

Participant, Firm, Broker-Dealer and Specialist, ROT, SQT and RSQT Fees for Removing Liquidity would apply to transactions resulting from electronic auctions and the Exchange's opening process.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after October 1, 2010.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange's proposal to assess separate fees for Complex and non-Complex Orders in Section I of its Fee Schedule is consistent with industry fees that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.<sup>12</sup> The Exchange believes that this amendment to the fees is both reasonable and equitable because the fees are within the range assessed other market participants and are similar to fees being assessed by the International Securities Exchange, LLC ("ISE") for complex order executions.<sup>13</sup>

The Exchange proposes to pay a Rebate for Adding Liquidity to Customers when such transaction is contra to a non-Customer order during an electronic auction and opening processes. Similarly, the Exchange proposes to not assess a fee to a Customer during such processes. The Exchange also proposes to apply the Fee for Removing Liquidity to all non-Customer market participants equally during electronic auction or opening processes. The Exchange believes that these proposals are both reasonable and equitable because they should incentivize Customer orders and attract additional order flow to the Exchange. Also, all other participants are equally assessed the applicable Fees for Removing Liquidity.

The Exchange 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 the fees it charges for options overlying the various Select Symbols remain competitive with fees charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

### *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 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 either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>14</sup> At any time within 60 days of the filing of the 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-129 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-Phlx-2010-129. 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 No. SR-Phlx-2010-129 and should be submitted on or before November 5, 2010.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63068; File No. SR-BYX-2010-001]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend BYX Rule 11.8, Entitled "Obligations of Market Makers"

October 8, 2010.

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>

<sup>15</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.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> See Securities Exchange Act Release No. 62805 (August 31, 2010), 75 FR 54682 (September 8, 2010) (SR-ISE-2010-90).

<sup>13</sup> See ISE's Schedule of Fees.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

notice is hereby given that on September 27, 2010, BATS Y-Exchange, Inc. ("BYX" or the "Exchange") 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 proposing to amend BYX Rule 11.8, which relates to the obligations of market makers registered with BYX ("Market Makers").

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 Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange proposes to adopt rules to enhance minimum quotation requirements for market makers. Under the proposal, the Exchange will require market makers for each stock in which they are registered to continuously maintain a two-sided quotation within a designated percentage of the National Best Bid ("NBB") and National Best Offer ("NBO") (or, if there is no NBB or NBO, the last reported sale). These enhanced market maker quotation requirements are intended to eliminate trade executions against market maker placeholder quotations traditionally priced far away from the inside market, commonly known as "stub quotes." They are also intended to augment and work in relation to the single stock pause standards already in place on a

pilot basis for stocks in the S&P 500® Index,<sup>3</sup> the Russell 1000® Index, as well as a pilot list of Exchange Traded Products.<sup>4</sup>

Under the proposal, the Exchange will require registered market makers to enter and maintain quotes priced at no more than a certain percentage away from the national inside bid and offer. Permissible quotes are determined by the individual character of the security, the time of day in which the quote is entered, and other factors which are summarized below.

For issues subject to an individual stock trading pause, a permissible quote is determined by first looking at the applicable individual stock pause trigger percentage of the security and then reducing that number by 2%. Since currently the individual stock pause trigger percentage utilized by the primary listing markets is 10%, a market maker's quote in a [sic] such a security may not be more than 8% away from the NBBO as appropriate. Once a compliant quote is entered, it may rest without adjustment until such time as it moves to within ½ of 1% of the applicable stock pause trigger percentage (*i.e.*, currently 9.5%) whereupon the market maker must immediately move its quote back to at least the permissible default level of 8% away from the NBBO. During times in which a stock pause trigger percentage is not applicable (*e.g.*, before 9:45 a.m. and after 3:35 p.m.), a market maker must maintain a quote no further than 20% away from the inside (*i.e.*, it may rest without adjustment until it reaches 21.5%). In the absence of a NBB or NBO, the above calculations will remain the same, but will use the national last sale instead of the absent bid or offer.

For securities not subject to any individual stock trading pause, the proposal will a [sic] assume a hypothetical 32% stock pause trigger percentage, apply a 2% reduction, and require market makers in those issues to maintain quotes no more than 30% away from the NBBO. Like securities subject to stock trading pauses, once a compliant quote is entered, it may rest without adjustment until such time as it moves to within ½ of 1% of its applicable pause trigger percentage (31.5%) whereupon the market maker

<sup>3</sup> See, *e.g.*, Securities Exchange Act Release No. 62340 (June 21, 2010), 75 FR 36768 (June 28, 2010) (SR-BATS-2010-014). The Exchange is separately working to amend its rules prior to commencement of operations to make clear that it will pause trading in Circuit Breaker Securities when an individual stock trading pause is issued by a primary listing market.

<sup>4</sup> See, *e.g.*, Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR-BATS-2010-018); *see id.*

must immediately move its quote back to at least the permissible default level of 30%. These requirements shall apply to Regulation NMS securities during normal market hours.

Nothing in the above precludes a market maker from voluntarily quoting at price levels that are closer to the NBBO than required under the proposal.

The Exchange proposes to offer optional functionality to Exchange Market Makers to assist such Market Makers with the quotation obligations proposed by this filing. Specifically, at 9 a.m. Eastern Time, the Exchange will extract information submitted by the Market Maker that provides specific quote instructions for the Exchange to enter a quote on the Market Maker's behalf consistent with proposed paragraph (d). The Exchange proposes to enter the initial bid and offer at the Designated Percentage and to cancel and replace the bid or offer if it drifts away from the NBBO to the Defined Limit or away from the Designated Percentage towards the NBBO by a number of percentage points determined by the Exchange. The Exchange will determine and publish this percentage in a circular distributed to Members from time to time; the Exchange wishes to retain this flexibility in the event it wishes to modify the number periodically in the future, for instance, to mitigate the amount of quotation information resulting from Exchange generated Market Maker quotes. If a bid or offer entered pursuant to proposed paragraph (e) is executed, the Exchange will re-enter a new bid or offer on behalf of a Market Maker. Bids and offers entered by the Exchange consistent with proposed paragraph (e) to replace a cancelled or executed quotation will be entered at the Designated Percentage away from the NBBO. Such orders will be posted by the Exchange as BATS Only Orders,<sup>5</sup> and will be maintained on the Exchange during Regular Trading Hours<sup>6</sup> unless cancelled by the Market Maker pursuant to the Exchange's Rules. In the event a Market Maker cancels the quotations entered by the Exchange in accordance with proposed paragraph (e), such Market Maker remains responsible for compliance with the requirements of paragraph (d).

In order to adopt the above-described market maker quotation obligations, the Exchange proposes to modify Rule 11.18(a)(1), which currently contains a two-sided quotation obligation, to cross-reference the above-described market maker quotation obligations in new

<sup>5</sup> As defined in Rule 11.9(c)(4).

<sup>6</sup> Defined in Rule 1.5(w) as 9:30 a.m. to 4:00 p.m. Eastern Time.

paragraph (d). In addition, because proposed paragraph (d) makes clear that the obligations of that paragraph apply during Regular Trading Hours, the Exchange proposes to delete paragraph (b) of current Rule 11.8 related to the [sic] when the current quoting obligations apply. Finally, the Exchange proposes deletion of current Rule 11.8(e), related to temporary withdrawal, because Exchange Rule 11.5(d) already provides a Market Maker with the ability to withdraw his or her status as a Market Maker and Rule 11.7(b) already provides a Market Maker with the ability to terminate his or her registration in a security. The Exchange believes that these mechanisms are sufficient for a Market Maker to withdraw or terminate its registration in a security or as a Market Maker without the need for an additional provision related to withdrawal.

## 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.<sup>7</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> 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, and, in general, protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)<sup>9</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning minimum market maker quotation requirements. The Exchange believes that the proposed optional functionality to assist Exchange Market Makers in maintaining continuous, two-sided limit orders in the securities in which they are registered will encourage Market Makers to remain registered with and trade on the Exchange, thus providing valuable liquidity to the Exchange; at the same time, the Exchange believes that the proposed functionality will keep Exchange generated quotations within reasonable reach of the NBBO and that the elimination of “stub quotes”

is important for 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 has neither solicited nor received written comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2010-001 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BYX-2010-001. 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 website 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 publicly available. All submissions should refer to File Number SR-BYX-2010-001 and should be submitted on or before November 5, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63067; File No. SR-NYSEArca-2010-78]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading Shares of Jefferies Commodity Real Return ETF

October 8, 2010.

## I. Introduction

On August 17, 2010, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 list and trade shares (“Shares”) of Jefferies Commodity Real Return ETF (the “Fund”). The proposed rule change was published for comment in the

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

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

<sup>9</sup> 15 U.S.C. 78k-1(a)(1).

<sup>10</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.