

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 Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSEArca's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-NYSEArca-2012-70 and should be submitted on or before August 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67421; File No. SR-NYSEAmex-2012-31]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Defining a Primary Specialist in Each Options Class and Modifying the Specialist Entitlement Accordingly

July 12, 2012.

#### I. Introduction

On May 11, 2012, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to define a Primary Specialist in each options class and modify the Specialist entitlement. The proposed rule change was published for comment in the **Federal Register** on May 31, 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

The Exchange proposes to amend Rules 964NY and 964.2NY to define Primary Specialists, and to modify the order allocation entitlement amongst Specialist Pool participants.

Rule 964NY sets forth the priority for the allocation of incoming orders to resting interest at a particular price in the NYSE Amex System. Under the current rule, the priority for the allocation of incoming orders at the same price is as follows: (1) resting Customer orders; (2) Directed Order Market Makers, provided they satisfy the criteria to be eligible to receive a Directed Order; (3) the Specialist Pool (for non-Directed Orders); and (4) non-Customer interest (on a size pro-rata basis). As currently provided in Rule 964NY(b)(2)(C) and Rule 964.2NY, the Specialist and e-Specialists in each class compete in the Specialist Pool on a size pro-rata basis, and do not compete for the allocation of non-Directed Orders of five contracts or fewer.<sup>4</sup> Such orders are allocated on a rotating basis (i.e., a round robin) to a Specialist or e-Specialist in the Specialist Pool.

The Exchange now proposes to designate a Primary Specialist from amongst the Specialist Pool participants. According to the Exchange, the Primary Specialist will be determined using objective evaluation of the relative quote performance of each Specialist and e-Specialist. The evaluation will be conducted on a quarterly basis and would include one or more of the following factors: time and size at the NBBO, average quote width, average quote size, and the relative share of electronic volume in a given class of options.<sup>5</sup> The Exchange will issue a Regulatory Bulletin at least five business days prior to each evaluation period with the evaluation criteria, including the relative weighting of each factor.

Under the proposed rule change, the Primary Specialist (instead of the Specialist) would receive any additional weighting in the size pro rata allocation amongst Specialist Pool participants. This additional weighting would be determined by the Exchange, as is currently the case. Additionally, under the proposal, rather than a round robin allocation of non-Directed Orders for five contracts or fewer, all such orders

would be allocated to the Primary Specialist after any allocation to Customers, not to exceed the size of the Primary Specialist's quote, provided the Primary Specialist is quoting at the NBBO. If the Primary Specialist's quote size is less than the order of five contracts or fewer, any remaining contracts after the Primary Specialist receives its allocation will be allocated in accordance with Rule 964NY(b)(2)(D) (i.e., size pro rata). In addition, as is the case under the current rule for the Specialist Pool, if the Primary Specialist is not quoting at the NBBO at the time the order for five or fewer contracts arrives, then the order will be executed in accordance with the provision of Rule 964NY(b)(2)(D).<sup>6</sup>

The Exchange stated that it will not implement this proposal until it has notified ATP Holders via Regulatory Bulletin regarding the rule change. The Exchange plans to issue notice announcing the compliance date of the rule change within 90 days from the effective date of the rule change.<sup>7</sup>

#### 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> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

The Commission closely scrutinizes exchange rule proposals to adopt or amend participation guarantees where such guarantees would rise to a level that could have a material adverse impact on quote competition within a particular exchange.<sup>10</sup> As noted by the Exchange, the proposed rule change is intended to enhance quote competition

<sup>6</sup> The Exchange is also proposing to correct a typographical error in Rule 964.2NY(b)(3)(A) by changing the word "on" to "one."

<sup>7</sup> See Notice, *supra* note 3, at 32158.

<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>10</sup> See Securities Exchange Act Release No. 44641 (August 2, 2001), 66 FR 41643 (August 8, 2001) (SR-ISE-2001-17), at 41644-41645; see also Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (SR-ISE-2005-18), at 35149.

<sup>8</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>3</sup> Securities Exchange Act Release No. 67057 (May 24, 2012), 77 FR 32157 ("Notice").

<sup>4</sup> Under the rule, the Specialist's pro-rata allocation may receive additional weighting as determined by the Exchange.

<sup>5</sup> The first evaluation period may be longer or shorter than a calendar quarter, depending on Commission approval of the proposed rule change.

among the Specialist Pool participants by creating a quarterly contest designed to measure the quote performance of Specialists and eSpecialists. The Exchange states that the determination of the winner of this quarterly contest will be based on objective evaluation of the relative quote performance of each Specialist and eSpecialist and the evaluation criteria will be announced in advance of each evaluation period. The Exchange notes that enhanced quote competition should lead to narrower spreads and more liquid markets, thereby benefiting investors. Further, notes the Exchange, narrower spreads and more liquid markets should attract more order flow to the exchange, enhancing price discovery and generally benefiting all participants on the Exchange. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSEAmex-2012-31) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67422; File No. SR-BYX-2012-013]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

July 12, 2012.

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> notice is hereby given that on February 8, 2012, BATS Y-Exchange, Inc. (“BYX” or “Exchange”) filed with the Securities and Exchange Commission (“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 the fee schedule applicable to Members<sup>3</sup> and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

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

The Exchange proposes to modify its fee schedule in order to: (i) Accommodate an additional venue as part of the Exchange’s “TRIM” routing strategy; and (ii) commence charging for logical ports used to enter orders into Exchange systems and to receive data from the Exchange. Each of these proposed changes is described in further detail below.

###### (i) TRIM Routing Strategy

The Exchange proposes to modify its fee schedule in order to accommodate an additional venue as part of the Exchange’s “TRIM” routing strategy. As defined in BYX Rule 11.13(a)(3)(G), TRIM is a routing option under which an order checks the System<sup>4</sup> for available shares and then is sent to

destinations on the System routing table. The TRIM routing strategy is focused on seeking execution of orders while minimizing execution costs by routing to certain low cost execution venues on the Exchange’s routing table. Accordingly, the Exchange’s current TRIM routing strategy will check the Exchange’s order book and then route to various venues on the Exchange’s routing table, including NASDAQ OMX BX, Inc. (“NASDAQ BX”), EDGA EXCHANGE, Inc. (“EDGA”), the New York Stock Exchange LLC (“NYSE”), BATS Exchange, Inc. (“BZX Exchange”) and certain alternative trading systems available through the Exchange’s “DRT” strategy (“DRT Venues”).<sup>5</sup> As of July 2, 2012, the Exchange plans to add an additional execution venue, NASDAQ OMX PSX (“NASDAQ PSX”), to the TRIM routing strategy. The TRIM routing strategy generally passes the same execution fee assessed by the applicable market center back to Exchange Users.<sup>6</sup> In order to add NASDAQ PSX to the TRIM routing strategy, the Exchange is proposing to adopt pricing for executions through the TRIM routing strategy of orders routed to NASDAQ PSX.

Based on a recently filed proposal, as of July 2, 2012, NASDAQ PSX does not assess any charge to remove liquidity from its order book for participants that reach certain volume tiers.<sup>7</sup> Because the Exchange anticipates being able to reach such tiers based on its routing practices, the Exchange proposes neither to assess any fee nor to provide any rebate for TRIM orders that remove liquidity from NASDAQ PSX.

###### (ii) Logical Port Fees

The Exchange also proposes to commence charging fees to Members and non-members for logical ports used to enter orders into Exchange systems and to receive data from the Exchange. A logical port is also commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange’s system for trading and billing purposes. Each logical port

<sup>5</sup> As set forth in BYX Rule 11.13(a)(3)(E), DRT is a routing option in which the entering firm instructs the System to route to alternative trading systems included in the System routing table. Unless otherwise specified, DRT can be combined with and function consistent with all other routing options.

<sup>6</sup> As defined in BYX Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. A Sponsored Participant is a firm that is sponsored by a Member of the Exchange to access the Exchange and that meets the criteria of Exchange Rule 11.3.

<sup>7</sup> See SR-Phlx-2012-87 (June 27, 2012). This proposal was recently filed and will become operative on July 2, 2012.

<sup>3</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

<sup>4</sup> As defined in BYX Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

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

<sup>12</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.