

Transactions will be consistent with the policies of each of the Existing Portfolios and the Replacement Portfolios involved in such Transactions, as recited in their current registration statement and reports filed with the Commission. Finally, the Section 17 Applicants submit that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act.

Conclusion

For the reasons set forth in the Application, the Section 26 Applicants request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act and the Section 17 Applications request an order of exemption pursuant to Section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66202/January 20, 2012]

Order Making Fiscal Year 2012 Annual Adjustments to Transaction Fee Rates

I. Background

Section 31 of the Securities Exchange Act of 1934 ("Exchange Act") requires each national securities exchange and national securities association to pay transaction fees to the Commission.¹ Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.² Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange.³

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate, and in some circumstances, to also make a mid-year adjustment. On April 29, 2011, the Commission issued an order establishing the uniform adjusted rate

for fiscal year 2012 and beyond.⁴ We noted in that order, however, that if a regular appropriation to the Commission for fiscal year 2012 was not enacted by October 1, 2011, the new uniform adjusted rate would never go into effect and the Commission would need to establish a new uniform adjusted rate for fiscal year 2012 pursuant to amendments made to Section 31 of Exchange Act by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").⁵ Because a regular appropriation to the Commission for fiscal year 2012 was not enacted by October 1, 2011, the Commission now is required to establish a new fee rate for fiscal year 2012 pursuant to the amended provisions of Section 31 of the Exchange Act.

II. Fiscal Year 2012 Annual Adjustment to the Fee Rate

The Dodd-Frank Act amendments to Section 31 of the Exchange Act establish a new method for annually adjusting the fee rates applicable under Sections 31(b) and (c) of the Exchange Act. Specifically, the Commission must now adjust the fee rates to a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.⁶ In short, the new fee rate is determined by (1) subtracting the sum of fees estimated to be collected during fiscal year 2012 prior to the effective date of the new fee rate and

estimated assessments on securities futures transactions to be collected under Section 31(d) of the Exchange Act for all of fiscal year 2012 from an amount equal to the regular appropriation to the Commission for fiscal year 2012, and (2) dividing the difference by the estimated aggregate dollar amount of sales for the remainder of the fiscal year following the effective date of the new fee rate.

The regular appropriation to the Commission for fiscal year 2012 is \$1,321,000,000. The Commission estimates that it will collect \$503,552,340 in fees for the period prior to the effective date of the new fee rate and \$17,328 in assessments on round turn transactions in security futures products during all of fiscal year 2012.⁷ Using a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal year 2012 (developed after consultation with the Congressional Budget Office and the Office of Management and Budget), the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal year 2012 to be \$45,419,684,665,277.

As described above, the uniform adjusted rate is computed by dividing the residual fees to be collected of \$817,430,332 by the estimate of the aggregate dollar amount of sales for the remainder of fiscal year 2012 of \$45,419,684,665,277. This results in a uniform adjusted rate for fiscal year 2012 of \$18.00 per million.⁸

III. Effective Dates of the Annual Adjustments

Section 31(j)(4)(A) of the Exchange Act provides that the fiscal year 2012 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2011, or 60 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted. The regular appropriation to the Commission for fiscal year 2012 was enacted on December 23, 2011, and accordingly, the new fee rates applicable under Sections 31(b) and (c) of the Exchange Act will take effect on February 21, 2012.

⁴ Exchange Act Rel. No. 34-64373, Order Making Fiscal Year 2012 Annual Adjustments to the Fee Rates Applicable under Section 31 of the Securities Exchange Act of 1934 (April 29, 2011).

⁵ Prior to amendment by the Dodd-Frank Act, Section 31(j)(4)(A) of the Exchange Act provided that the fiscal year 2012 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2011, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

Section 991 of the Dodd-Frank Act, however, amended Section 31 of the Exchange Act effective on the later of October 1, 2011 or the date of enactment of an Act making a regular appropriation to the Commission for fiscal year 2012. Those amendments are now effective, because a regular appropriation to the Commission was enacted on December 23, 2011. The amendments require the Commission to make a new adjustment to the fee rates applicable under Section 31 for fiscal year 2012.

⁶ See 15 U.S.C. 78ee(j)(1) (The Commission must adjust the rates under Sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.").

⁷ The estimate of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of sales prior to the effective date of the new fee rate.

⁸ Appendix A shows the purely arithmetical process of calculating the fiscal year 2012 annual adjustment. The appendix also includes the data used by the Commission in making this adjustment.

¹ 15 U.S.C. 78ee.

² 15 U.S.C. 78ee(b).

³ 15 U.S.C. 78ee(c).

IV. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,⁹

It is hereby ordered that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be \$18.00 per million effective on February 21, 2012.

By the Commission.

Elizabeth M. Murphy,
Secretary.

Appendix A

This appendix provides the formula for determining the annual adjustment to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act for fiscal year 2012.¹⁰ Section 31 of the Exchange Act requires the fee rates to be adjusted so that it is reasonably likely that the Commission will collect aggregate fees equal to its regular appropriation for fiscal year 2012. To make the adjustment, the Commission must project the aggregate dollar amount of covered sales of securities on the securities exchanges and certain over-the-counter markets over the course of the year. The fee rate equals the ratio of the Commission's regular appropriation for fiscal year 2012 (less the sum of fees to be collected during fiscal year 2012 prior to the effective date of the new fee rate and aggregate assessments on security futures transactions during fiscal year 2012) to the projected aggregate dollar amount of covered sales for fiscal year 2012 (less the aggregate dollar amount of covered sales prior to the effective date of the new fee rate).

For 2012, the Commission has estimated the aggregate dollar amount of covered sales by projecting forward the trend established in the previous decade. More specifically, the dollar amount of covered sales was forecasted for months subsequent to November 2011, the last month for which the Commission has data on the dollar volume of covered sales.¹¹

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Dollar Amount of Covered Sales for Fiscal Year 2012

First, calculate the average daily dollar amount of covered sales (ADS) for each month in the sample (November 2001—November 2011). The monthly aggregate dollar amount of covered sales (exchange plus certain over-the-counter markets) is presented in column C of Table A.

Next, calculate the change in the natural logarithm of ADS from month to month. The average monthly percentage growth of ADS over the entire sample is 0.0087 and the standard deviation is 0.126. Assuming the monthly percentage change in ADS follows a random walk, calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 1.7%.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for November 2011 (\$261,614,593,980) to forecast ADS for December 2011 (\$265,994,342,797 = \$261,614,593,980 × 1.017).¹² Multiply by the number of trading days in December 2011 (21) to obtain a forecast of the total dollar volume for the month (\$5,585,881,198,747). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume of covered sales are in column G of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t , calculate the change in ADS from the previous month as $\Delta_t = \log(\text{ADS}_t/\text{ADS}_{t-1})$, where $\log(x)$ denotes the natural logarithm of x .

appropriation is equal to or subsequent to the date the data are due from the exchanges, the Commission uses these data. The appropriation was signed on December 23. The first business day after this date was December 27. Data for November were due from the exchanges on December 14. So the Commission used November 2011 and earlier data to forecast volume for December 2011 and later months.

¹² The value 1.017 has been rounded. All computations are done with the unrounded value.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \dots, \Delta_{120}\}$. These are given by $\mu = 0.0087$ and $\sigma = 0.126$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t .

5. Under the assumption that Δ_t is normally distributed, the expected value of $\text{ADS}_t/\text{ADS}_{t-1}$ is given by $\exp(\mu + \sigma^2/2)$, or on average $\text{ADS}_t = 1.017 \times \text{ADS}_{t-1}$.

6. For December 2011, this gives a forecast ADS of $1.017 \times \$261,614,593,980 = \$265,994,342,797$. Multiply this figure by the 21 trading days in December 2011 to obtain a total dollar volume forecast of \$5,585,881,198,747.

7. For January 2012, multiply the December 2011 ADS forecast by 1.017 to obtain a forecast ADS of \$270,447,413,976. Multiply this figure by the 20 trading days in January 2012 to obtain a total dollar volume forecast of \$5,408,948,279,516.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Use Table A to estimate fees collected for the period 10/1/11 through 2/20/12. The projected aggregate dollar amount of covered sales for this period is \$26,226,684,370,811. Actual and projected fee collections at the current fee rate of 0.0000192 are \$503,552,340.

2. Estimate the amount of assessments on securities futures products collected during 10/1/11 and 9/30/12 to be \$17,328 by projecting a 1.7% monthly increase from a base of \$1,387 in November 2011.

3. Subtract the amounts \$503,552,340 and \$17,328 from the target offsetting collection amount set by Congress of \$1,321,000,000 leaving \$817,430,332 to be collected on dollar volume for the period 2/21/12 through 9/30/12.

4. Use Table A to estimate dollar volume for the period 2/21/12 through 9/30/12. The estimate is \$45,419,684,665,277. Finally, compute the fee rate required to produce the additional \$817,430,332 in revenue. This rate is \$817,430,332 divided by \$45,419,684,665,277 or 0.0000179973.

5. Round the result to the seventh decimal point, yielding a rate of .0000180 (or \$18.00 per million).

⁹ 15 U.S.C. 78ee(j).

¹⁰ Congress requires that the Commission make a mid-year adjustment to the fee rate if four months into the fiscal year it determines that its forecasts of aggregate dollar volume are reasonably likely to be off by 10% or more.

¹¹ To determine the availability of data, the Commission compares the date of the appropriation with the date the transaction data are due from the exchanges (10 business days after the end of the month). If the business day following the date of the

Table A. Estimation of baseline of the aggregate dollar amount of sales.

Fee rate calculation.

| | |
|--|------------|
| a. Baseline estimate of the aggregate dollar amount of sales, 10/1/11 to 2/20/12 (\$Millions) | 26,226,684 |
| b. Baseline estimate of the aggregate dollar amount of sales, 2/21/12 to 9/30/12 (\$Millions) | 45,419,685 |
| c. Estimated collections in assessments on securities futures products in FY 2012 (\$Millions) | 0.017 |
| d. Implied fee rate $((\$1,321,000,000 - 0.0000192 * a - c) / b)$ | \$18.00 |

Data

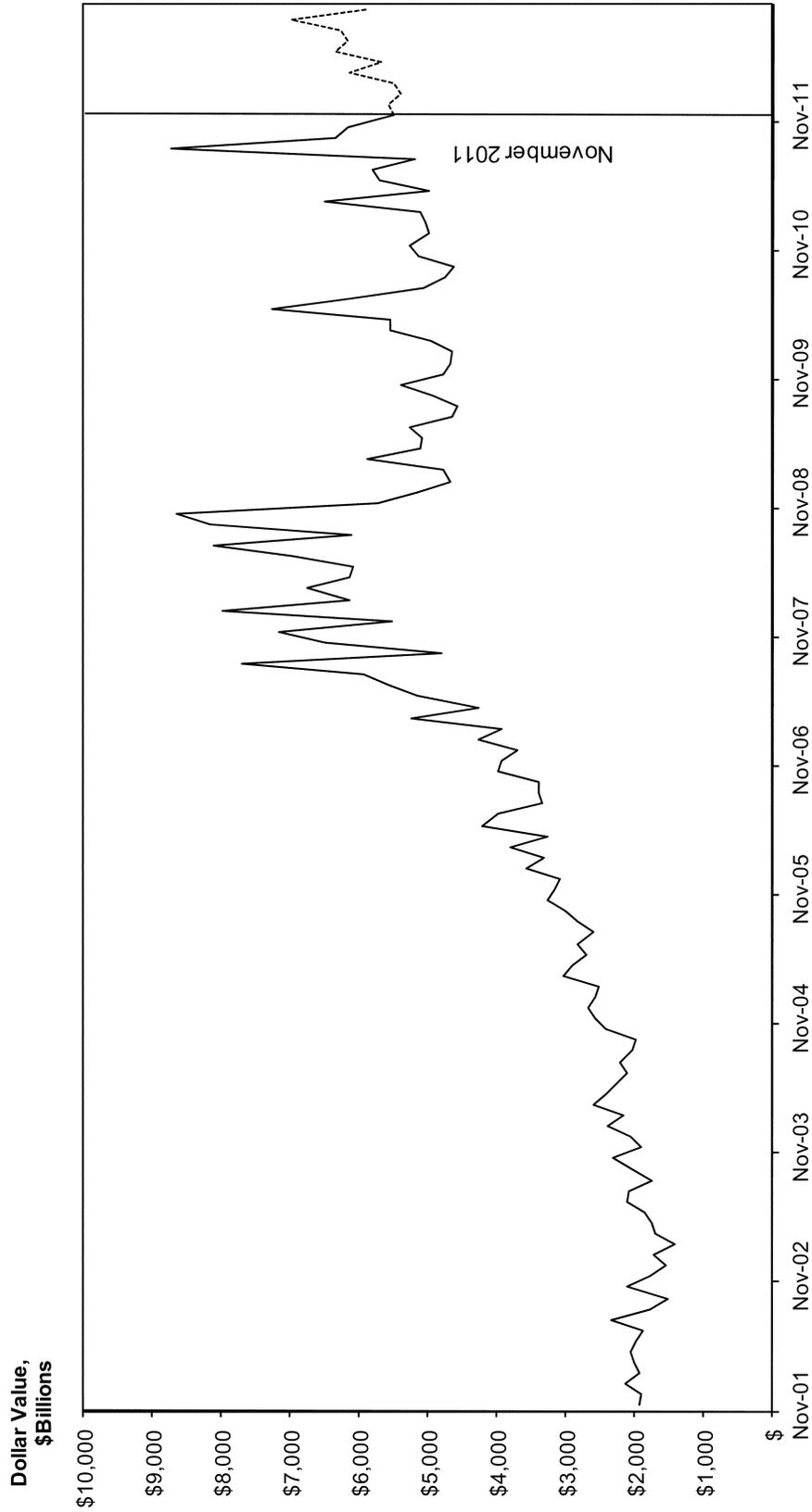
| (A) Month | (B) # of Trading Days in Month | (C) Aggregate Dollar Amount of Sales | (D) Average Daily Dollar Amount of Sales (ADS) | (E) Change in LN of ADS | (F) Forecast ADS | (G) Forecast Aggregate Dollar Amount of Sales |
|--------------|-----------------------------------|---|---|----------------------------|---------------------|--|
| Nov-01 | 21 | 1,939,427,217,518 | 92,353,677,025 | - | | |
| Dec-01 | 20 | 1,921,098,738,113 | 96,054,936,906 | 0.039 | | |
| Jan-02 | 21 | 2,149,243,312,432 | 102,344,919,640 | 0.063 | | |
| Feb-02 | 19 | 1,928,830,595,585 | 101,517,399,768 | -0.008 | | |
| Mar-02 | 20 | 2,002,216,374,514 | 100,110,818,726 | -0.014 | | |
| Apr-02 | 22 | 2,062,101,866,506 | 93,731,903,023 | -0.066 | | |
| May-02 | 22 | 1,985,859,756,557 | 90,266,352,571 | -0.038 | | |
| Jun-02 | 20 | 1,882,185,380,609 | 94,109,269,030 | 0.042 | | |
| Jul-02 | 22 | 2,349,564,490,189 | 106,798,385,918 | 0.126 | | |
| Aug-02 | 22 | 1,793,429,904,079 | 81,519,541,095 | -0.270 | | |
| Sep-02 | 20 | 1,518,944,367,204 | 75,947,218,360 | -0.071 | | |
| Oct-02 | 23 | 2,127,874,947,972 | 92,516,302,086 | 0.197 | | |
| Nov-02 | 20 | 1,780,816,458,122 | 89,040,822,906 | -0.038 | | |
| Dec-02 | 21 | 1,561,092,215,646 | 74,337,724,555 | -0.180 | | |
| Jan-03 | 21 | 1,723,698,830,414 | 82,080,896,686 | 0.099 | | |
| Feb-03 | 19 | 1,411,722,405,357 | 74,301,179,229 | -0.100 | | |
| Mar-03 | 21 | 1,699,581,267,718 | 80,932,441,320 | 0.085 | | |
| Apr-03 | 21 | 1,759,751,025,279 | 83,797,667,870 | 0.035 | | |
| May-03 | 21 | 1,871,390,985,678 | 89,113,856,461 | 0.062 | | |
| Jun-03 | 21 | 2,122,225,077,345 | 101,058,337,016 | 0.126 | | |
| Jul-03 | 22 | 2,100,812,973,956 | 95,491,498,816 | -0.057 | | |
| Aug-03 | 21 | 1,766,527,686,224 | 84,120,366,011 | -0.127 | | |
| Sep-03 | 21 | 2,063,584,421,939 | 98,265,924,854 | 0.155 | | |
| Oct-03 | 23 | 2,331,850,083,022 | 101,384,786,218 | 0.031 | | |
| Nov-03 | 19 | 1,903,726,129,859 | 100,196,112,098 | -0.012 | | |
| Dec-03 | 22 | 2,066,530,151,383 | 93,933,188,699 | -0.065 | | |
| Jan-04 | 20 | 2,390,942,905,678 | 119,547,145,284 | 0.241 | | |
| Feb-04 | 19 | 2,177,765,594,701 | 114,619,241,826 | -0.042 | | |
| Mar-04 | 23 | 2,613,808,754,550 | 113,643,858,893 | -0.009 | | |
| Apr-04 | 21 | 2,418,663,760,191 | 115,174,464,771 | 0.013 | | |
| May-04 | 20 | 2,259,243,404,459 | 112,962,170,223 | -0.019 | | |
| Jun-04 | 21 | 2,112,826,072,876 | 100,610,765,375 | -0.116 | | |
| Jul-04 | 21 | 2,209,808,376,565 | 105,228,970,313 | 0.045 | | |
| Aug-04 | 22 | 2,033,343,354,640 | 92,424,697,938 | -0.130 | | |
| Sep-04 | 21 | 1,993,803,487,749 | 94,943,023,226 | 0.027 | | |
| Oct-04 | 21 | 2,414,599,088,108 | 114,980,908,958 | 0.191 | | |
| Nov-04 | 21 | 2,577,513,374,160 | 122,738,732,103 | 0.065 | | |
| Dec-04 | 22 | 2,673,532,981,863 | 121,524,226,448 | -0.010 | | |
| Jan-05 | 20 | 2,581,847,200,448 | 129,092,360,022 | 0.060 | | |
| Feb-05 | 19 | 2,532,202,408,589 | 133,273,810,978 | 0.032 | | |
| Mar-05 | 22 | 3,030,474,897,226 | 137,748,858,965 | 0.033 | | |
| Apr-05 | 21 | 2,906,386,944,434 | 138,399,378,306 | 0.005 | | |
| May-05 | 21 | 2,697,414,503,460 | 128,448,309,689 | -0.075 | | |
| Jun-05 | 22 | 2,825,962,273,624 | 128,452,830,619 | 0.000 | | |
| Jul-05 | 20 | 2,604,021,263,875 | 130,201,063,194 | 0.014 | | |
| Aug-05 | 23 | 2,846,115,585,965 | 123,744,155,912 | -0.051 | | |
| Sep-05 | 21 | 3,009,640,645,370 | 143,316,221,208 | 0.147 | | |
| Oct-05 | 21 | 3,279,847,331,057 | 156,183,206,241 | 0.086 | | |
| Nov-05 | 21 | 3,163,453,821,548 | 150,640,658,169 | -0.036 | | |
| Dec-05 | 21 | 3,090,212,715,561 | 147,152,986,455 | -0.023 | | |
| Jan-06 | 20 | 3,573,372,724,766 | 178,668,636,238 | 0.194 | | |

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| | | | | | | |
|--------|----|-------------------|-----------------|--------|--|--|
| Feb-06 | 19 | 3,314,259,849,456 | 174,434,728,919 | -0.024 | | |
| Mar-06 | 23 | 3,807,974,821,564 | 165,564,122,677 | -0.052 | | |
| Apr-06 | 19 | 3,257,478,138,851 | 171,446,217,834 | 0.035 | | |
| May-06 | 22 | 4,206,447,844,451 | 191,202,174,748 | 0.109 | | |
| Jun-06 | 22 | 3,995,113,357,316 | 181,596,061,696 | -0.052 | | |
| Jul-06 | 20 | 3,339,658,009,357 | 166,982,900,468 | -0.084 | | |
| Aug-06 | 23 | 3,410,187,280,845 | 148,269,012,211 | -0.119 | | |
| Sep-06 | 20 | 3,407,409,863,673 | 170,370,493,184 | 0.139 | | |
| Oct-06 | 22 | 3,980,070,216,912 | 180,912,282,587 | 0.060 | | |
| Nov-06 | 21 | 3,933,474,986,969 | 187,308,332,713 | 0.035 | | |
| Dec-06 | 20 | 3,715,146,848,695 | 185,757,342,435 | -0.008 | | |
| Jan-07 | 20 | 4,263,986,570,973 | 213,199,328,549 | 0.138 | | |
| Feb-07 | 19 | 3,946,799,860,532 | 207,726,308,449 | -0.026 | | |
| Mar-07 | 22 | 5,245,051,744,090 | 238,411,442,913 | 0.138 | | |
| Apr-07 | 20 | 4,274,665,072,437 | 213,733,253,622 | -0.109 | | |
| May-07 | 22 | 5,172,568,357,522 | 235,116,743,524 | 0.095 | | |
| Jun-07 | 21 | 5,586,337,010,802 | 266,016,048,133 | 0.123 | | |
| Jul-07 | 21 | 5,938,330,480,139 | 282,777,641,911 | 0.061 | | |
| Aug-07 | 23 | 7,713,644,229,032 | 335,375,836,045 | 0.171 | | |
| Sep-07 | 19 | 4,805,676,596,099 | 252,930,347,163 | -0.282 | | |
| Oct-07 | 23 | 6,499,651,716,225 | 282,593,552,879 | 0.111 | | |
| Nov-07 | 21 | 7,176,290,763,989 | 341,728,131,619 | 0.190 | | |
| Dec-07 | 20 | 5,512,903,594,564 | 275,645,179,728 | -0.215 | | |
| Jan-08 | 21 | 7,997,242,071,529 | 380,821,051,025 | 0.323 | | |
| Feb-08 | 20 | 6,139,080,448,887 | 306,954,022,444 | -0.216 | | |
| Mar-08 | 20 | 6,767,852,332,381 | 338,392,616,619 | 0.098 | | |
| Apr-08 | 22 | 6,150,017,772,735 | 279,546,262,397 | -0.191 | | |
| May-08 | 21 | 6,080,169,766,807 | 289,531,893,657 | 0.035 | | |
| Jun-08 | 21 | 6,962,199,302,412 | 331,533,300,115 | 0.135 | | |
| Jul-08 | 22 | 8,104,256,787,805 | 368,375,308,537 | 0.105 | | |
| Aug-08 | 21 | 6,106,057,711,009 | 290,764,652,905 | -0.237 | | |
| Sep-08 | 21 | 8,156,991,919,103 | 388,428,186,624 | 0.290 | | |
| Oct-08 | 23 | 8,644,538,213,244 | 375,849,487,532 | -0.033 | | |
| Nov-08 | 19 | 5,727,998,341,833 | 301,473,596,939 | -0.221 | | |
| Dec-08 | 22 | 5,176,041,317,640 | 235,274,605,347 | -0.248 | | |
| Jan-09 | 20 | 4,670,249,433,806 | 233,512,471,690 | -0.008 | | |
| Feb-09 | 19 | 4,771,470,184,048 | 251,130,009,687 | 0.073 | | |
| Mar-09 | 22 | 5,885,594,284,780 | 267,527,012,945 | 0.063 | | |
| Apr-09 | 21 | 5,123,665,205,517 | 243,984,057,406 | -0.092 | | |
| May-09 | 20 | 5,086,717,129,965 | 254,335,856,498 | 0.042 | | |
| Jun-09 | 22 | 5,271,742,782,609 | 239,624,671,937 | -0.060 | | |
| Jul-09 | 22 | 4,659,599,245,583 | 211,799,965,708 | -0.123 | | |
| Aug-09 | 21 | 4,582,102,295,783 | 218,195,347,418 | 0.030 | | |
| Sep-09 | 21 | 4,929,155,364,888 | 234,721,684,042 | 0.073 | | |
| Oct-09 | 22 | 5,410,025,301,030 | 245,910,240,956 | 0.047 | | |
| Nov-09 | 20 | 4,770,928,103,032 | 238,546,405,152 | -0.030 | | |
| Dec-09 | 22 | 4,688,555,303,171 | 213,116,150,144 | -0.113 | | |
| Jan-10 | 19 | 4,661,793,708,648 | 245,357,563,613 | 0.141 | | |
| Feb-10 | 19 | 4,969,848,578,023 | 261,570,977,791 | 0.064 | | |
| Mar-10 | 23 | 5,563,529,823,621 | 241,892,601,027 | -0.078 | | |
| Apr-10 | 21 | 5,546,445,874,917 | 264,116,470,234 | 0.088 | | |
| May-10 | 20 | 7,260,430,376,294 | 363,021,518,815 | 0.318 | | |
| Jun-10 | 22 | 6,124,776,349,285 | 278,398,924,967 | -0.265 | | |
| Jul-10 | 21 | 5,058,242,097,334 | 240,868,671,302 | -0.145 | | |

| | | | | | | |
|--------|----|-------------------|-----------------|--------|-----------------|-------------------|
| Aug-10 | 22 | 4,765,828,263,463 | 216,628,557,430 | -0.106 | | |
| Sep-10 | 21 | 4,640,722,344,586 | 220,986,778,314 | 0.020 | | |
| Oct-10 | 21 | 5,138,411,712,272 | 244,686,272,013 | 0.102 | | |
| Nov-10 | 21 | 5,279,700,881,901 | 251,414,327,710 | 0.027 | | |
| Dec-10 | 22 | 4,998,574,681,208 | 227,207,940,055 | -0.101 | | |
| Jan-11 | 20 | 5,043,391,121,345 | 252,169,556,067 | 0.104 | | |
| Feb-11 | 19 | 5,114,631,590,581 | 269,191,136,346 | 0.065 | | |
| Mar-11 | 23 | 6,499,355,385,307 | 282,580,668,926 | 0.049 | | |
| Apr-11 | 20 | 4,975,954,868,765 | 248,797,743,438 | -0.127 | | |
| May-11 | 21 | 5,717,905,621,053 | 272,281,220,050 | 0.090 | | |
| Jun-11 | 22 | 5,820,079,494,414 | 264,549,067,928 | -0.029 | | |
| Jul-11 | 20 | 5,189,681,899,635 | 259,484,094,982 | -0.019 | | |
| Aug-11 | 23 | 8,720,566,877,109 | 379,155,081,613 | 0.379 | | |
| Sep-11 | 21 | 6,343,578,147,811 | 302,075,149,896 | -0.227 | | |
| Oct-11 | 21 | 6,163,272,963,688 | 293,489,188,747 | -0.029 | | |
| Nov-11 | 21 | 5,493,906,473,584 | 261,614,593,980 | -0.115 | | |
| Dec-11 | 21 | | | | 265,994,342,797 | 5,585,881,198,747 |
| Jan-12 | 20 | | | | 270,447,413,976 | 5,408,948,279,516 |
| Feb-12 | 20 | | | | 274,975,035,021 | 5,499,500,700,425 |
| Mar-12 | 22 | | | | 279,578,453,990 | 6,150,725,987,779 |
| Apr-12 | 20 | | | | 284,258,939,832 | 5,685,178,796,640 |
| May-12 | 22 | | | | 289,017,782,741 | 6,358,391,220,309 |
| Jun-12 | 21 | | | | 293,856,294,511 | 6,170,982,184,735 |
| Jul-12 | 21 | | | | 298,775,808,896 | 6,274,291,986,814 |
| Aug-12 | 23 | | | | 303,777,681,979 | 6,986,886,685,506 |
| Sep-12 | 19 | | | | 308,863,292,545 | 5,868,402,558,346 |

Figure A.
Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)¹
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)



¹Forecasted line is not smooth because the number of trading days varies by month.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66187; File No. SR-BYX-2012-002]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Clearly Erroneous Execution Reviews

January 19, 2012.

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 January 6, 2012, 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 and II 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 is filing with the Commission a proposal to extend a pilot program related to Rule 11.17, entitled "Clearly Erroneous Executions."

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.17. The rule, explained in further detail below, is currently operating as a pilot program set to expire on January 31, 2012.³ The Exchange proposes to extend the pilot program to July 31, 2012.

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national security exchange was pending approval. Such changes included changes to the Exchange's Rule 11.17, on a pilot basis, to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.⁴ The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17.⁵ The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis.

2. Statutory Basis

The Exchange believes that its proposal 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(b) of the Act.⁶ In particular, the proposal is consistent with Section 6(b)(5) of the Act,⁷ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The

Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

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

The Exchange neither solicited nor received comments on the proposal.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹² 17 CFR 240.19b-4(f)(6).

³ See Securities Exchange Act Release No. 65077 (August 9, 2011), 76 FR 50795 (August 16, 2011) (SR-BYX-2011-017).

⁴ See Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR-BYX-2010-002).

⁵ *Id.*

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.