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October 26, 2016

VIA E-MAIL

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

Re: Securities Exchange Act Release Nos. 78198 (June 30, 2016), 81 FR 44363 (July 7, 2016) (SR-NYSEMKT-2016-52) and 78381 (July 21, 2016), 81 FR 49286 (July 27, 2016) (SR-NYSEArca-2016-103) (the "Proposals")

Dear Mr. Fields:

NYSE MKT LLC ("NYSE MKT") and NYSE Arca, Inc. ("NYSE Arca") (together the "Exchanges") appreciate the opportunity to respond to the comment letter filed by the Office of the Investor Advocate ("Investor Advocate") of the U.S. Securities and Exchange Commission ("Commission") in connection with the above-referenced proposed rule changes.¹ The Investor Advocate recognizes that the Proposals seek to harmonize the Exchanges' Form U5 filing deadlines with the rules of other exchanges and self-regulatory organizations, and "generally support[s] a harmonized approach among all the various SROs,"² yet argues that the existing 10-day deadlines in the Exchanges' nonconforming rules should become the uniform Form U5 filing standard across the industry.³

While the Comment Letter expresses the Investor Advocate's goals and ambitions regarding the timing for reporting Form U5 information, including to "encourage the Commission to work with the SROs in evaluating the appropriate time frame for requiring such filings,"⁴ it does not argue that the Exchanges' proposals are not consistent with the Securities Exchange Act of 1934 (the "Act"). To the contrary, as noted in the Proposals, the Exchanges' proposed filing requirements for submitting a Form U5 are based on the existing, approved rules of FINRA, New York Stock

¹ See Letter from Rick A. Fleming, Investor Advocate, and Tracey L. McNeil, Ombudsman, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated October 3, 2016 ("Comment Letter").

² Id. at 3.

³ A similar comment letter was previously filed by the North American Securities Administrators Association, Inc. ("NASAA"), concerning NYSE MKT's proposed rule filing, to which NYSE MKT responded. See Letter from Judith Shaw, NASAA President, Maine Securities Administrator, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 3, 2016 ("NASAA Comment Letter"). See also Letter from Elizabeth K. King, General Counsel, New York Stock Exchange, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 12, 2016 (responding to NASAA Comment Letter).

⁴ Comment Letter at 7.

Exchange LLC, and Bats BZX Exchange, Inc.⁵ Further, existing and approved rules in other exchanges' rule books that impose 30-day time limits for the filings and amendments of Forms U5 include: Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., International Securities Exchange, LLC, Miami International Securities Exchange, The Nasdaq Stock Market LLC, and NASDAQ BX, Inc.⁶

As recently as June 17, 2016, the Commission approved a rule substantially identical to what the Exchanges are proposing. Specifically, when the Commission approved Investors' Exchange, LLC ("IEX") as a new exchange, it approved a rule requiring that the discharge or termination of employment of any person registered with IEX shall be electronically reported to the CRD System immediately following the date of termination but in no event later than thirty days.⁷ And even more recently, the Commission approved a proposed rule filing (filed simultaneously with the Proposals) by NYSE Arca, through its wholly-owned corporation NYSE Arca Equities, Inc. ("NYSE Arca Equities"), to amend NYSE Arca Equities rules to harmonize the requirement of when a Form U5 must be filed with the rules of other exchanges and FINRA, as in the present Proposals.⁸

⁵ See e.g. NYSE Rule 345(a).17(a) and (b) (requiring that a Form U5 shall be reported promptly, but in any event not later than 30 days following termination, that any amendment to the Form U5 shall be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice must be provided concurrently to the person whose association has been terminated); Bats BZX Exchange, Inc. Rule 2.5 Interpretations and Policies .04(a) and (b) (requiring that a Form U5 be reported immediately following the date of termination, but in no event later than 30 days following termination, that any amendment to the Form U5 shall be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice or amendment be provided concurrently to the person whose association has been terminated); FINRA By-Laws Article 5 Sec. 3(a) and (b) (requiring that notice of termination be filed not later than 30 days after termination, that an amendment to a Form U5 be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that notice be provided concurrently to the person whose association has been terminated within the time periods prescribed).

⁶ See Bats BYX Exchange, Inc. Rule 2.5 Interpretations and Policies .04(a) and (b); Bats EDGA Exchange, Inc. Rule 2.5 Interpretations and Policies .04(a) and (b); Bats EDGX Exchange, Inc. Rule 2.5 Interpretations and Policies .04(a) and (b); BOX Options Exchange LLC Rule 2040 IM-2040-7; Chicago Board Options Exchange, Incorporated Rule 9.3(b) and (c); Chicago Stock Exchange, Inc. Rule 2 Interpretations and Policies .02; International Securities Exchange, LLC Rule 603(a) and (b); Miami International Securities Exchange Rule 1303(a) and (b); The Nasdaq Stock Market LLC Rule 1031(e)(1) and (2); and NASDAQ BX, Inc. Rule 1031(e)(1) and (2).

⁷ See IEX Rule 2.160(r)(1) and (2) and Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10-222) (Order approving IEX's registration as an exchange).

⁸ See NYSE Arca Equities Rules 2.16(c) and 2.21(i) and Securities Exchange Act Release No. 78808 (September 9, 2016), 81 FR 63543 (September 15, 2016) (SR-NYSEArca-2016-104). Though the Commission noted that the change to Rule 2.21 shortened the time within which the Form U5 must be submitted from 30 business days to 30 calendar days and that shortening the time within which a Form U5 must be submitted is important, the Commission determined that the proposed rule change to 30 calendar days is consistent with the Act. *Id.* at 63543.

Accordingly, the Exchanges believe that the Proposals are consistent with the Act because they would conform the time period within which the Exchanges' members, member organizations, OTP Holders and OTP Firms must file a Form U5 with the current approved and extant rules of other exchanges and FINRA. Moreover, as noted in NYSE MKT's response to the NASAA Comment Letter,⁹ the Exchanges believe that because all broker-dealers who conduct business with the public are required to be members of FINRA, unless FINRA moves to a shorter filing time frame, it would be a burden on competition for the Exchanges to maintain a disparate filing requirement for Form U5s under their rules.¹⁰

Sincerely,



Elizabeth K. King

cc: Mary Jo White, Chair
Michael Piwowar, Commissioner
Kara Stein, Commissioner
David Shillman, Associate Director, Division of Trading & Markets
Kathleen England, Assistant Director, Division of Trading & Markets

⁹ See supra n. 3.

¹⁰ The Investor Advocate acknowledges that in 1996, FINRA's predecessor obtained Commission approval for the mandatory electronic filing of Forms U5 within 30 days, but suggests that less weight be afforded this approval because the Commission "did not appear to explicitly address the specific filing time frames in the approval order." See Comment Letter at 3-4. More recently, FINRA's predecessor sought and obtained approval from the Commission to amend its by-laws to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc., and the text of the applicable by-law provisions governing U5 filing deadlines was unchanged. See Securities Exchange Act Release No. 34-56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SR-NASD-2007-023) (Approval Order). See also <http://www.finra.org/sites/default/files/RuleFiling/p018844.pdf> at pgs. 95-96 for text of unchanged 30 days filing requirement for both Form U5 and amendments thereto.