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

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65572; File No. SR-NYSEAmex-2011-61]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of Proposed Rule Change Adding Commentary .01 to Rule 925.1NY Concerning Market Maker Continuous Quoting Obligations and Adjusted Option Series

October 14, 2011.

#### I. Introduction

On August 16, 2011, NYSE Amex LLC (“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 add Commentary .01 to Rule 925.1NY to indicate that market makers will not be obligated to quote in adjusted option series and to reference an existing exception to the quoting obligations. The proposed rule change was published for comment in the *Federal Register* on September 1, 2011.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Rule 925.1NY (i) To add an exception to relieve market makers from the obligation to continuously quote in adjusted option series, and (ii) to reflect in Rule 925.1NY an exception from the continuous quote requirements for Long-Term Equity Option Series (“LEAPS”) that is currently provided for in Commentary .03(a) to Rule 903.

Rule 925.1NY, relating to market maker quotations, requires Specialists to provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each such issue. Rule 925.1NY also requires non-specialist market makers to provide continuous two-sided quotations throughout the trading day in their appointed issues for 60% of the time the Exchange is open for trading in each such issue.

Commentary .03(a) to Rule 903, relating to LEAPS open for trading, currently provides that Exchange Rules regarding continuous quoting obligations do not apply to index option series until the time to expiration is less than 12 months and do not apply to equity options or option on Exchange Traded Fund Shares until the time to expiration is less than nine months.<sup>4</sup>

The Exchange now proposes to add Commentary .01 to Rule 925.1NY (the rule applicable to market maker quotations) to reflect the exception for LEAPS that is currently provided for in Commentary .03(a) to Rule 903 to the continuous quoting obligations contained in Rule 925.1NY. In other words, without altering the substance of the exception, the Exchange is proposing to include text that already appears in Commentary .03(a) to Rule 903 into Rule 925.1NY in order to reference that exception in the rule that addresses market maker quoting obligations.

In addition, the Exchange proposes to extend the exception from the continuous quoting obligations to certain “adjusted series.” The Exchange proposes to define an “adjusted series” for purposes of Rule 925.1NY as “an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.”<sup>5</sup>

In its filing, the Exchange notes that adjusted series are generally active for a short period of time following adjustment and thereafter become inactive as new orders to open options positions in the underlying are almost exclusively placed in the new standard

contracts.<sup>6</sup> The Exchange noted that adjusted series may not meet the standards to be considered “active” and thereby, under NYSE Amex Rule 970.1NY, the Exchange may no longer disseminate quotes in such series.<sup>7</sup> Consequently, market makers are currently required to submit quotes in adjusted series that may not be published to OPRA unless otherwise requested.<sup>8</sup>

In its filing, the Exchange states that market makers, including Specialists, that have recently withdrawn from assignments in classes have informed the Exchange that the withdrawals were based in part on the obligation to continuously quote adjusted options series whereby the quoting obligations on such less frequently traded option series impacted the risk parameters acceptable to the market makers.<sup>9</sup> The Exchange noted that market makers have also expressed concern that the adjusted nature of these series complicates the calculation of an appropriate quote.<sup>10</sup> As a result of withdrawals from such assignments by market makers, the Exchange states that liquidity, as well as volume, has been negatively impacted in the affected options classes listed on the Exchange.<sup>11</sup> The Exchange now proposes to add an exception to Rule 925.1NY to relieve market makers from the obligation to continuously quote in adjusted option series in order to encourage market makers, including Specialists, to continue their appointments in option classes that include adjusted series.

#### 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>12</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> NYSE Amex Rule 970.1NY states, in part, “The Exchange may determine that a series has become active intraday if (i) The series trades at any options exchange; (ii) NYSE Amex receives an order in the series; or (iii) NYSE Amex receives a request for quote from a customer in that series. If a series becomes active intraday, the Exchange will immediately disseminate quotes in the series to OPRA, and continue to disseminate quotes for the balance of the trading day.”

<sup>9</sup> See Notice, *supra* note 3, at 54519. See also Rule 925NY (providing for market maker appointments by class).

<sup>10</sup> See Notice, *supra* note 3, at 54519.

<sup>11</sup> See *id.*

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</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>17</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> See Securities Exchange Act Release No. 65209 (August 26, 2011), 76 FR 54518 (“Notice”).

<sup>4</sup> In addition, Commentary .03(a) to Rule 903 provides that trading in such LEAPS will commence either when there is buying or selling interest, or forty minutes prior to the close of trading for the day, whichever occurs first. Further, the rule provides that quotations will not be posted for extended far term option series until trading in such series is commenced on the day.

<sup>5</sup> The Exchange provided additional background regarding adjusted series options in its Notice. See Notice, *supra* note 3, at 54519.

particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</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 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 Exchange's proposal to relieve market makers from the obligation to continuously quote in adjusted series would not affect market makers' other obligations. For example, the Commission notes that the proposal does not excuse a market maker from the obligations to respond with a two-sided, legal width market to a call for a market by a floor broker.<sup>15</sup> The Commission also notes that the proposal does not excuse a market maker from the obligation to submit a single quote or maintain continuous quotes in one or more series of an option issue within the market maker's appointment whenever, in the judgment of such Trading Official, it is necessary to do so in the interest of maintaining fair and orderly markets.<sup>16</sup> Accordingly, the Exchange's proposal concerning adjusted series is narrowly tailored to, among other things, 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. To the extent such series, shortly after the adjustment, become inactive as a result of a lack of interest in the series by market participants who have instead focused their trading in the new standard contracts, the Exchange's proposal would reduce the burden on market makers to submit continuous quotes that the Exchange may not submit to OPRA. In so doing, the proposal may incentivize market makers to continue appointments in classes that have adjusted option series, and thereby should help maintain liquidity in these classes to the benefit of the Exchange, its ATP Holders, and investors. In addition, the obligation to continuously quote in such illiquid series, for which there may be little or no trading interest, is a minor part of a market maker's overall obligations and thus requiring a continuous quote may not justify the

system resources necessary to accommodate them.

Further, the proposed new Commentary .01 to Rule 925.1NY (the rule applicable to market maker quotations) to reflect the exception for LEAPS provided for in Commentary .03(a) to Rule 903 to the continuous quoting obligations contained in Rule 925.1NY, is not a new substantive provision, but rather references the exception currently provided for in Commentary .03(a) to Rule 903. In so doing, the proposed change clarifies the exception by referencing it in the rule applicable to market maker quoting obligations generally.

#### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NYSEAmex-2011-61) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65554; File No. SR-NASDAQ-2011-142]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Accept Inbound Orders Routed From Its Affiliates

October 13, 2011.

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 October 6, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ"), 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</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.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to accept inbound orders routed by Nasdaq Execution Services LLC ("NES") from both the NASDAQ OMX PSX facility ("PSX") of NASDAQ OMX PHLX ("PHLX") as well as from the NASDAQ OMX BX Equities Market of NASDAQ OMX BX, Inc. ("BX"), as described further below, on a one year pilot basis.

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at NASDAQ'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, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

NES provides all routing functions for The NASDAQ Stock Market ("NASDAQ") as well as, pursuant to recent proposed rule changes, for BX and PHLX.<sup>3</sup> Accordingly, NASDAQ now proposes that NES be permitted to route orders from BX and PSX to the Exchange on a one year pilot basis.

NES is a broker-dealer and member of NASDAQ, PHLX and BX. BX, NASDAQ, PHLX and NES are affiliates. This raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See NYSE Amex Rule 925NY(b)(6).

<sup>16</sup> See NYSE Amex Rule 925.1NY(d).

<sup>3</sup> See Securities Exchange Act Release Nos. 65470 (October 3, 2011) (SR-BX-2011-048); and 65469 (October 3, 2011) (SR-Phlx-2011-108).