

a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NASDAQ–2012–021 and should be submitted on or before March 8, 2012.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66376; File No. SR–NYSEAmex–2012–05]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending an Existing Rebate Relating to Qualified Contingent Cross Orders That Are Entered and Executed Through the Exchange Systems

February 10, 2012.

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 January 30, 2012, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) 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 self-regulatory organization. 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 an existing rebate relating to Qualified Contingent Cross (“QCC”) orders that are entered and executed through the Exchange systems. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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 self-regulatory organization 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 those 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 purpose of the proposal is to increase a rebate for Floor Brokers who enter QCC orders that subsequently execute.<sup>3</sup> The Exchange intends to increase the existing rebate of \$.03 per executed contract to \$.07 per executed contract.<sup>4</sup>

The rebate is credited to the executing Floor Broker. The Exchange notes that the terms of a QCC order are negotiated and agreed to prior to being brought to an exchange for possible execution. In bringing a QCC order to the Exchange for execution, permit holders have two primary means of doing so. They can configure their systems to deliver the QCC order to the Exchange matching engines for validation and execution. Alternatively they can utilize the services of another ATP Holder acting as a Floor Broker. In turn, the Floor Broker who is in receipt of such an order can enter the order through an Exchange-provided system<sup>5</sup> to be delivered to the

<sup>3</sup> See Securities Exchange Act Release No. 65472 (October 3, 2011), 76 FR 62887 (October 11, 2011) (SR–NYSEAmex–2011–72). See also Securities Exchange Act Release No. 65047 (August 5, 2011), 76 FR 49812 (August 11, 2011) (SR–NYSEAmex–2011–56). The QCC permits an NYSE Amex ATP Holder to effect a qualified contingent trade (“QCT”) in a Regulation NMS stock and cross the options leg of the trade on the Exchange immediately upon entry and without order exposure if the order is for at least 1,000 contracts, is part of a QCT, is executed at a price at least equal to the national best bid or offer, as long as there are no Customer orders in the Exchange’s Consolidated Book at the same price.

<sup>4</sup> The exclusion of Customer-to-Customer QCC trades from the Floor Broker rebate will remain. See Securities Act Release No. 65943 (December 13, 2011), 76 FR 78704 (December 19, 2011) (SR–NYSEAmex–2011–95).

<sup>5</sup> Floor Brokers are required by NYSE Amex Rule 955NY to have systematized orders prior to representing them in open outcry. Using the same Electronic Order Capture System, Floor Brokers will be able to enter QCC orders for validation by the

Exchange matching engine for validation and potential execution. The Exchange does not offer a front-end for order entry, unlike some of the competing exchanges.<sup>6</sup> The Exchange expects that the increased rebate offered to executing Floor Brokers will allow them to price their services at a level that will enable them to attract QCC order flow from participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange’s competitors or floor brokers on other exchanges, instead of incurring the cost in time and money to develop their own internal systems to be able to deliver QCC orders directly to the Exchange systems. To the extent that Floor Brokers are able to attract these QCC orders, they will gain important information that will allow them to solicit the parties to the QCC orders for participation in other trades, which will in turn benefit all other Exchange participants through the additional liquidity and price discovery that may occur as a result. The proposed change is also a competitive response to recent pricing changes at competing exchanges.<sup>7</sup> The proposed change will be operative on February 1, 2012.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>8</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)<sup>9</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes the proposed increase from \$.03 per contract to \$.07 per contract rebate for Floor Brokers who enter QCC orders that execute is reasonable because it will allow Floor Brokers the opportunity to compete for QCC orders that would otherwise be

Exchange matching engines and potential execution.

<sup>6</sup> The International Securities Exchange (“ISE”) offers PRECISE TRADE as a means for users to enter orders and Chicago Board Options Exchange has a similar front-end order entry system called PULSE. Such systems do not require users to develop their own internal front-end order entry systems and may provide savings to users in terms of development time and costs.

<sup>7</sup> See Securities Act Release No. 66169 (January 17, 2011) (SR–ISE–2012–01) (notice of filing and immediate effectiveness of a proposed rule change, including an increase in ISE rebate of up to \$.10 per contract for qualifying executed QCC orders), and NASDAQ OMX PHLX fee schedule dated January 18, 2012, page 5 (describing a rebate of up to \$.10 per contract for qualifying executed QCC Orders), available at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<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.

entered into front-end order entry systems of competing exchanges or sent to floor brokers on exchanges that offer higher rebates.<sup>10</sup> The proposed rebate is comparable to or less than rebates offered on both the ISE and NASDAQ OMX PHLX in that it is being offered to Floor Brokers as an inducement that may allow them to competitively price their services offered to all participants.<sup>11</sup> To the extent that the rebate is successful in attracting additional order flow to the Exchange, all participants should benefit. As such the Exchange believes that the rebate is appropriate and reasonable.

The Exchange believes the proposal to increase the rebate from \$.03 per contract to a \$.07 per contract is equitable and not unfairly discriminatory because it would uniformly apply to all QCC orders entered by a Floor Broker for validation by the system and potential execution, excepting Customer-to-Customer QCC trades. The exclusion of Customer-to-Customer QCC trades from the Floor Broker rebate will remain.<sup>12</sup> Any participant will be able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the entry of the QCC order to the Floor Broker into the Exchange systems for validation and execution. The additional order flow attracted by this increase in the rebate should benefit all participants. For this reason the Exchange feels the adoption of the proposed rebate increase is both equitable and not unfairly discriminatory.

For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

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

The Exchange does not believe that the proposed rule change will impose 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*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of such 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.

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2012-05 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-NYSEAmex-2012-05. This file number should be included on the subject line if email 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 NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSEAmex-2012-05 and should be submitted on or before March 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **DEPARTMENT OF STATE**

### **[Public Notice 7801]**

### **30-Day Notice of Proposed Information Collection: DS-86, Statement of Non-Receipt of a Passport**

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Statement of Non-Receipt of a Passport.
- *OMB Control Number:* 1405-0146.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, CA/PPT/PMO/PC.
- *Form Number:* DS-86.
- *Respondents:* Individuals who have not received the passport for which they originally applied.
- *Estimated Number of Respondents:* 12,755 per year.
- *Estimated Number of Responses:* 12,755 per year.
- *Average Hours per Response:* 5 min.
- *Total Estimated Burden:* 1,063 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 16, 2012.

<sup>10</sup> See *supra* note 6.

<sup>11</sup> See *supra* note 7.

<sup>12</sup> See *supra* note 4.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).