



Martha Redding
Chief Counsel

New York Stock Exchange
20 Broad Street
New York, NY 10005
T +1 212 656 2938

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VIA E-MAIL

Kevin M. O'Neill
Deputy Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C., 20549-1090

Re: Response to Comment Letters, Securities Exchange Act Release No. 72548 (July 7, 2014), 79 FR 40183 (July 11, 2014) (SR-NYSE-2014-32) ("Proposal")

Dear Mr. O'Neill:

The New York Stock Exchange LLC ("NYSE" or "Exchange")¹ appreciates the opportunity to submit a second response to a comment letter submitted in connection with the Proposal.² For the reasons set forth in the Proposal, this response, and its earlier response to comment letters,³ the Exchange believes that its proposed rule change to make the Add Liquidity Only ("ALO") modifier available for limit orders and make the day time-in-force condition available for Intermarket Sweep Orders ("ISO") is consistent with the Section 6(b)(5) of the Securities Exchange Act of 1934 ("Act").⁴ The Exchange therefore respectfully requests that the Securities and Exchange Commission ("Commission") approve the Proposal.

The second comment letter from Tradebook again requests that the Commission disapprove the Proposal and, in responding to the NYSE Response, does not raise any new arguments to support why the Proposal is not consistent with the Act. Rather, the Tradebook II Comment Letter repeats

¹ Both the NYSE and its affiliated exchange NYSE MKT LLC ("NYSE MKT"), which operates on the same trading platform as the NYSE, submitted virtually identical rule proposals. See Securities Exchange Act Release No. 72547 (July 7, 2014), 79 FR 40169 (July 11, 2014) (SR-NYSEMKT-2014-56). The Commission extended its time to act on the Proposal and the related NYSE MKT proposal to October 9, 2014. See Securities Exchange Act Release Nos. 72893 (Aug. 21, 2014), 79 FR 51208 (Aug. 27, 2014) (SR-NYSE-2014-32) and 72894 (Aug. 21, 2014), 79 FR 51208 (Aug. 27, 2014) (SR-NYSE-2014-56) (Notice of Designation of Longer Period for Commission Action on Proposed Rule Change). This second response is intended to support both the NYSE and NYSE MKT proposals.

² See Letter from Raymond M. Tierney III, President and Chief Executive Officer, and Gary Stone, Chief Strategy Officer, Bloomberg Tradebook LLC, to Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, dated October 6, 2014 ("Tradebook II Comment Letter").

³ See Letter from Martha Redding, Chief Counsel, New York Stock Exchange LLC, to Kevin O'Neill, Deputy Secretary, Securities and Exchange Commission, dated September 30, 2014 ("NYSE Response").

⁴ 15 U.S.C. 78f(b)(5).

the same erroneous arguments with respect to the operation of Regulation NMS and, more specifically, questions whether an ISO with a day time-in-force modifier is consistent with Regulation NMS and the Act.⁵ The Exchange reiterates its previous responses to these arguments:

- Regulation NMS specifically contemplates the availability of ISOs with a day modifier, and on which Commission staff elaborated in Regulation NMS guidance.⁶ Tradebook requests that the Commission “revisit” its Regulation NMS guidance with respect to Day ISOs,⁷ acknowledging that Regulation NMS currently permits ISOs with a day modifier. The Exchange believes that if the Commission chooses to revisit Regulation NMS, any changes as a result should be applied to all market participants, not solely to one exchange through its rule proposal.
- As the Exchange discussed in both the Proposal and the NYSE Response, the Commission has already considered and approved the use of a day modifier with an ISO in the context of Regulation NMS.⁸ As noted by the Commission, NYSE Arca adopted the ISO with a day modifier in 2006, among other changes, expressly to conform to Regulation NMS requirements.⁹ Accordingly, Tradebook’s claim that the NYSE is the only exchange to file with the Commission a rule proposal for an ISO with a day modifier under Regulation NMS is incorrect¹⁰ and approval of the Exchange’s proposal is not novel.
- Member firms routing ISOs to exchanges bear the responsibility to assure that ISOs that are entered as exceptions to Rule 610(d) or 611 of Regulation NMS meet the

⁵ Both Tradebook Comment Letters refer to the use of reserve orders. However, the Exchange does not believe that the use of reserve orders is dispositive to whether an ISO with a day modifier is consistent with the Act.

⁶ See NYSE Response at 7 and Commission Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, April 4, 2008 Update, available at: <http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm> (“Reg NMS FAQ”) 5.01.

⁷ See Tradebook II Comment Letter at 2.

⁸ See NYSE Response at 6 and Securities Exchange Act Release No. 54549 (Sept. 29, 2006), 71 FR 59179 (Oct. 6, 2006) (SR-NYSEArca-2006-59) (approval of NYSE Arca Equities, Inc. (“NYSE Arca”) proposal that provides that “[i]f an ISO is not marked as ‘immediate or cancel,’ any remaining balance would be displayed by the Exchange without regard to whether that display would lock or cross another market center, only if the participant routing the order has already sent an order to satisfy the quotations of other markets so that the display of the order would not lock or cross those markets.”). The Exchange notes that NYSE Arca does not name this order type a “Day ISO,” however, the existing NYSE Arca Rule 7.31(w) PNP Order type provides that it may be marked as an Intermarket Sweep Order and may lock and cross and trade through both Manual and Protected Quotations, provided that the member that entered such ISO also simultaneously routed an ISO to executed the full displayed size of any locked or cross Protected Quotation (see NYSE Arca Rule 7.37(e)(3)(C)). Accordingly, NYSE Arca rules similarly provide for an ISO with a day modifier that may lock or cross the market.

⁹ See *id.* at 59179

¹⁰ See *id.* at 3.

requirements of those exceptions.¹¹ More specifically, consistent with the Regulation NMS definition of ISO,¹² Exchange Rule 13 governing ISOs already requires that a member organization entering an ISO has an independent obligation to simultaneously with the routing of an ISO to the Exchange, routing one or more additional limit orders, as necessary, to execute against the full displayed size of any protected bids or offers on other markets. This obligation does not differ whether an ISO has an immediate-or-cancel or day time-in-force. Notwithstanding existing rules governing ISOs, Tradebook mistakenly believes that the reference to "market participant" in the Reg NMS FAQs can only mean exchanges and therefore only exchanges have the obligation to route ISOs if it is for an exception to Rule 610(d) of Regulation NMS.¹³ This misguided interpretation not only calls into question the existing use of ISOs by broker-dealers, but is also directly contrary to the Commission's approval of the NYSE Arca proposal for an ISO with a day modifier.¹⁴

- Finally, Regulation NMS does not provide for an absolute prohibition on locking or crossing markets.¹⁵ An exchange may display a quote that locks or crosses a protected quotation provided that such display is consistent with an existing and approved exception to Rule 610(d) of Regulation NMS. As noted in the NYSE Response, the Exchange has an existing rule that provides for an ISO exception to locking and crossing markets.¹⁶ The current proposal to make a day modifier available for ISOs would enable Exchange member organizations to avail themselves of this existing and approved exception to Rule 610(d).

For the foregoing reasons, as well as those set forth in the Proposal and the NYSE Response, the Exchange respectfully requests the Commission approve the Proposal.

Sincerely,



¹¹ See NYSE Response at 7.

¹² See Rule 600(b)(30) of Regulation NMS, 17 CFR 242.600(b)(3).

¹³ See Tradebook II Comment Letter at 5-6.

¹⁴ See *supra* n. 8.

¹⁵ See NYSE Response at 7.

¹⁶ See *id.* and Exchange Rule 19(d)(3).