Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2011–05. 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,[10] 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 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–EDGX–2011–05 and should be submitted on or before March 31, 2011.

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

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5442 Filed 3–9–11; 8:45 am]

BILLING CODE 8011–01–P

[10] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGX, and at the Commission's Public Reference Room.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64041; File No. SR–FINRA–2011–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to the Trading Activity Fee Rate for Transactions in Asset-Backed Securities

March 4, 2011.

I. Introduction

On January 10, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide a new method of calculating the Trading Activity Fee ("TAF") for transactions in Asset-Backed Securities. The proposed rule change was published for comment in the **Federal Register** on January 27, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA proposes to amend Section 1 of Schedule A to the FINRA By-Laws to provide a new method of calculating the TAF [4] for transactions in Asset-Backed Securities.[5] The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, which include examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.[6] Generally, the TAF is assessed on the sale of all exchange-registered securities wherever executed (except debt securities that are not Trade Reporting and Compliance Engine ("TRACE")-Eligible Securities), over-the-counter equity securities, security futures, TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to MSRB reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.[7]

In 2010, the Commission approved a proposed rule change that generally makes transactions in Asset-Backed Securities reportable to TRACE.[8] Because Asset-Backed Securities will be TRACE-Eligible Securities, transactions in Asset-Backed Securities will generally be subject to the TAF.

Currently, when reporting the size of a corporate bond transaction to TRACE, the number of bonds is reported and the TRACE System, which is programmed to reflect that one bond equals $1,000 par value, calculates the total dollar volume of the transaction (*e.g.,* 10 bonds × $1,000=$10,000).[9] Based on this reporting structure, the TAF is assessed on a per-bond basis, but the number of bonds is a proxy for the size of the total dollar volume of a transaction in $1,000 increments. Although some Asset-Backed Securities are structured like conventional corporate bonds, many are structured differently. For example, many Asset-Backed Securities are based on financial assets that amortize, and the principal (or face) value declines over time. Accordingly, transactions in Asset-Backed Securities will not be reported to TRACE on a per-bond basis like conventional corporate bonds, but rather will be reported based on the original principal (or face) value of the underlying security or the Remaining Principal Balance.

Consequently, FINRA is proposing to conform the TAF rate for sales of Asset-Backed Securities consistent with the reporting of such transactions to TRACE. Accordingly, FINRA is proposing to base the TAF for sales of Asset-Backed Securities on the size of the transaction as reported to TRACE (*i.e.,* par value, or, where par value is not used to determine the size of the transaction, the lesser of original face value or Remaining Principal Balance) at a rate of $0.00000075 times the size of the transaction as reported to TRACE, with a maximum charge of $0.75 per trade.

The effective date of the proposed rule change will be the date the proposed rule change SR–FINRA–2009–065 becomes effective, which is currently anticipated to be May 16, 2011.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63751 (January 21, 2011), 76 FR 4966 ("Notice").

[4] *See* FINRA By-Laws, Schedule A, section 1 (describing how the TAF is applied).

[5] *See* FINRA Rule 6710(m) (defining "Asset-Backed Security").

[6] In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment.

[7] *See* FINRA By-Laws, Schedule A, section 1(b)(2).

[8] *See* Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010). *See also Regulatory Notice* 10–23 (April 2010).

[9] *See* FINRA Rules 6730(c)(2) and 6730(d)(2).

[10] *See* Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010) (extending the operational date of SR–FINRA–2009–065 to no later than June 1, 2011).

III. Discussion and Commission's Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[11] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,[12] which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using any facility or system that the association operates or controls. The Commission believes that the proposal is reasonably designed to impose equitable fees on members that transact in Asset-Backed Securities, where the principal value of the securities may decline over time.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–FINRA–2011–004), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5518 Filed 3–9–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64040; File No. SR–NYSEAmex–2011–11]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending Rule 103B—NYSE Amex Equities To Modify the Application of the Exchange's Designated Market Maker Allocation Policy in the Event of a Merger Involving One or More Listed Companies

March 4, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 24, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 Rule 103B—NYSE Amex Equities to modify the application of the Exchange's Designated Market Maker ("DMM") allocation policy in the event of a merger involving one or more listed companies. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov,* and *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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Policy Note VI(D)(1) to Rule 103B—NYSE Amex Equities provides that when two NYSE Amex listed companies merge, the post-merger listed company is assigned to the DMM in the company that is determined to be the survivor-in-fact (dominant company). Under Exchange policy, the determination of which company is the survivor-in-fact is based on which of the merging companies provides the chief executive officer and a majority of the board of directors of the post-merger listed company. The policy focuses on the CEO and the make-up of the board of the post-merger listed company rather than on any criteria based on the relative sizes of the pre-merger companies because the Exchange believes that the post-merger listed company's CEO and board will have the relationship with the DMM going forward and should therefore be comfortable with the DMM allocated to the post-merger listed company. Under the Exchange policy, no survivor-in-fact will be found if one of the merging companies provides the CEO and the other merging company provides a majority or half of the board of the post-merger listed company. Where no survivor-in-fact can be identified, the post-merger listed company may select one of the units trading the merging companies without the security being referred for reallocation, or it may request that the matter be referred for allocation through the allocation process pursuant to Rule 103B—NYSE Amex Equities, Section III. In addition, Policy Note VI(D)(3) provides that in situations involving the merger of a listed company and an unlisted company, where the unlisted company is determined to be the survivor-in-fact, the post-merger listed company may choose to remain registered with the DMM unit that had traded the listed company entity in the merger, or it may request that the matter be referred for allocation through the allocation process pursuant to Rule 103B—NYSE Amex Equities.[4]

The Exchange believes that the decision as to how the stock of a post-merger listed company is allocated should be made solely by the post-merger listed company itself, rather than on the basis of which company is determined to be the survivor-in-fact in the merger. The Exchange believes that it is important that the CEO and board of the post-merger listed company are comfortable with its assigned DMM and that it therefore makes sense to give the post-merger listed company as much control as possible over the allocation decision. Consequently, the Exchange proposes to amend Policy Note VI(D)(1) and (3) to provide that in all listed company mergers, either between two listed companies or a listed company and an unlisted company, the management of the post-merger listed

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A company seeking to choose a DMM through the allocation process must select a minimum of three DMM units to interview from the pool of DMM units eligible to participate in the allocation process and must notify the Exchange of its choice of DMM within two business days of the interviews. Alternatively, the company can delegate to the Exchange the authority to select its DMM. In that case, the selection is made by an Exchange Selection Panel ("ESP") comprised of senior management of the Exchange, Exchange floor operations staff and non-DMM Executive Floor Governors or Floor Governors.