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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67421; File No. SR-NYSEAmex-2012-31)

July 12, 2012

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Defining a Primary Specialist in Each Options Class and Modifying the Specialist Entitlement Accordingly

I. Introduction

On May 11, 2012, NYSE Amex LLC (the “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 define a Primary Specialist in each options class and modify the Specialist entitlement. The proposed rule change was published for comment in the Federal Register on May 31, 2012.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Rules 964NY and 964.2NY to define Primary Specialists, and to modify the order allocation entitlement amongst Specialist Pool participants.

Rule 964NY sets forth the priority for the allocation of incoming orders to resting interest at a particular price in the NYSE Amex System. Under the current rule, the priority for the allocation of incoming orders at the same price is as follows: (1) resting Customer orders; (2) Directed Order Market Makers, provided they satisfy the criteria to be eligible to receive a Directed Order; (3) the Specialist Pool (for non-Directed Orders); and (4) non-Customer interest

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

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

<sup>3</sup> Securities Exchange Act Release No. 67057 (May 24, 2012), 77 FR 32157 (“Notice”).

(on a size pro-rata basis). As currently provided in Rule 964NY(b)(2)(C) and Rule 964.2NY, the Specialist and e-Specialists in each class compete in the Specialist Pool on a size pro-rata basis, and do not compete for the allocation of non-Directed Orders of five contracts or fewer.<sup>4</sup> Such orders are allocated on a rotating basis (i.e., a round robin) to a Specialist or e-Specialist in the Specialist Pool.

The Exchange now proposes to designate a Primary Specialist from amongst the Specialist Pool participants. According to the Exchange, the Primary Specialist will be determined using objective evaluation of the relative quote performance of each Specialist and e-Specialist. The evaluation will be conducted on a quarterly basis and would include one or more of the following factors: time and size at the NBBO, average quote width, average quote size, and the relative share of electronic volume in a given class of options.<sup>5</sup> The Exchange will issue a Regulatory Bulletin at least five business days prior to each evaluation period with the evaluation criteria, including the relative weighting of each factor.

Under the proposed rule change, the Primary Specialist (instead of the Specialist) would receive any additional weighting in the size pro rata allocation amongst Specialist Pool participants. This additional weighting would be determined by the Exchange, as is currently the case. Additionally, under the proposal, rather than a round robin allocation of non-Directed Orders for five contracts or fewer, all such orders would be allocated to the Primary Specialist after any allocation to Customers, not to exceed the size of the Primary Specialist's quote, provided the Primary Specialist is quoting at the NBBO. If the Primary Specialist's quote size is less than the order of five contracts or fewer, any remaining contracts after the Primary Specialist

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<sup>4</sup> Under the rule, the Specialist's pro-rata allocation may receive additional weighting as determined by the Exchange.

<sup>5</sup> The first evaluation period may be longer or shorter than a calendar quarter, depending on Commission approval of the proposed rule change.

receives its allocation will be allocated in accordance with Rule 964NY(b)(2)(D) (i.e., size pro rata). In addition, as is the case under the current rule for the Specialist Pool, if the Primary Specialist is not quoting at the NBBO at the time the order for five or fewer contracts arrives, then the order will be executed in accordance with the provision of Rule 964NY(b)(2)(D).<sup>6</sup>

The Exchange stated that it will not implement this proposal until it has notified ATP Holders via Regulatory Bulletin regarding the rule change. The Exchange plans to issue notice announcing the compliance date of the rule change within 90 days from the effective date of the rule change.<sup>7</sup>

### 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.<sup>8</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

The Commission closely scrutinizes exchange rule proposals to adopt or amend participation guarantees where such guarantees would rise to a level that could have a material

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<sup>6</sup> The Exchange is also proposing to correct a typographical error in Rule 964.2NY(b)(3)(A) by changing the word “on” to “one.”

<sup>7</sup> See Notice, supra note 3, at 32158.

<sup>8</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>9</sup> 15 U.S.C. 78f(b)(5).

adverse impact on quote competition within a particular exchange.<sup>10</sup> As noted by the Exchange, the proposed rule change is intended to enhance quote competition among the Specialist Pool participants by creating a quarterly contest designed to measure the quote performance of Specialists and eSpecialists. The Exchange states that the determination of the winner of this quarterly contest will be based on objective evaluation of the relative quote performance of each Specialist and eSpecialist and the evaluation criteria will be announced in advance of each evaluation period. The Exchange notes that enhanced quote competition should lead to narrower spreads and more liquid markets, thereby benefiting investors. Further, notes the Exchange, narrower spreads and more liquid markets should attract more order flow to the exchange, enhancing price discovery and generally benefiting all participants on the Exchange. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

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<sup>10</sup> See Securities Exchange Act Release No. 44641 (August 2, 2001), 66 FR 41643 (August 8, 2001) (SR-ISE-2001-17), at 41644-41645; see also Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (SR-ISE-2005-18), at 35149.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSEAmex-2012-31) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

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