



February 1, 2018

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 20549-1090

RE: Securities Exchange Act Release No. 81310 (August 3, 2017); SR-NYSE-2017-36

Dear Mr. Fields:

Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to comment on the above-referenced proposed rule change in which the New York Stock Exchange, Inc. (“NYSE”) proposes to adopt rules for trading Tape B and C securities, on an Unlisted Trading Privileges (“UTP”) basis, on the NYSE’s new electronic trading platform (the “Proposal”). The proposal included rules governing available order types and their ranking, display, execution, and routing. On November 7, 2017, the Securities and Exchange Commission (“SEC” or “Commission”) issued an order instituting proceedings to determine whether to approve or disapprove the Proposal (the “Order”).¹ In the Order, the Commission solicited comments on certain aspects of the Proposal and whether those aspects are consistent with Sections 6(b)(5) and 6(b)(8) of the Securities Exchange Act of 1934 (the “Act”).² In particular, the Commission sought views on whether providing Floor Brokers with parity allocations in UTP securities, or providing them exclusive use of certain order instructions, unfairly discriminates against market participants who do not submit orders through a Floor Broker. The Commission further sought views on whether providing parity to Floor Brokers, or providing them with exclusive use of certain order instructions, impose a burden on competition that is not necessary or appropriate. The simple answer to these questions is yes. Cboe submits this letter to provide its view that preferential treatment provided to Floor Brokers in a fully electronic trading environment as set forth in the Proposal does, in fact, unfairly discriminate against market participants who do not submit orders through a Floor Broker and provides Floor Brokers an unnecessary competitive advantage in violation of the Act. For the reasons set forth below, the Exchange strongly urges the Commission to disapprove the Proposal.

The NYSE trades its own listed securities (Tape A) via a floor-based model in which each security is assigned a Designated Market Maker and executions are allocated amongst participants based on parity. In a separate proposed rule change to allow the NYSE to trade Tape B and C securities that was approved by the Commission, it specifically stated that it “is not proposing to change its core functionality, but rather to adopt a rule numbering framework and

¹ See Securities Exchange Act Release No. 82028 (November 7, 2017), 82 FR 52757 (November 14, 2017).

² 15 U.S.C. 78f(b)(5) and (8).

rules based on the rules of NYSE Arca.”³ NYSE Arca executes trades based on price/time priority and, based on this statement, one was led to assume that the NYSE would conduct trading of UTP securities in a similar manner. With this Proposal, the NYSE now seeks to incorporate elements of its floor-based parity allocation methodology into the fully electronic trading system within which it intends to trade UTP securities.

The NYSE has proposed to carry over to their new electronic system on which Tape B and C securities would be handled, certain aspects of its floor-based trading model that provide preferential treatment to Floor Brokers. These benefits include the exclusive use of pegging orders and the ability to participate in executions based on parity. Parity provides advantages only to select NYSE members. These benefits provided to Floor Brokers are remnants of a floor-based trading model that is now proposed to be extended to a fully electronic system for the trading of Tape B and C securities. Floor Brokers with these exclusive benefits when trading in Tape B and C securities in a fully electronic trading environment, as proposed by the NYSE, have a distinct unfair competitive advantage over other market participants, such as customers and broker-dealers, which is not consistent with the Act.

Floor Brokers with parity can insert themselves into the parity wheel and can buy or sell during price disparities without the restrictions of following time priority. Floor Brokers could utilize this advantaged position to liquidate or acquire positions at beneficial prices as they see fit by through the execution advantage they have over others. One may argue that Floor Brokers add liquidity when others don't. Absent the affirmative obligation to do so, adding liquidity in an electronic trading environment does not alone justify Floor Brokers being able to exploit their privileged position in a parity model and at the expense of customers and broker-dealers who can also add liquidity.

Floor Brokers would be able to disregard time priority and skip the line because their orders do not need to be placed in the electronic book. This disadvantages other members and their orders, including orders routed from other Trading Centers, which are collectively represented on the NYSE book. Those orders get one slot on the parity wheel as a single group. Whereas, individual Floor Brokers can enter at the last moment and receive their own slot. Many entities do not, as a practical matter, have the option to take advantage of Floor Brokers and their privileged parity position. As a result, Floor Brokers would gain an unfair competitive advantage with no affirmative obligations to contribute to a fair and orderly market.

As a consequence, the proposed preferential treatment of Floor Brokers may lead to more orders routing through them to take advantage of their enhanced position to access liquidity on the NYSE's proposed electronic system. This could result in Floor Brokers taking advantage of their unique position by charging increased transaction fees to their customers. Further, orders submitted by Floor Broker at times do not represent manual interest that the Floor Broker is to

³ See Securities Exchange Act Release No. 78263 (July 8, 2016), 81 FR 45580, 45589 (July 14, 2016) (Notice of Filing of SR-NYSE-2016-44).

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represent in the marketplace, but are rather the byproduct of them reselling algorithms or other electronic access to their privileged position on the parity wheel.

In addition, providing Floor Brokers with the exclusive use of pegging orders provides them an unjustified competitive advantage over customers and broker-dealers when trading securities electronically. When the market moves, pegging orders are automatically and immediately re-priced to the new price level. As a result, pegging orders as a group have a time advantage over all other orders that seek to be entered at the revised price. By unnecessarily providing pegging orders solely to Floor Brokers, and not to customers and other broker-dealers, Floor Brokers are provided another exclusive execution advantage – preferred time priority on top of a privileged parity position.

Cboe appreciates the opportunity to comment on the above proposed rule change. For the reasons discussed above, the Exchange strongly believes preferential treatment provided to Floor Brokers in the Proposal does, in fact, unfairly discriminate against market participants who do not submit orders through a Floor Broker and provides Floor Brokers an unnecessary competitive advantage that is not consistent with the Act. The Exchange, therefore, strongly urges the Commission to disapprove the Proposal. Please feel free to contact Chris Solgan at [REDACTED] or me at [REDACTED] if you have any questions related this matter.

Sincerely,



Joanne Moffic-Silver
Executive Vice President, General
Counsel, and Corporate Secretary

Cc: Brett Redfearn, Director, Division of Trading and Markets
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