

Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2009-23 and should be submitted by June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59883; File No. SR-NYSEAmex-2009-16]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Making Certain Amendments to Its Price List

May 7, 2009.

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 April 30, 2009, 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 price list to (i) clarify that non-electronic agency transactions of less than 10,000 shares between floor brokers in the crowd are not subject to any transaction fee, (ii) clarify that brokers are charged a discounted fee of \$0.0005 per share for Discretionary e-Quotes and verbal agency interest when taking liquidity from the Exchange, and (iii) to remove references to the payment of rebates applicable to the period prior to the implementation of the Capital

Commitment Schedule that are no longer relevant. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://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 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 the 2009 NYSE Amex Price List to clarify that non-electronic agency transactions of less than 10,000 shares between floor brokers in the crowd are not subject to any transaction fee. The 2009 NYSE Amex Price List does not currently reference any fee for these transactions and the Exchange treats them the same as non-electronic agency transactions of more than 10,000 shares, which are free of charge. The amended 2009 NYSE Amex Price List will state that any non-electronic agency transaction between brokers in the crowd is free of charge, regardless of size.

The current NYSE Amex price list does not state a fee policy with respect to Discretionary e-Quotes and orders submitted by floor brokers as verbal agency interest. The Exchange's current practice with respect to such orders is to charge the floor broker \$0.0005 per share or, in the case of securities with a trading price of less than \$1.00, the lesser of (i) \$0.0005 per share or (ii) 0.25% of the dollar value of the transaction. The current NYSE Amex Price List does not state this fee policy. The Exchange is amending its price list to specifically state this policy.

Footnote 5 in the current 2009 NYSE Amex Price List states that Designated Market Makers receive rebates under several circumstances when providing liquidity on non-displayed interest using the Capital Commitment Schedule, or, prior to the implementation of the Capital Commitment Schedule, using the

following message activities: price improvement, size improvement (PRIN FILL), matching away market quotes. As the Capital Commitment Schedule has been implemented, the text dealing with the payment of rebates in the period prior to its implementation is no longer relevant and the Exchange proposes to delete it.

The subheading "Transactions in Securities with a Per Share Price Above \$1.00" is modified to clarify that it applies to all transactions in securities with a price equal to or greater than \$1.00. It will now read as follows: "Transactions in Securities with a Per Share Price of \$1.00 or more."

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and Section 6(b)(4) of the Act,<sup>4</sup> 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.

##### 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)<sup>5</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2009-16 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-2009-16. 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 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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-2009-16 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59890; File No. SR-BATS-2009-010]

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

May 7, 2009.

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 April 30, 2009, BATS Exchange, Inc. ("BATS" or the "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. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 modify its fee schedule applicable to use of the Exchange. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2009.

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.

<sup>7</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

#### 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 applicable to use of the Exchange effective May 1, 2009, in order to:* (i) Charge a consistent fee of \$0.0025 per share for trades that remove liquidity in securities priced \$1.00 or above and provide a consistent rebate of \$0.0024 per share to Members who add displayed liquidity in securities priced \$1.00 or above; (ii) change the securities for which the Exchange does not pay a rebate for adding liquidity to all securities priced below \$1.00, rather than securities priced below \$5.00, and eliminate the rebate of \$0.0001 per share for trades that remove liquidity in securities priced below \$5.00; (iii) decrease the fee charged by the Exchange for its "CYCLE" routing strategy from \$0.0026 per share to \$0.0025 per share and modify the routing fee for securities priced below \$1.00; and (iv) change from a fee of \$0.0005 per share to a rebate of \$0.0001 per share for Modified Destination Specific Orders routed to a dark liquidity venue. Each of these proposed changes is described in further detail below.

###### (i) Fees and Rebates for Securities Priced \$1.00 or Above

The Exchange currently charges a fee of \$0.0025 per share for trades that remove liquidity in securities priced \$5.00 or above, and proposes to change this fee so that it instead applies to trades that remove liquidity in securities priced \$1.00 or above.

The Exchange currently provides rebates for securities priced \$5.00 or above of \$0.0023 per share to Members who add displayed liquidity in Tape A and C securities, and \$0.0028 per share to Members who add displayed in Tape B securities. The Exchange proposes to