

the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Based on changes in pricing at NYSE, BATS is proposing a change to its price for BATS + NYSE Destination Specific Orders to align its fees so they are \$0.0001 less per share for orders routed to NYSE. Specifically, the Exchange proposes to increase the fee charged for BATS + NYSE Destination Specific Orders executed at NYSE from \$0.0017 to \$0.0020 per share. This change will result in the Exchange charging \$0.0001 less per share for orders routed to NYSE as Destination Specific Orders.

## 2. Statutory Basis

The Exchange believes that the proposed rule change 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 of the Act.<sup>6</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

### (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

No written comments were solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the

Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 proposal 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2010-012 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 No. SR-BATS-2010-012. This file number should be included on the subject line if e-mail 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, NE., Washington, DC 20549, on official business days between the hours of 10

a.m. and 3 p.m. Copies of such filing will also 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 No. SR-BATS-2010-012 and should be submitted on or before June 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2010-11807 Filed 5-17-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62082; File No. SR-NYSE-2010-34]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Price List

May 11, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 30, 2010, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.<sup>4</sup> 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 certain of the fees and credits set forth in its 2010 Price List. The amended pricing will take effect on May 1, 2010.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a et seq.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Email from John Carey, Chief Counsel, U.S. Equities, NYSE Euronext, to David Liu, Assistant Director, Nathan Saunders, Special Counsel, and Daniel Gien, Attorney, Division of Trading and Markets, Commission, dated May 6, 2010 (clarifying the language of note 6 below and making other minor technical changes to conform the description of the changes to the text of the proposed rule text).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), on the Commission's Web site at <http://www.sec.gov>, at the Exchange's Office of the Secretary, 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 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 these statements may be examined at the places specified in Item IV below. The NYSE 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

The Exchange proposes to make the following changes to its 2010 Price List with effect from May 1, 2010:

- The rebate paid for executions in which the customer adds liquidity to the Exchange will increase from \$0.0010 to \$0.0013 per share.
- The rebate paid for executions of orders sent to the floor broker for representation on the NYSE when adding liquidity to the Exchange will increase from \$0.0012 to \$0.0015 per share.
- The equity per share charge when taking liquidity from the Exchange will increase from \$0.0018 to \$0.0021 per share.
- The equity per share charge (charged to both sides) for all odd lot transactions (including odd lot portions of partial round lots) will increase from \$0.0018 to \$0.0021 per share. A parallel change will be made to the odd lot transaction charges for securities with a per share trading price less than \$1.00, which will now be subject to a fee equal to the lesser of (i) 0.3% of the transaction value or (ii) \$0.0021 per share.

• Currently, the Exchange charges \$0.0006 per share for all market at-the-close ("MOC") and limit at-the-close ("LOC") orders for all executions of orders from any member organization executing an average daily trading volume ("ADV") on the NYSE in that month of at least 130 million shares, including (i) adding liquidity in an ADV

of at least 30 million shares and (ii) an ADV of at least 15 million shares total in MOC and LOC orders. The Exchange is eliminating this separate pricing tier and will now charge \$0.0007 per share for all MOC and LOC transactions, which is the price currently charged for all such transactions that do not qualify for the \$0.0006 per share tier described in the previous sentence. A parallel change will be made to the transaction charges for MOC and LOC orders in securities with a per share stock price less than \$1.00. All such transactions will now be subject to a fee equal to the lesser of (i) 0.3% of the transaction value or (ii) \$0.0007 per share.

• Currently, the Exchange charges \$0.0017 per share for executions of orders from any member organization executing an average daily trading volume ("ADV") on the NYSE in that month of at least 130 million shares, including (i) adding liquidity in an ADV of at least 30 million shares and (ii) an ADV of at least 15 million shares total in MOC and LOC orders. The Exchange is eliminating this separate pricing tier and will now charge the regular transaction fee for these transactions that applies to executions taking liquidity from the Exchange. Therefore, all transactions taking liquidity from the NYSE in securities with a per share stock price of \$1.00 or more will be subject to a fee of \$0.0021 per share and all such transactions in securities with a per share stock price less than \$1.00 will be subject to a fee equal to the lesser of (i) 0.3% of the transaction value or (ii) \$0.0021 per share.<sup>5</sup>

• The equity per share charge for designated market makers ("DMMs") for transactions taking liquidity from the NYSE will be increased from \$0.0010 per share to \$0.0013 per share.

• The Exchange is modifying its schedule of liquidity rebates for supplemental liquidity providers ("SLPs").<sup>6</sup> SLPs will receive a credit of

<sup>5</sup> Some superfluous language is also removed from this entry in the Price List and the same language is removed from the entry specifying the fee paid by DMMs when taking liquidity.

<sup>6</sup> The Exchange currently has a three tier structure of rebates paid only to SLPs when the SLP provides liquidity to the NYSE and meets the requirements to benefit for the specific tier. The highest tier pays a credit of \$0.0017 per share to SLPs when they add liquidity to the NYSE in securities with a per share price of \$1.00 or more, and the SLP (i) meets the Quoting Requirement and (ii) adds liquidity of an ADV of more than 250 million shares in the applicable month. The second-highest tier pays a credit of \$0.0016 per share to SLPs and applies to SLPs when they add liquidity to the NYSE in securities with a per share price of \$1.00 or more, and the SLP (i) meets the Quoting Requirement and (ii) adds liquidity of an ADV of more than 100 million shares in the applicable month. The third-highest tier pays a credit of \$0.0015 per share to SLPs and applies to SLPs when they add liquidity

\$0.0020 per share when they add liquidity to the NYSE in securities with a per share price of \$1.00 or more, and the SLP (i) meets the 3% average or more quoting requirement in an assigned security pursuant to Rule 107B (the "Quoting Requirement") and (ii) adds liquidity of an ADV of more than 10 million shares in the applicable month. For all other transactions adding liquidity to the NYSE, SLPs will receive a rebate of \$0.0013 per share.

• SLPs currently receive a rebate of \$0.0005 per share for executions of securities with a per share price of \$1.00 or more at the close. This rebate will no longer be paid, although these transactions will continue to be free of charge.

• The Exchange is instituting a new \$0.0001 per share fee for executions in Crossing Session II. This fee will be subject to a \$50,000 per month cap per member organization.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6<sup>7</sup> of the Act in general and furthers the objectives of Section 6(b)(4)<sup>8</sup> 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 that the proposal does not constitute an inequitable allocation of dues, fees and other charges, as all similarly situated member organizations will be charged the same schedule of fees and be entitled to receive the same rebates.

### 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 purpose of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

to the NYSE in securities with a per share price of \$1.00 or more, and the SLP (i) meets the Quoting Requirement and (ii) adds liquidity of an ADV of more than 10 million shares in the applicable month. SLPs adding liquidity in securities with a per share price of \$1.00 or more, if the SLP does not qualify for any of the foregoing rebates, receive the same rebates as other market participants.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

### 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>9</sup> of the Act and Rule 19b-4(f)(2)<sup>10</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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, as amended, 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2010-34 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-NYSE-2010-34. This file number should be included on the subject line if e-mail 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, NE., 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-NYSE-2010-34 and should be submitted on or before June 8, 2010.

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

Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2010-11809 Filed 5-17-10; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62083; File No. SR-CBOE-2010-038]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Related to the Hybrid Matching Algorithms

May 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that April 22, 2010, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 6, 2010, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice, as amended, 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 Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, to revise its market turner and modified participation entitlement priority overlays. The text of

the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE and at the Commission.

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

###### Background

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which incoming electronic orders in options are allocated on the Hybrid System. Paragraph (a) of each rule currently provides a "menu" of allocation algorithms to choose from when executing incoming electronic orders. The menu format allows the Exchange to utilize different allocation algorithms on a class-by-class basis. The menu includes, among other choices, the Ultimate Matching Algorithm ("UMA"),<sup>3</sup> and price-time and pro-rata priority allocation algorithms. Additional priority overlays can be applied to the base allocation algorithms. The price-time and pro-rata priority overlays currently include: public customer priority for public customer orders resting on the Hybrid System, participation entitlements for certain qualifying market-makers<sup>4</sup> (the

<sup>3</sup> Under the UMA algorithm, public customer orders in the electronic book have first priority to trade against incoming electronic orders, then the Market-Maker participation entitlement has second priority. Thereafter, any remaining balance of the incoming order, if any, is allocated among other market participants based on a weighting of the number of market participants quoting at the best bid or offer (Component A) and the percentage that the size of each market participant's quote is at the best bid or offer relative to the total number of contracts at the disseminated quote (Component B). See Rules 6.45A(a)(i)(B)(2) and 6.45B(a)(ii)(B)(2) for a more detailed description of UMA.

<sup>4</sup> Under the original participation entitlement, the Exchange may determine to grant Market-Makers participation entitlements pursuant to the provisions of Rules 8.87, *Participation Entitlement of DPMS and e-DPMS*, 8.13, *Preferred Market-Maker Program*, or 8.15B, *Participation Entitlement of*

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</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.