

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63736; File No. SR-NYSE-2010-74)

January 19, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change to Create a Bond Trading License for Member Organizations and Establish Bonds Liquidity Providers as a New Market Class on NYSE Under a Pilot Program

I. Introduction

On November 23, 2010, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a twelve-month pilot program to create a bond trading license (“BTL”) for member organizations that desire to trade only debt securities on the Exchange and establish a new class of NYSE market participants, Bonds Liquidity Providers (“BLPs”). The proposal was published for comment in the Federal Register on December 10, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

A. Bonds Trading License

The Exchange proposes to establish a new bonds-only trading license.⁴ Currently, an approved member organization may obtain a trading license pursuant to Rule 300, which permits trading of all debt and equity securities listed on the Exchange. Under proposed Rule 87, any

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 63444 (December 6, 2010), 75 FR 77024 (SR-NYSE-2010-74) (“Notice”).

⁴ NYSE intends to submit a separate filing to address the fees associated with the proposed bond trading license.

member organization that chooses to trade only bonds, or any new member organization who desires to trade only bonds, could apply for a BTL. A BTL would be available to any approved NYSE member organization. A BTL could not be transferred, assigned, sublicensed or leased, in whole or in part.⁵

B. Bond Liquidity Providers

The Exchange also proposes to create a new class of market participant, BLPs, which would function similarly to Supplemental Liquidity Providers (“SLPs”) trading equity securities in the Exchange’s New Market Model.⁶ Currently, bond platform participants are charged a graduated fee for liquidity-taking transactions, with larger-size transactions charged at a lower rate.⁷ Pursuant to proposed Rule 88, the Exchange would provide an additional incentive in the form of a rebate to BLPs for quoting and adding liquidity to the bond market via the BLP program.

⁵ The holder of the BTL could, however, with prior written consent of the Exchange, transfer a BTL to a qualified and approved member organization (i) that is an affiliate or (ii) that continues substantially the same business of such BTL holder without regard to the form of the transaction used to achieve such continuation, e.g., merger, sale of substantially all assets, reincorporation, reorganization or the like.

⁶ See Securities Exchange Act Release Nos. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108) (establishing SLP Pilot); 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (establishing New Market Model Pilot); and 62814 (September 1, 2010), 75 FR 54671 (September 8, 2010) (SR-NYSE-2010-61) (extending the Pilots until January 31, 2011).

⁷ See Securities Exchange Act Release Nos. 63593 (December 21, 2010), 75 FR 81701 (December 28, 2010) (SR-NYSE-2010-83) and 57176 (January 18, 2008), 73 FR 4929 (January 28, 2008) (SR-NYSE-2008-04). See also Notice, supra note 3.

Responsibilities of BLPs⁸

(1) Quoting Requirements

Under proposed Rule 88(a), a BLP would be required to maintain: (1) a bid at least seventy percent of the trading day for a bond; (2) an offer at least seventy percent of the trading day for a bond; and (3) a bid or offer at the Exchange's Best Bid ("BB") or Exchange's Best Offer ("BO") at least five percent of the trading day in each of its bonds in the aggregate.

Proposed Rule 88(b) provides that a BLP that meets these quoting requirements would receive a liquidity provider rebate, to be set forth in the Exchange's Price List.⁹ The Exchange has represented that it would monitor the balance between the quoting requirements and the liquidity provider rebate during the course of the pilot and may consider revising the incentive and quoting structure if, for example, more liquidity is brought to the NYSE bond marketplace.

(2) Qualifications

To qualify as a BLP under proposed Rule 88(c), a member organization would be required to: (1) demonstrate an ability to meet the quoting requirements of a BLP; (2) have mnemonics that identify to the Exchange BLP trading activity in assigned BLP bonds; and (3) have adequate trading infrastructure and technology to support electronic trading.¹⁰

⁸ The following provides an overview of the Exchange's BLP proposal. For additional information, see Notice, supra note 3.

⁹ NYSE has represented that it intends to submit a separate filing that would set the liquidity provider rebate at \$0.05 per bond, with a \$50 rebate cap per transaction.

¹⁰ A member organization's off-Floor technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as a BLP. If a member organization were unable to support the electronic trading and reporting systems of the Exchange for BLP trading activity, it would not qualify as a BLP. The BLP must establish connectivity with relevant Exchange systems before being permitted to trade as a BLP.

(3) Application Process

Under proposed Rule 88(d), to become a BLP, a member organization would be required to submit a BLP application form with supporting documentation to the Exchange. The Exchange would review the application and documentation and notify the applicant of its decision. In the event an applicant is disapproved or disqualified under proposed Rule 88(d)(4) or (i)(2) by the Exchange, the applicant may request an appeal as provided in proposed Rule 88(j), and/or reapply for BLP status three months after the month in which the applicant received disapproval or disqualification notice from the Exchange.

(4) Voluntary Withdrawal of BLP Status

A BLP may withdraw its status by giving notice to the Exchange. After the Exchange receives the notice of withdrawal from the BLP, the Exchange would reassign such bonds as soon as practicable, but no later than 30 days from the date the notice was received by the Exchange. Withdrawal would become effective when bonds assigned to the withdrawing BLP are reassigned to another BLP. If the reassignment of bonds takes longer than the 30-day period, the withdrawing BLP would have no further obligations and would not be responsible for any matters concerning its previously assigned BLP bonds.

(5) Calculation of Quoting Requirements

Beginning with its first month of operation as a BLP, the BLP must satisfy the 70% quoting requirement for each of its assigned BLP bonds. The Exchange would calculate whether a BLP met its 70% quoting requirement by determining the average percentage of time a BLP

was at a bid (offer) in each of its BLP bonds during the regular trading day on a daily and monthly basis,¹¹ using the calculation methodology set forth proposed Rule 88(f)(1).¹²

The 5% quoting requirement would take effect starting the third month of a BLP's operation.¹³ The Exchange would determine whether a BLP had met its 5% quoting requirement by determining the average percentage of time a BLP was at the BB or BO in each of its assigned BLP bonds during the regular trading day on a daily and monthly basis, using the calculation methodology set forth proposed Rule 88(f)(2).¹⁴

(6) Matching of BLPs and Issuers

During the proposed pilot program, an issuer may be represented by only one BLP. Prior to the commencement of the pilot, the Exchange would match issuers with approved BLPs. The matching process for the largest issuers would be determined on a random basis, while the matching process for smaller issuers would be determined in favor of those BLPs willing to offer the broadest coverage to such issuers.

In the first round of matching, the Exchange would match BLPs to issuers that have at least one debt issue with a current outstanding principal of \$500 million or greater. BLPs would be permitted to select the issuers that they want to represent from this group in an order determined by lottery. Each BLP would make one selection, and the process would continue until all BLPs exhausted their selections for this group of issuers.

¹¹ Only displayed orders entered throughout the trading day would be used when calculating whether a BLP is in compliance with its 70% average quoting requirement. In addition, for purposes of the 70% quoting requirement, a BLP would be considered to be quoting an assigned bond if it had a displayed bid (offer) for at least 10 displayed bonds at a single price level.

¹² See Notice, supra note 3, 75 FR at 77025-26.

¹³ Only displayed orders at the BB and BO throughout the trading day would be used when calculating whether a BLP is in compliance with its 5% average quoting requirement.

¹⁴ See Notice, supra note 3, 75 FR at 77026.

In the second round of matching, the Exchange would match BLPs to issuers with one or more debt issues that each has a current outstanding principal of less than \$500 million. Each BLP would submit a list of the issuers and bonds that it would be willing to represent. The BLP that is willing to represent the most bonds for a given issuer would be matched to that issuer. In event of a tie (i.e., two or more issuers seeking to represent the same issuer and the same number of that issuer's bonds), the BLP with the highest lottery number from the first round would be matched with the issuer.

After the commencement of the program, matching would continue in a manner similar to the second round of matching prior to commencement of the program. On a monthly basis, BLPs would be permitted to apply for unrepresented issuers. The BLP willing to represent the most debt issuances of an issuer would be awarded status as a BLP for such issuer, with ties resolved by lottery.

A BLP must represent each debt issuance of an issuer that has an outstanding principal of \$500 million or more. A BLP may represent any issuance below such level, but would not be required to do so. If a BLP is representing a debt issuance that was above \$500 million but falls below such level, or has voluntarily been representing an issuance below the \$500 million level where the outstanding principal amount has since been reduced, the BLP may cease representing such issue by notifying the Exchange in writing by the 15th day of the month, in which case the BLP may cease acting as such on the first day of the following month.

The Exchange believes that the matching process would give BLPs the opportunity to select the issuers that they want to represent and thereby take into account the BLP's expertise in particular issuers and sectors. In addition, NYSE believes this matching process would be fair to

approved BLPs and beneficial to issuers and would result in the broadest coverage of issuers and sectors upon commencement of the pilot.

(7) Failure to Meet Quoting Requirements

After the initial two-month grace period, if, in any given calendar month, a BLP fails to meet any of the quoting requirements set forth in proposed Rule 88(a), the BLP would not receive the liquidity provider rebate for the affected bond for that month. If a BLP's failure to meet the quoting requirements continues for three consecutive calendar months in any assigned BLP bond, the Exchange could, in its discretion, take one or more of the following actions: (i) revoke the assignment of all of the affected issuer's bonds from the BLP; (ii) revoke the assignment of an additional unaffected issuer from the BLP; or (iii) disqualify a member organization from its status as a BLP.

The Exchange, in its sole discretion, would determine if and when a member organization is disqualified from its status as a BLP. One calendar month prior to any such determination, the Exchange would notify a BLP of its impending disqualification in writing. When disqualification determinations are made, the Exchange would provide a disqualification notice to the member organization.

If a member organization were denied approval pursuant to paragraph (d)(2) of the proposed rule or disqualified from its status as a BLP pursuant to paragraph (i)(1)(C) of the proposed rule, such member organization could re-apply for BLP status three calendar months after the month in which the member organization received its disapproval or disqualification notice.

(8) Appeal of Disapproval or Disqualification

A member organization may dispute the Exchange’s decision to disapprove or disqualify it by requesting, within five business days of receiving notice of the decision, review by the Bond Liquidity Provider Panel (“BLP Panel”)¹⁵ (the disputing member organization, an “appellant”).¹⁶ In the event a member organization is disqualified from its status as a BLP pursuant to proposed Rule 88(i)(2), the Exchange will not reassign the appellant’s bonds to a different BLP until the BLP Panel has informed the appellant of its ruling. The BLP Panel will review the facts and render a decision within the time frame prescribed by the Exchange, and all determinations by the BLP Panel will constitute final action by the Exchange.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposed rule change to establish a pilot program, expiring twelve months from the date of this approval order, to create a BTL for member organizations that desire to trade only debt securities on the Exchange and to establish BLPs as a new class of NYSE market participants, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to

¹⁵ The BLP Panel will consist of the NYSE’s Chief Regulatory Officer (“CRO”), or a designee of the CRO, and two officers of the Exchange designated by the Co-Head of U.S. Listings and Cash Execution.

¹⁶ See proposed Rule 88(j).

¹⁷ In approving this proposed rule change, the Commission has considered the proposed rule change’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Commission notes that the new BTL, pursuant to a pilot program, may allow member organizations to become authorized to trade on the Exchange pursuant to a license more specifically tailored to a member organization's trading. Therefore, this aspect of the proposal may increase efficiency, without compromising regulatory oversight, both for member applicants as well as the Exchange. In addition, the Commission notes that NYSE has represented it will submit a separate fee filing to address the BTL, and the Commission expects that the costs for the BTL would be less than the general trading license on the Exchange. Thus, the BTL may also decrease costs for organizations choosing to trade just bonds on NYSE.

The Commission also notes that BLPs would be required to have adequate trading infrastructure and technology to support trading in the bonds and meet quoting requirements and be approved by NYSE, and upon bringing liquidity to NYSE's bond market, BLPs would receive a rebate based on an incentive and quoting structure. BLPs that fail to meet the quoting requirements set forth in the proposed rule would no longer be eligible for the rebate and may, in the Exchange's discretion, have one or more issues revoked or be disqualified as a BLP. The Commission believes it is consistent with the Act for the Exchange to provide an incentive to member organizations bringing liquidity to the bond marketplace, and to remove the incentive when the BLP does not meet its obligations. Importantly, the Commission notes that the proposed rules relating to BLPs would be on a pilot basis. The Commission believes that, while the framework proposed by the Exchange as part of this proposed rule change may be suitable for the Exchange's current level of trading activity on its bond platform, this framework may not

be suitable in the future should the characteristics of the bond platform, including but not limited to trading activity, change. Thus, the Commission believes that it is appropriate that the proposed rules be approved on a pilot basis, such that the Exchange and Commission may review the suitability of these rules again. The Commission notes that the Exchange has represented that it would monitor the quoting and rebate structure and may consider modifications.

The Commission understands that one BLP would be matched to each issuer. BLPs would be able to choose issuers having at least one issue with an outstanding principal of \$500 million or greater in an order determined by lottery. Issuers not having at least one issue with an outstanding principal of \$500 million or greater would be matched to BLPs willing to represent the most bonds for that given issuer, and any tie with respect to BLPs wishing to represent these issuers would be resolved by allowing BLPs to choose in the order determined by lottery. The Commission believes that this is an objective way to commence the pilot program for all parties, as it is intended by the Exchange to result in broad coverage of issuers; however, the Commission believes the results of the issuer selection and assignment process should be evaluated by the Exchange, and the findings shared with the Commission, prior to any proposal to modify or permanently establish the rules relating to the BLP selection process.

Finally, the Commission understands that NYSE would allow BLPs and BLP applicants the opportunity to appeal disapproval or disqualification decisions, as applicable, to a BLP panel, and that NYSE would provide a disqualified BLP with a month's prior written notice of the disqualification. This should provide transparency to the process and an additional opportunity for BLPs and BLP applicants to be heard.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NYSE-2010-74), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Elizabeth M. Murphy
Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).