SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66464; File Nos. SR-NYSE-2011-55; SR-NYSEAmex-2011-84)

February 24, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Notice of Filing of Partial Amendment No. 2 to Proposed Rule Changes, As Modified By Amendment No. 1, Adopting New Rule 107C to Establish a Retail Liquidity Program on a Pilot Basis to Attract Additional Retail Order Flow to the Exchanges

I. Introduction

On October 19, 2011, New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex" and together with NYSE, the "Exchanges") each 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 Retail Liquidity Program ("Program") on a pilot basis for a period of one year from the date of implementation, if approved. The proposed rule changes were published for comment in the Federal Register on November 9, 2011.[3] The Commission received 28 comments on the NYSE proposal[4] and 4 comments on the NYSE Amex proposal.[5]

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release Nos. 65671 (November 2, 2011), 76 FR 69774 (SR-NYSE Amex-2011-84); 65672 (November 2, 2011), 76 FR 69788 (SR-NYSE-2011-55).

4 See Letters to the Commission from Sal Arnuk, Joe Saluzzi and Paul Zajac, Themis Trading LLC, dated October 17, 2011 ("Themis Letter"); Garret Cook, dated November 4, 2011 ("Cook Letter"); James Johannes, dated November 27, 2011 ("Johannes Letter"); Ken Voorhies, dated November 28, 2011 ("Voorhies Letter"); William Wuepper, dated November 28, 2011 ("Wuepper Letter"); A. Joseph, dated November 28, 2011 ("Joseph Letter"); Leonard Amoruso, General Counsel, Knight Capital, Inc., dated November 28, 2011 ("Knight Letter"); Kevin Basic, dated November 28, 2011 ("Basic Letter"); J. Fournier, dated November 28, 2011 (Fournier Letter"); Ullrich Fischer, CTO, PairCo, dated November 28, 2011 ("PairCo Letter"); James Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated November 28, 2011 ("Angel Letter"); Jordan Wollin, dated November 29, 2011 ("Wollin Letter"); Aaron Schafter, President, Great Mountain Capital Management LLC, dated November

On December 19, 2011, the Commission designated a longer period for Commission action on the proposed rule change, until February 7, 2012.[6] In connection with the proposals, the Exchanges requested exemptive relief from Rule 612(c) of Regulation NMS,[7] which prohibits a national securities exchange from accepting or ranking certain orders based on an increment smaller than the minimum pricing increment.[8] The Exchanges submitted a consolidated response letter on January 3, 2012.[9] On January 17, 2012, each Exchange filed

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29, 2011 ("Great Mountain Capital Letter"); Wayne Koch, Trader, Bright Trading, dated November 29, 2011 ("Koch Letter"); Kurt Schact, CFA, Managing Director, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated November 30, 2011 ("CFA Letter"); David Green, Bright Trading, dated November 30, 2011 ("Green Letter"); Robert Bright, Chief Executive Officer, and Dennis Dick, CFA, Market Structure Consultant, Bright Trading LLC, dated November 30, 2011 ("Bright Trading Letter"); Bodil Jelsness, dated November 30, 2011 ("Jelsness Letter"); Christopher Nagy, Managing Director, Order Routing and Market Data Strategy, TD Ameritrade, dated November 30, 2011 ("TD Ameritrade Letter"); Laura Kenney, dated November 30, 2011 ("Kenney Letter"); Suhas Daftuar, Hudson River Trading LLC, dated November 30, 2011 ("Hudson River Trading Letter"); Bosier Parsons, Bright Trading LLC, dated November 30, 2011 ("Parsons Letter"); Mike Stewart, Head of Global Equities, UBS, dated November 30, 2011 ("UBS Letter"); Dr. Larry Paden, Bright Trading, dated December 1, 2011 ("Paden Letter"); Thomas Dercks, dated December 1, 2011 ("Dercks Letter"); Eric Swanson, Secretary, BATS Global Markets, Inc., dated December 6, 2011 ("BATS Letter"); Ann Vlcek, Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 7, 2011 ("SIFMA Letter"); and Al Patten, dated December 29, 2011 ("Patten Letter").

5 See Knight Letter; CFA Letter; TD Ameritrade Letter; and letter to the Commission from Shannon Jennewein, dated November 30, 2011 ("Jennewein Letter").

6 See Securities Exchange Act Release No. 66003, 76 FR 80445 (December 23, 2011).

7 17 CFR 242.612(c).

8 The Exchanges amended the exemptive relief request on January 13, 2012. See Letter from Janet M. McGinness, Senior Vice President-Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission.

9 See Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated January 3, 2012 ("Exchanges' Response Letter").

Amendment No. 1 to its proposal.[10] On February 7, 2012, the Commission instituted proceedings to determine whether to disapprove the proposed rule changes, as modified by Amendment No. 1.[11] The comment period for the Commission's Order Instituting Proceedings is set to expire on March 5, 2012, and the Exchanges' rebuttal period is scheduled to close on March 19, 2012.[12] On February 16, 2012, the Exchanges filed Partial Amendment No. 2 to the proposed rule changes.

The Commission is publishing this notice to solicit comments on the proposed rule changes, as modified by Amendment No. 2, from interested persons.

II. Description of the Partial Amendment No. 2

In Amendment No. 2, the Exchanges propose to make three changes to proposed Rule 107C, which establishes the Retail Liquidity Provider program: (1) limit the definition of "Retail Order"; (2) modify the definition of the Retail Liquidity Identifier; and (3) clarify the treatment of odd lots, round lots, and part of a round lot orders.[13]

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10 In Amendment No. 1, the Exchanges modified the proposals as follows: (1) to state that Retail Member Organizations may receive free executions for their retail orders and the fees and credits for liquidity providers and Retail Member Organizations would be determined based on experience with the Retail Liquidity Program in the first several months; (2) to correct a typographical error referring to the amount of minimum price improvement on a 500 share order; (3) to indicate the Retail Liquidity Identifier would be initially available on each Exchange's proprietary data feeds, and would be later available on the public market data stream; and (4) to limit the Retail Liquidity Program to securities that trade at prices equal to or greater than $1 per share.

11 See Securities Exchange Act Release No. 34-66346, 77 FR 7628 (February 13, 2012) ("Order Instituting Proceedings").

12 See id.

13 In addition, the Exchanges propose to make conforming changes to the Form 19b-4 and Exhibit 1 that they submitted in connection with the proposed rule changes.

First, the Exchanges propose to amend proposed Rule 107C(a)(3) to remove from the definition of "Retail Order" proprietary orders of Retail Member Organizations[14] that result from liquidating a position acquired from the internalization of orders that otherwise meet the definition of "Retail Order." As amended, the definition of "Retail Order" thus would be limited to "an agency order that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology."

Second, the Exchanges would add language to the definitions of "Retail Order" and "Retail Price Improvement Order" ("RPI") in proposed Rules 107C(a)(3) and 107C(a)(4), respectively, to clarify that both may include odd lot, round lot, and part of round lot orders. The Exchanges explain further in the Amendment that RPIs would be ranked and allocated according to price and time of entry into the Exchange systems consistent with Exchange Rule 55, 61, and 72, and therefore without regard to whether the size entered is an odd lot, round lot, or part of round lot amount. Similarly, the Exchanges explain that Retail Orders would interact with RPIs according to the priority and allocation rules of the Program and without regard to whether they are odd lots, round lots, or parts of round lots. According to the Amendment, Retail Orders may be designated as Type 1, Type 2, or Type 3 under proposed Rule 107C(k) without regard to the size of the order. However, the Exchanges note that, pursuant to the rules of the Consolidated

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14 As described in the Commission's Order Instituting Proceedings, Retail Member Organizations are Exchange member organizations that conduct a retail business or handle retail orders on behalf of another broker-dealer, apply to the Exchanges to obtain the "Retail Member Organization" designation, and attest that the order flow they would provide under the Program would satisfy the "Retail Order" definition.

Tape Association, executions less than a round lot will not print to the tape or be considered the last sale.

Third, the Exchanges would amend proposed Rule 107C(j) to add to the definition of Retail Liquidity Identifier that the identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest. The previously proposed definition of the Retail Liquidity Identifier did not contain these details. Rather, it said only that an identifier shall be disseminated through proprietary data feeds or as appropriate through the Consolidation Quote System when RPI interest priced at least $0.001 better than the best protected bid or best protected offer[15] for a particular security is available in Exchange systems.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes, as modified by Amendment No. 2, are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2011-55 or NYSEAmex-2011-84 on the subject line.

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[15] Under proposed Rule 107C(a)(4), the terms protected bid and protected offer would have the same meaning as defined in Rule 600(b)(57) of Regulation NMS. Rule 600(b)(57) of Regulation NMS defines "protected bid" and "protected offer" as "a quotation in an NMS stock that: (i) [i]s displayed by an automated trading center; (ii) [i]s disseminated pursuant to an effective national market system plan; and (iii) [i]s an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of the Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of the Nasdaq Stock Market, Inc." 17 CFR 242.600(b)(57).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR- NYSE-2011-55 or NYSEAmex-2011-84. 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 website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 website 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at 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 publicly

available. All submissions should refer to File Number SR- NYSE-2011-55 or SR-NYSEAmex-2011-84 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [16]

Kevin M. O'Neill
Deputy Secretary

[16] 17 CFR 200.30-3(a)(12).