

All submissions should refer to File Number SR-Phlx-2009-65. 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 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-Phlx-2009-65 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60464; File No. SR-BATS-2009-027]

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.

August 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 29, 2009, BATS Exchange, Inc. (the

"Exchange" or "BATS") 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 August 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.

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 August 1, 2009, in order to change the fee charged by the Exchange for odd lot orders routed to NYSE Arca. Due to the pricing structure at NYSE Arca, the Exchange currently charges higher fees for odd lot orders to the extent such odd lot orders are routed to and executed at NYSE Arca. Effective

August 1, 2009, NYSE Arca will begin applying its standard fees for round lot executions to odd lot executions.⁵ Accordingly, the Exchange proposes to delete the specific fees charged for odd lot orders routed to NYSE Arca, and instead, will charge the same fees that it charges for routed orders generally. For instance, an odd lot order routed through the Exchange's CYCLE or RECYCLE routing strategy will be charged \$0.0026 per share wherever such order is executed, including NYSE Arca. If such odd lot order is in a stock priced below \$1.00, then the Exchange will charge 0.26% of the total dollar value of the trade to the extent the order was routed to and executed at any venue (including NYSE Arca) pursuant to the Exchange's CYCLE or RECYCLE routing strategy.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange 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. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(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.

⁵ See NYSE Arca Trader Update, July 20, 2009, available at http://www.nyse.com/pdfs/Arca_Fee_Schedule_Update.pdf.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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.

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-BATS-2009-027 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-BATS-2009-027. 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 BATS. 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-BATS-2009-027 and should be submitted on or before September 8, 2009.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60469; File No. SR-NYSEArca-2009-73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.76A—Order Execution-OX and Proposing New Rule 6.88—Directed Orders

August 10, 2009.

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 August 5, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 is proposing (i) new Rule 6.88 to describe Directed Orders, (ii) to amend Rule 6.76A to describe how Directed Orders are allocated upon execution, (iii) define Directed Order

Market Makers, Order Flow Providers, and Directed Orders, and (iv) make other amendments to provide for Directed Orders. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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 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

NYSE Arca proposes new Rule 6.88, Directed Orders, under which Market Makers may receive Directed Orders, and also proposes to amend Rule 6.76A to describe the allocation of Directed Orders upon execution. Additionally, the Exchange proposes to define Directed Orders, Order Flow Provider, and Directed Order Market Maker ("DOMM"), and make other rule modifications to provide for Directed Orders.

Proposed Rule 6.88, Directed Orders, is based on NYSE Amex Rule 964.1NY. It permits any Market Maker to receive Directed Orders, provided the Market Maker is quoting at the National Best Bid/Offer ("NBBO") at the time of receipt. It also describes how Directed Orders are to be executed if the DOMM is not at the NBBO at time of receipt. Additionally, the proposed Rule requires a DOMM to meet a 90% quoting obligation in any class in which a Directed Order is received. The Exchange believes it is appropriate to oblige DOMMs to a higher quoting standard in return for the privilege of receiving directed order flow.

The Exchange is also proposing to amend Rule 6.76A the circumstances by which a DOMM may receive an allocation entitlement up to 40% of an incoming order if quoting at the NBBO at the time the NYSE Arca System

¹⁰ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

²⁵ U.S.C. 78a.

¹⁷ CFR 240.19b-4.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).