

requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will maintain the perception of fairness in its disciplinary and similar proceedings and will safeguard against former FINRA officers potentially exerting undue influence in FINRA proceedings.

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

FINRA does not believe that the proposed rule change will result in 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*

Written comments were neither solicited nor received.

### **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)(A) of the Act<sup>15</sup> and paragraph (f)(3) of Rule 19b-4 thereunder.<sup>16</sup> 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2011-032 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-FINRA-2011-032. 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 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2011-032 and should be submitted on or before August 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-17682 Filed 7-13-11; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64844; File No. SR-NYSEAmex-2011-34]

#### **Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Amending NYSE Amex Equities Rule 70.40(3) To Permit Member Organizations To Engage in Proprietary Trading From Their Approved Booth Premises in Certain OTC Bulletin Board and OTC Markets Securities**

July 8, 2011.

#### **I. Introduction**

On May 11, 2011, NYSE Amex LLC ("NYSE Amex" or the "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 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTC Bulletin Board ("OTCBB") and OTC Markets securities. The proposed rule change was published for comment in the **Federal Register** on May 25, 2011.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### **II. Description**

NYSE Amex proposes to amend NYSE Amex Equities Rule 70.40(3) to permit member organizations to engage in proprietary trading from their approved booth premises in certain OTCBB and OTC Markets securities.<sup>4</sup>

In June 2007, the New York Stock Exchange LLC adopted NYSE Rule 70.40, which permits a member organization to operate its booth premises on the NYSE Floor in a manner similar to its "upstairs" office, thereby allowing member organizations to access other markets and trade a wider array of products from their booth premises and thus operate more efficiently and competitively.<sup>5</sup> At the

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

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

<sup>3</sup> See Securities Exchange Act Release No. 64521 (May 19, 2011); 76 FR 30415 ("Notice").

<sup>4</sup> The Exchange's affiliate, New York Stock Exchange LLC ("NYSE"), has proposed to adopt the same rule. See SR-NYSE-2011-22.

<sup>5</sup> See Securities Exchange Act Release 55908 (June 14, 2007), 72 FR 34056 (June 20, 2007) (SR-NYSE-2007-51) (notice of filing and immediate effectiveness of proposed rule change permitting member organizations to operate their booth

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

<sup>16</sup> 17 CFR 240.19b-4(f)(3).

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

time that NYSE Rule 70.40 was adopted, it included certain conditions and limitations on such trading, including that only trading on behalf of customers would be permitted. In October 2008, the Exchange adopted NYSE Amex Equities Rule 70.40, which is identical to NYSE Rule 70.40.<sup>6</sup> As such, NYSE Rule Amex Equities 70.40(3) prohibits member organizations approved to operate booth premises pursuant to such Rule from effecting any transaction from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion on the Exchange.

After more than two years of experience with NYSE Amex Equities Rule 70.40, member organizations have requested that certain types of proprietary trading be permitted under the Rule, and the Exchange has determined that it is appropriate to do so. Therefore, the Exchange proposes to revise NYSE Amex Equities Rule 70.40(3) to permit member organizations to effect transactions in the common, preferred, and debt securities of an operating company that is quoted on the OTC Bulletin Board or OTC Markets (an "OTC Security") from their approved booth premises for their own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion, except that such member organizations could not effect such transactions in an OTC Security that is related to a security listed or traded on the Exchange or NYSE.<sup>7</sup> Because trading would be limited to the common, preferred, and debt securities of an operating company, a member organization could not trade in an index-based or derivative security (*e.g.*, a right or warrant) that is quoted on the OTCBB or OTC Markets.

Under the proposed rule change, an OTC Security would be considered

premises as an upstairs office). Under NYSE Amex Equities Rule 70.40, only Floor Brokers may conduct activity from booth premises.

<sup>6</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (Order Granting Approval of Proposed Rule Change To Establish New Membership, Member Firm Conduct, and Equity Trading Rules Following the Exchange's Acquisition by NYSE Euronext). Under NYSE Amex Equities Rule 70.40, only Floor Brokers may conduct activity from booth premises.

<sup>7</sup> Since the merger of NYSE and NYSE Amex in 2008, the exchanges have conducted equity trading from the same Trading Floor, and NYSE Amex has conducted options trading in rooms adjacent the Trading Floor. See Securities Exchange Act Release No. 58673 (September 29, 2008) (SR-Amex-2008-62 and SR-NYSE-2008-60), 73 FR 57707 (October 3, 2008), and NYSE Rule 6A.

related to a security listed or traded on the Exchange or NYSE<sup>8</sup> if:

(a) The OTC Security is issued by an issuer of a security that is listed or traded on the Exchange or NYSE or that underlies an NYSE Amex option, or an affiliate of such issuer;

(b) The OTC Security is subject to a corporate action that relates to the issuer of a security that is listed or traded on the Exchange or NYSE or that underlies an NYSE Amex option, or an affiliate of such issuer;

(c) The OTC Security is issued by an issuer of a security that is a component of a narrow-based security index<sup>9</sup> that is linked to a security that is listed or traded on the Exchange or NYSE or that underlies an NYSE Amex option; or

(d) The OTC Security is issued by a foreign issuer or is a depositary receipt (or the equivalent thereof) for such a security, and a security issued by such foreign issuer or a depositary receipt (or the equivalent thereof) for such a security is listed or traded on the Exchange or NYSE or underlies an NYSE Amex option.

Under the proposed rule, a corporate action would be any action by an issuer of an OTC Security or a security listed or traded on the Exchange or NYSE that causes a relationship between the price of the OTC Security and the price of the security that is listed or traded on the Exchange or NYSE or that underlies an NYSE Amex option, such as the announcement of a merger, acquisition, joint venture, spinoff, dissolution, bankruptcy filing or other similar type of event involving the issuers.

The proposed proprietary transactions in OTC Securities would remain subject to all of the other provisions of NYSE Amex Equities Rule 70.40. First, a member organization would have to obtain approval from NYSE Regulation, Inc. ("NYSER") to engage in proprietary OTC Securities trading from booth premises.<sup>10</sup> Second, all such transactions would be subject to the regulatory requirements that apply to "upstairs" trading, including registration requirements and audit trail requirements applicable to those markets and supervision requirements under NYSE Amex Equities Rule 342.<sup>11</sup> Finally, a member organization would be required to adopt and implement comprehensive written procedures governing the conduct and supervision of proprietary trading in OTC Securities

<sup>8</sup> Securities listed on The NASDAQ Stock Market are traded on NYSE Amex pursuant to unlisted trading privileges and thus would be considered a security traded on NYSE Amex under the proposed rule change. See Rules 500-525—NYSE Amex Equities.

<sup>9</sup> For purposes of the proposed rule, the definition of narrow-based security index would be the same as the definition in Section 3(a)(55) of the Securities Exchange Act of 1934 (the "Act").

<sup>10</sup> NYSE Amex Equities Rule 70.40(1).

<sup>11</sup> NYSE Amex Equities Rule 70.40(4) and (5).

handled through the booth and the staff responsible for such activities; such procedures must be reasonably designed to ensure that the member organization would be trading in compliance with the requirements of NYSE Amex Equities Rule 70.40, including that it is not effecting transactions from booth premises in OTC Securities that are related to securities listed or traded on the Exchange or NYSE. A member organization would be required to obtain NYSE approval of such written procedures before such trading commences.<sup>12</sup> A member organization would be required to regularly review such procedures and compliance therewith, and obtain approval from NYSE of any subsequent changes to such procedures.<sup>13</sup>

At a minimum, such written procedures must require the member organization to exercise due diligence before commencing trading in an OTC Security from the booth premises pursuant to this Rule to ensure that such trading is in compliance with the requirements of this Rule and that the member organization has procedures to monitor its trading activity in order to remain in compliance. A member organization must have supervisory systems in place that produce records sufficient to reconstruct, in a time-sequenced manner, all orders with respect to which the member organization is trading from the booth premises under this Rule. The member organization must be able to demonstrate which OTC Security transactions were effected from the booth premises (as compared to off-Floor trading, if applicable). If the member organization could not demonstrate which trading is from the booth premises, the Exchange would presume that all such trading was effected from the booth premises.

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>14</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> In

<sup>12</sup> If a member organization had already obtained approval to operate booth premises under NYSE Amex Equities Rule 70.40, it would still be required to update its written procedures to address proprietary trading in OTC Securities and obtain NYSE approval under NYSE Amex Equities Rule 70.40(7).

<sup>13</sup> NYSE Amex Equities Rule 70.40(6) and (7).

<sup>14</sup> 15 U.S.C. 78f.

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

particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 notes that the proposed rule change will enable member organizations to expand the types of activities that can be conducted from booth premises to include transactions in certain OTCBB and OTC Markets securities for the member organization's own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion. At the same time, the proposal excludes such transactions in an OTC Security that is related to a security listed or traded on the Exchange or on NYSE. In addition, the Commission notes that the proposed proprietary transactions in OTC Securities would remain subject to the registration, audit trail, and supervision requirements of NYSE Amex Equities Rule 70.40.<sup>17</sup> This includes the requirement to adopt and implement comprehensive written procedures governing the conduct and supervision of proprietary trading in OTC Securities handled through the booth and the staff responsible for such activities. These procedures must be reasonably designed to ensure that member organizations are not effecting transactions from booth premises in OTC Securities that are related to securities listed or traded on the Exchange or NYSE.<sup>18</sup>

The primary reason for the earlier restriction on proprietary trading by Floor Brokers was concern that the Floor Broker's knowledge of events on the floor and the state of the market would provide him with an unfair advantage over off-floor market participants. However, in light of the proposed rule's restriction on trading OTC Securities that are related to a security listed or traded on the Exchange or NYSE, the Commission believes that the opportunities for members to trade on non-public information will be appropriately minimized or eliminated.

In addition to written procedures, the member organization must have a

supervisory system in place to produce records sufficient to reconstruct, in a time-sequenced manner, all orders with respect to trading from booth premises and must be able to demonstrate which OTC Security transactions were effected from the booth premises. Furthermore, as noted above, to the extent that a member organization has already obtained approval to operate booth premises under NYSE Amex Equities Rule 70.40, it would still be required to update its written procedures to address proprietary trading in OTC Securities and obtain NYSE approval under NYSE Amex Equities Rule 70.40(7).<sup>19</sup>

In light of the foregoing requirements, which provide for appropriate limitations on and oversight of proprietary trading by Exchange members from their approved booth premises adjacent to the floor, the Commission finds 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>20</sup> that the proposed rule change (SR-NYSEAmex-2011-34) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Cathy H. Ahn,**  
*Deputy Secretary.*

[FR Doc. 2011-17690 Filed 7-13-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64846; File No. SR-BYX-2011-013]

### 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 8, 2011.

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 July 1, 2011, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") 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 Exchange 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 amend the fee schedule applicable to Members<sup>5</sup> 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 applicable to use of the Exchange effective July 1, 2011, in order to: (i) Decrease the standard rebate to remove liquidity from the Exchange; (ii) modify the tiered pricing structure applicable to adding displayed liquidity to the Exchange's order book; (iii) adopt a fee for non-displayed orders that add liquidity to the Exchange and receive price improvement when executed; (iv) increase the standard routing fee for the CYCLE, RECYCLE, Parallel D and

<sup>19</sup> See Notice. See also *supra* note 12.

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</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).

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Notice, *supra* note 3.

<sup>18</sup> See *id.*