

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

<sup>10</sup> 17 CFR 19b-4(f)(2).

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

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 of the 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.

#### 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 referred to as "SLP-Prop."

The proposed new class of SLP would be referred to as "SLMM". 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.

Under the proposal, an SLP can choose to be either an SLP-Prop or an SLMM. The 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.

To be approved as an SLMM, an SLMM must meet specified regulatory obligations, which are set forth in proposed Rule 107B(d). Failure to comply with these regulatory obligations could result in disciplinary action. First, pursuant to proposed 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.<sup>6</sup> 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.<sup>7</sup> 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.

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 are not related to any customer-facing business, including potentially market-making businesses. The Exchange proposes to maintain this requirement for SLP-Props.

Proposed Rule 107B(i) would 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. SLMM could submit 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. Under proposed Rule 107B(f)(2), 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.

Under proposed Rule 107B(h), 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. 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.

#### III. Discussion

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.<sup>8</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 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 providing liquidity at the Exchange, to the benefit of investors. In particular, the proposal would allow additional market participants, including member organizations that are registered as market makers on other exchanges that engage in a customer-facing business, to participate in the SLP program.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 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).

<sup>7</sup> 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).

The proposed SLMMs would provide supplemental liquidity in addition to the liquidity provided by DMMs and SLP-Props, and the Exchange would continue to require that a DMM be registered in every security listed on the Exchange. Because the proposed SLMMs would be required to meet the Two-Sided Obligation applicable to all equities market makers, the Commission 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 maintain a continuous two-sided quotation a specified percentage away from the NBBO in the securities in which they are registered. Moreover, the proposed SLMM would be subject to other currently existing requirements.

The Commission finds that the proposal is not unfairly discriminatory. Registration as an SLP-Prop or SLMM is available to all Exchange member organizations that satisfy the requirements of proposed Rule 107B(c) or (d). The Commission finds further that the proposal to establish procedures for the registration, withdrawal, and disqualification of SLMM, and the SLMM quoting requirements, are consistent with the requirements of Section 6(b)(5) of the Act. The Exchange's proposed rules provide an objective process by which a member organization could become a SLMM and for appropriate oversight by the Exchange to monitor for continued compliance with the terms of these provisions. The Commission also notes that these provisions are similar to the existing provisions that apply to the current SLP program.

In addition, the Commission 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.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSEAmex-2012-22) be, and it hereby is, approved.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67162; File No. SR-BATS-2012-019]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Exchange Rule 11.19, Entitled "Short Sales"

June 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 24, 2012, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 is filing with the Commission a proposal to amend Exchange Rule 11.19, entitled "Short Sales," to adopt certain changes related to Regulation SHO in connection with the Exchange's recent status as the primary listing market for certain securities.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at 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 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

On February 26, 2010, the Commission adopted amendments to Rules 200(g) and 201 of Regulation SHO.<sup>3</sup> Rule 201 of Regulation SHO, as amended, requires trading centers<sup>4</sup> such as the Exchange to establish, maintain, and enforce certain written policies and procedures reasonably designed to comply with the rule.<sup>5</sup> The Exchange has proposed and received approval of rule changes<sup>6</sup> in connection with the amendments to Rules 201 and 200 of Regulation SHO that were implemented in 2011.<sup>7</sup> The Exchange recently began operation as a primary listing market of certain securities, and is thus proposing additional rules in connection with Regulation SHO, as amended.

Proposed Exchange Rule 11.19(b)(1), "Definitions," defines the terms "covered security," "listing market," and "national best bid" as having the same meaning as such terms have in Rule 201 of Regulation SHO.<sup>8</sup>

<sup>3</sup> 17 CFR 242.200(g); 17 CFR 242.201. See Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) ("Adopting Release") (amending Rules 201 and 200 of Regulation SHO to adopt a short sale price test restriction and "short exempt" marking requirement).

<sup>4</sup> Rule 201(a)(9) states the term "trading center" will have the same meaning as in Rule 600(b)(78). 17 CFR 242.201(a)(9). Rule 600(b)(78) of Regulation NMS defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

<sup>5</sup> See 17 CFR 242.201(b). The amendments to Rule 200(g) of Regulation SHO provide a "short exempt" marking requirement. See 17 CFR 242.200(g).

<sup>6</sup> See Securities Exchange Act Release No. 63948 (Feb. 23, 2011), 76 FR 11303 (Mar. 1, 2011) (SR-BATS-2011-002). See Rule 11.9(g)(2), which describes the handling of orders pursuant to Exchange "short sale price sliding" functionality in connection with the short sale price test restriction; see also, Rule 11.13, which codifies in the Exchange's rules the execution restrictions of Rule 201; see also Rule 11.19, which requires marking of short sale orders as either "short" or "short exempt."

<sup>7</sup> See *supra* note 3; see also Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010) (extending the compliance date of the amendments to Rules 201 and 200 of Regulation SHO until February 28, 2011).

<sup>8</sup> See Rule 201(a) of Regulation SHO. The System will utilize the national best bid from the systems

<sup>11</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>10</sup> 15 U.S.C. 78s(b)(2).