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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67155; File No. SR-NYSEAmex-2012-22)

June 7, 2012

Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of Proposed Rule Change Amending NYSE Amex Equities Rule 107B to Add a Class of Supplemental Liquidity Providers that are Registered as Market Makers at the Exchange

I. Introduction

On April 17, 2012, NYSE Amex LLC (“NYSE Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Amex Equities Rule 107B to add a class of Supplemental Liquidity Providers (“SLP”) that are registered as market makers at the Exchange. The proposed rule change was published for comment in the Federal Register on April 23, 2012.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

NYSE Amex Equities Rule 107B (“Rule 107B”) was adopted as a pilot program in January 2010 and established a new class of off-floor market participants referred to as Supplemental Liquidity Providers or “SLPs.”⁴ Approved Exchange member organizations are eligible to be an SLP. SLPs supplement the liquidity provided by Designated Market Makers (“DMM”). SLPs have monthly quoting requirements that may qualify them to receive SLP

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 66820 (April 17, 2012), 77 FR 24236 (“Notice”).

⁴ See Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR-NYSEAmex-2009-98). The pilot is currently scheduled to end on July 31, 2012.

rebates, which are larger than the general rebate available to non-SLP market participants.⁵

To qualify as an SLP under Rule 107B(c), a member organization is subject to a number of conditions, including adequate trading infrastructure to support SLP trading activity, quoting and volume performance that demonstrates an ability to meet the 5% average quoting requirement, and use of specified SLP mnemonics. In addition, the business unit of the member organization acting as an SLP must enter proprietary orders only and have adequate information barriers between the SLP unit and any of the member organization's customer, research, and investment-banking business. Pursuant to Rule 107B(g)(2)(A), a DMM may also be an SLP, but not in the same securities in which it is registered as a DMM.

Proposed SLP Market Makers

The Exchange proposes to amend Rule 107B to add a category of SLPs that would be registered as market makers at the Exchange. As proposed, the term "SLP" would refer to member organizations that provide supplemental liquidity and there would be two classes of SLP. The existing SLP member organizations and associated requirements would continue unchanged and would be referred to as "SLP-Prop."

The proposed new class of SLP would be referred to as "SLMM". SLMMs would have differing qualification requirements and increased regulatory obligations as compared to SLP-Props, but would otherwise be subject to the existing SLP program.

Under the proposal, an SLP can choose to be either an SLP-Prop or an SLMM. The proposed SLMMs would have different qualification requirements, specified regulatory

⁵ Rule 107B(a) requires that an SLP maintain a bid and/or an offer at the national best bid ("NBB") or national best offer ("NBO") averaging at least 5% of the trading day for each assigned security. Meeting this volume requirement will enable an SLP to receive the basic SLP rebate (currently \$0.0032 per executed share) on a security-by-security basis and to maintain their SLP status.

obligations, expanded entry of order requirements, and a security-by-security withdrawal ability. SLP-Props and SLMMs would be subject to the same application and overall program withdrawal process, quoting requirements, manner by which SLP securities are assigned, and non-regulatory penalties.

To be approved as an SLMM, an SLMM must meet specified regulatory obligations, which are set forth in proposed Rule 107B(d). Failure to comply with these regulatory obligations could result in disciplinary action. First, pursuant to proposed Rule 107B(d)(1), the SLMM must maintain a continuous two-sided quotation in those securities in which the SLMM is registered to trade as an SLP (“Two-Sided Obligation”). As proposed, the Two-Sided Obligation applicable to SLMMs would be virtually identical to the market-maker two-sided obligations adopted by the equities markets in 2010.⁶ Second, pursuant to proposed Rule 107B(d)(2), the SLMM would be required to maintain net capital in accordance with the provisions of Rule 15c3-1 under the Act, which specifies the capital requirements for market makers.⁷ Finally, pursuant to proposed Rule 107B(d)(3), the SLMM would be required to maintain unique mnemonics specifically dedicated to SLMM activity. Use of these unique mnemonics will enable SLMMs to meet their requirement under proposed Rule 107B(d)(1)(A) to

⁶ See Securities Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR-BATS-2010-025; SR-BX-2010-66; SR-CBOE-2010-087; SR-CHX-2010-22; SR-FINRA-2010-049; SR-NASDAQ-2010-115; SR-NSX-2010-12; SR-NYSE-2010-69; SR-NYSEAmex-2010-96; and SR-NYSEArca-2010-83) (order approving enhanced quoting requirements for market makers).

⁷ 17 CFR 240.15c3-1. For purposes of that rule, the term “market maker” is defined as “a dealer who, with respect to a particular security, (i) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (ii) furnishes bona fide competitive bid and offer quotations on request; and (iii) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers.” 17 CFR 240.15c3-1(c)(8).

identify their market-making activity to the Exchange. As proposed, such mnemonics may not be used for trading in securities other than SLP Securities assigned to the SLMM.

Pursuant to Rule 107B(c)(6), SLPs must currently maintain adequate information barriers between the SLP unit and the member organization's customer, research and investment-banking business. This requirement ensures that the orders submitted by SLPs are proprietary only, and are not related to any customer-facing business, including potentially market-making businesses. The Exchange proposes to maintain this requirement for SLP-Props.

Proposed Rule 107B(i) would modify the entry of order requirements. SLP-Prop would continue to be required to enter proprietary orders only. As proposed, SLMMs would similarly be required to enter orders for their own account, however, they could be entered in either a proprietary capacity or a principal capacity on behalf of an affiliated or unaffiliated person. SLMM could submit SLMM quotes to the Exchange on behalf of customers, or other unaffiliated or affiliated persons.

The Exchange proposes to add an additional ability for SLMMs to voluntarily withdraw from registration as a market maker in a particular security. Under proposed Rule 107B(f)(2), an SLMM may withdraw its registration in a security by giving written notice to the SLP Liaison Committee and FINRA. As proposed, the Exchange may require a certain minimum notice period for withdrawal, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets. An SLMM that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action.

Under proposed Rule 107B(h), an SLP-Prop may not also act as an SLMM in the same securities in which it is registered as an SLP-Prop and vice versa. If a member organization has

more than one business unit, and the SLP-Prop business unit is walled off from the SLMM business unit, the member organization may engage in both an SLP-Prop and SLMM business from those different business units. Provided there is no coordinated trading between the SLP-Prop and SLMM business units, they may be assigned the same securities.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national securities exchange 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 Commission believes that adding an additional registered market maker program to the Exchange will promote just and equitable principles of trade as it could potentially expand the number of market participants providing liquidity at the Exchange, to the benefit of investors. In particular, the proposal would allow additional market participants, including member organizations that are registered as market makers on other exchanges that engage in a customer-facing business, to participate in the SLP program.

⁸ 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).

⁹ 15 U.S.C. 78f(b)(5).

The proposed SLMMs would provide supplemental liquidity in addition to the liquidity provided by DMMs and SLP-Props, and the Exchange would continue to require that a DMM be registered in every security listed on the Exchange. Because the proposed SLMMs would be required to meet the Two-Sided Obligation applicable to all equities market makers, the Commission believes that the proposed rule change would also remove impediments to and perfect the mechanism of a free and open market and a national market system by increasing the number of market participants that are required to maintain a continuous two-sided quotation a specified percentage away from the NBBO in the securities in which they are registered. Moreover, the proposed SLMM would be subject to other currently existing requirements.

The Commission finds that the proposal is not unfairly discriminatory. Registration as an SLP-Prop or SLMM is available to all Exchange member organizations that satisfy the requirements of proposed Rule 107B(c) or (d). The Commission finds further that the proposal to establish procedures for the registration, withdrawal, and disqualification of SLMM, and the SLMM quoting requirements, are consistent with the requirements of Section 6(b)(5) of the Act. The Exchange's proposed rules provide an objective process by which a member organization could become a SLMM and for appropriate oversight by the Exchange to monitor for continued compliance with the terms of these provisions. The Commission also notes that these provisions are similar to the existing provisions that apply to the current SLP program.

In addition, the Commission believes that the proposed rule change is consistent with the requirements of the Act because the proposed requirements for the SLMMs are based on existing, approved requirements for registered market makers on other exchanges. In addition to the Two-Sided Obligation, the proposed SLMMs would also be required to assist in the

maintenance of a fair and orderly market, as reasonably practicable, and maintain net capital consistent with federal requirements for market makers.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSEAmex-2012-22) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

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Deputy Secretary

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¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).